

RECONTEXTUALISATION IN THE POLICE STATION

by

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ABSTRACT

Recontextualisation involves repetition and change; it is central to police work. Officers routinely transform the words of the legal institution by explaining them to lay people and they routinely transform the words of lay people for institutional use. This thesis explores police officers' transformations of written and spoken language in two situations: first, in explaining the rights of detainees in custody and secondly, in collecting witness' accounts during investigations. The forms and functions of recontextualisation in police work are illustrated through the analysis of naturally occurring data, ethnographic observations and qualitative interviews. The investigation shows that recontextualisations in these legal contexts are characterised by personalisation, collaboration and appropriation. Through personalisation officers and lay people reposition and reperspectivise texts for one another. Through collaboration officers share practices amongst themselves and create innovative formulations with lay people. Finally, through appropriation routine procedures become vehicles for wide-ranging interpersonal and experiential work. Officers and lay people exhibit sophisticated metalinguistic awareness, reflecting on their own recontextualisation practices and other practices that they encounter. The thesis concludes that recontextualisation in the police station is not simply about transmission of information and that its many other levels of meaning require recognition.

DEDICATION

To my grandparents

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TERMINOLOGY AND KEY TO TRANSCRIPTION CONVENTIONS

Terminology

Anglo-Welsh caution (the) – This thesis focuses on the rights information used in England and Wales, including the police caution. When discussing other jurisdictions it is, on occasions, necessary to refer back to the caution used in England and Wales. At these points, I refer to it as the Anglo-Welsh caution. When not differentiating from cautions used in any other jurisdiction, I call this form of words simply *the caution*. See also *Caution (the)*.

Appropriate adult – These people are called to the police station to give “advice and assistance” to detainees who need it (PACE *Codes of practice*, Code C, 3.18, 58). In particular they might “help check documentation” for detainees (PACE *Codes of practice*, Code C, 3.20, 58). In the case of juvenile detainees the main categories of people suitable to act as appropriate adult will be: their parent or guardian; a person representing the agency responsible for their care, if they are in local authority care, for example; or a social worker. In the case of the “mentally disordered or mentally vulnerable” suitable appropriate adults include: family members; a guardian or someone “experienced in dealing with mentally disordered or ... vulnerable people”. In either case the appropriate adult could also be a different “responsible adult” but should not be someone employed by the police (PACE *Codes of practice*, Code C, 1.7, 48-9).

Caution (the) – The caution runs: *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.* See also *Anglo-Welsh caution (the)*.

Detainees – I follow Bucke and Brown who identify *suspects* as those who are “arrested under suspicion of committing a criminal offence”. They present this group as a sub-set of *detainees* who also include “those in detention who are not under suspicion, including those arrested on a warrant for failing to appear at court or to pay a fine” (1997:2). I therefore use *detainees* to refer to all people in police custody.

EIDU – Enterprise Information Design Unit - A document design company based in Newport Pagnell, Buckinghamshire. This company employs the information designers who provided data for this study (see section 4.5.2). The acronym EIDU is combined with a number throughout this text (1-5) to label each of the five authors from the Unit who contributed to this research.

Judges' rules – These rules used to offer guidance on cautioning. They did not “carry the force of law, but failure to conform to them may have led answers and statements “to be excluded from evidence in subsequent criminal proceedings” (Brandon and Davies, 1972:47).

Juvenile detainee – This category of detainees includes anyone who “appears to be under 17 ... in the absence of clear evidence that they are older”. Those classed as a juvenile should be accompanied by an appropriate adult (PACE *Codes of practice*, Code C, 1.5, 48). In these data nearly one fifth of detainees (19%) were juveniles. See also *Appropriate adult*.

Legal advice / adviser – See *solicitor*

No comment – Giving a “‘no comment’ interview” or ‘going “no comment”’ means using the words “no comment” as a verbal ‘equivalent’ of silence. It offers a way of being silent, in not providing relevant responses to questions, but participating in interaction, in taking turns at talk.

Notice (*the*) – This abbreviation is used to refer to the main rights text used in detention, the *Notice to detained persons*. This is discussed in Chapters 4-8.

Notices (*the*) – This abbreviation is used to refer to both of the two written rights texts used in detention, the *Notice to detained persons* and the *Notice of Entitlements*. These are discussed in Chapters 4-8.

pc – This abbreviation is used to denote ‘personal communication’ within references in the text. Thus, (Gibbons, 2003:pc) indicates an informal communication between myself and John Gibbons which took place during 2003. Further details of these interactions are provided in the references section.

PEC (*the*) – Plain English Campaign. A campaigning organisation which aims to promote and produce plain language texts.

Solicitor – *Solicitor* is used with a specialist meaning in the *Notice*, and in detention. It is defined in Code C of the PACE *Codes of practice*. Lay readers might not expect its in-detention meaning and it is not explained in the *Notice* or elsewhere within detention procedure. Code C’s definition of a solicitor includes trainee solicitors, accredited representatives and “non-accredited or probationary representative[s]” of law firms (PACE *Codes of practice*, 2003:C6.12).

Data excerpts

Coding

Data excerpts from authentic police interviews are labelled with the force initial used to anonymise police forces throughout this study (see section 9.5.1) and an identification number. For example, A12 is from Force A and arbitrarily assigned the identifier '12'. Data excerpts from research interviews in which I interviewed police officers are labelled similarly but with the addition of the letter 'O' to indicate 'officer'. For example, AO12 is an officer interview from Force A and arbitrarily assigned the identifier '12'.

Names and anonymisation

Consistent abbreviations are used throughout to label speakers in excerpts:

P	Police officer
D	Detainee
S	Solicitor
AA	Appropriate adult
F	Frances (the researcher)

All names and other potentially identifying details have been anonymised. Pseudonyms have been inserted in place of personal names in some cases for ease of reference.

Key

<u>Underlining</u>	Indicates stress signaled by the speaker through a change in pitch and volume.
(.)	A micropause of 0.9 seconds or less.
(1.2)	A pause of 1.0 second or more, the duration appearing within the brackets. In this case, for example, the pause lasted for 1.2 seconds.
// //	Simultaneous or overlapping talk. Words within the double slashes on consecutive lines are simultaneous.
hhh	Audible out-breath.
.hhh	Audible in-breath.
=	Latching on.
-	Self correction or speaker breaking off.
[]	Comments (for example [coughs]).
(())	Unclear speech (Double brackets either contain an attempt to decipher the unclear speech or, where that is not possible, an estimation of the number of inaudible syllables).
:	The preceding syllable was prolonged.
Bold face	Is used to highlight points of interest in data excerpts.
...	Indicates that words have been removed from an excerpt. Only fillers, false-starts and hedges have been removed. Their removal is intended to make the excerpts more readily intelligible for readers. Words have only been removed if they are not directly relevant to the point being made in analysis of, or commentary on the excerpt. For example from the excerpt in section 11.1 (beginning <i>I've been in that situation myself</i>), the following three chunks have been removed: (1) <i>if you know what I mean sort of I don't know it depends on the circumstances I suppose</i> ; (2) <i>do you know what I mean</i> ; (3) <i>you know what I mean</i> .
... ..	In Chapter 10, some excerpts have been abridged because their details are not relevant to the macro-focus there. This convention is used to indicate places where substantial sections have been removed.
*	Indicates invented examples.
Ø	Indicates an 'empty set', an item which is absent or missing. This is used when an absence is marked or noteworthy.

CHAPTER 1: INTRODUCTION

1.1 The law and the lay person

The excerpt below is from the opening of an interview between a police officer and a detainee. Routine procedure dictates that, as interviews commence, detainees should be asked whether they require legal advice and, if not, why not:

- | | | |
|----|-----|---|
| 1 | P | do you wish to have a solicitor present or speak to one on the telephone? |
| 2 | → D | I don't know [no?] |
| 3 | → P | no? and I just have to ask you your reasons for waiving the right (.) why you don't want one? |
| 4 | D | .hhh why I don't actually want a? |
| 5 | P | yeah I just have to ask you why you don't want one? |
| 6 | D | .hhh |
| 7 | P | if it's because you just don't (.) you just don't? |
| 8 | D | I just don't at the moment no |
| 9 | P | OK right you can have one at any time though u::m if you can just confirm we haven't affected your decision in that at all? |
| 10 | D | no you haven't no |
| 11 | P | right that's good |

Does the officer understand what the detainee is saying? Does the detainee understand what the officer is saying? What is the relationship between what is said and 'what is going on'?

At turn 2 the detainee's ambiguous *I don't know* creates considerable doubt about whether he does not want a solicitor or does not know whether he wants one. Nonetheless, the officer recasts *I don't know* as an unambiguous right waiver and proceeds to probe its motivations (turn 3), formulating *a solicitor* of his first turn as *the right*. The detainee's subsequent two turns (4 and 6) suggest that he does not understand these questions and possibly remains doubtful about whether he has declined a solicitor and whether they are even still discussing solicitors. The officer, who could be said to have created this confusion, does little to address it. He does not reintroduce the word *solicitor* from turn 1, for example. Things are apparently resolved when the officer suggests a response to his own question (turn 7) which the detainee affirms (turn 8). Finally, the officer closes with a loaded question which begins an Initiation-Response-Feedback exchange (turns 9-11).

Excerpts like this invite bombastic statements, such as “It is vital that communication between legal specialists and lay people proceeds in a way which ensures mutual comprehension”. Yet what does this mean in reality? What is the place of language here? How do lay people pass through the criminal justice system in such apparent confusion about things which the system intends to explain to them? These are the issues which are explored in this thesis.

Language is indispensable to both the enactment and enforcement of law (see, for example, Melinkoff, 1963; Tiersma, 1999:1; Gibbons, 1987:3). Police officers, themselves, see talk and writing as crucial:

when you're charging somebody with a Public Order Offence and you read out the offence (.) the offence is so long winded and so complicated for them to understand that what you tend to do is then they'll like look at you as if "what?" (.) you know (.) they've maybe been fighting in the street and they've been charged with Section 4 Public Order and they're like "what's going on here I was just fighting in the street?" and then you have to obviously ex- so like you're used to explaining things in layman's terms anyway

Whilst this officer points to using language at work, he focuses on the potency of language in *transforming* texts and the centrality of transformation to his work. The research presented here considers aspects of police work in which police and lay people rely upon transformation to try to facilitate comprehension. This is something which did not appear to have succeeded in the case of the detainee in the first excerpt. The thesis has three Parts, and each examines transformations around a different text.

1.2 Sites of interest

The focus of Part A (Chapters 4-8) is a written text, the *Notice to detained persons*, which is administered to those who enter police custody and is intended to inform them of their rights. This text is not routinely transformed by police officers. However, one officer, responding to his personal concerns about its comprehensibility, embarked on a project of reform through transformation. That project is examined here by comparing the original *Notice* to the text which the officer produced and, augmenting that central comparison, to five texts produced by commercial information designers. Part A examines the officer revision as it was appropriated and received in a working custody unit by both officers and detainees, and illustrates how research on that appropriation and reception in turn influenced further revision through an

iterative, data-driven consultation. Thus Part A triangulates sources (cf. Labov, 1988:162; Labov and Harris, 1994:279; Lentz and Pander Maat, 1992):

- **Texts** – examination of the original *Notice* using notions and concepts for assessing texts which have been explored by Gibbons (2003), Tiersma (2001), Jackson (1995) and others who study language, difficulty and the law both inside and outside linguistics;
- **Texts in process** – examination of rewritings of the original *Notice* and comments from the rewriters during interviews and focus groups. This draws on studies of adaptation by Davidson and Kantor (1982) and revision by Faigley and Witte (1981) and Duffy, Curran and Sass (1983). It accordingly treats rewriting practices as legitimate objects of study in their own right and as informative sources on the texts and contexts which they transform;
- **Texts in use** – examination of the texts' wider context of administration:
 - using field-notes composed during an ethnographic study based on daily observation in the custody block of a provincial police station over a four-month period (September to December 2000);
 - and on the basis of 112 interviews, including 48 with police officers and 52 with detainees, in two different police authorities.

The focus of Part B is the police caution, a predominantly spoken text although one which begins its intertextual journey in writing. The caution seeks to explain one of the rights which is also introduced in the *Notice to detained persons*: the right to silence. Police officers do not always transform the caution when they deliver it, but are institutionally invited to do so if they believe that explanation is necessary. Thus, individual police officers may transform this text frequently and are given considerable freedom to do so. These transformations are scrutinised in Chapters 9-14, through examination of:

- **Texts** – examination of the original caution using notions and concepts which have been explored by Dumas (1990), Gibbons (2001a; 2003), Cotterill (2000), Kurzon (1995; 1996), Berk-Seligson (2000), Russell (2000) and others who study spoken rights communication;

- **Texts in process** – examination of 48 officers’ accounts of how they accomplish this transformation and how they view transformation, using studies of lay-expert explanation by Adelswärd and Sachs (1998) and Sarangi (1998a);
- **Texts in use** – examination of over 700 audio-recordings of police interviews with detainees, 151 in detail, which illustrate linguistic features of officers’ transformations and the diversity of interactional work surrounding those explanations.

The transformations examined in Part C (Chapter 15) may be seen as inversions of the text-to-speech and legal-to-lay transformations examined earlier. In these interactions, police officers transform the words of a lay speaker into a written text for the legal institution. Again officers are concerned with understanding, but in translating the lay person for the institution, they face a very different task. Here, a case study explores:

- **Texts** – examination of the witness’s crime narrative and the statement produced on the basis of that narrative;
- **Texts in process** – examination of how the witness’s spoken crime narrative was transformed into a written text, through the statement-taking session;
- **Texts in use** – examination of how the written statement which was produced during the police interview might be taken up by the legal system and whether its processes of production are ever recalled as the text is used.

1.3 Theoretical departure point

These wide-ranging sources allow closer scrutiny of everyday reading and writing than is possible from one source alone (Barton, 1994:24; cf. Scribner and Cole, 1981; Brice Heath, 1983; Street, 1984; Potter and Wetherell, 1987:162). Triangulation within each Part (A, B and C) permits examination of legal texts and language “as forms of life, not merely as systems or instances of communication” (White, 1990:xiv). This ecological approach positions texts as part of police officers’ working lives and as central to the experience of the criminal justice system for detainees and witnesses (Barton, 1994; Barton and Hamilton, 1998). Through this approach I ask “how people take their life experiences to the text” (Fawns and Ivanič, 2001:82). A constructionist orientation investigates how the everyday practices which were

uncovered “exhibit, indeed generate” social structures (Mehan, 1993:243) by studying these language performances “as situated, concerted activities carefully constructed from and reflective of the tensions and constraints that organise all the institutions of ... society” (McDermott, 1988:47, see also Steirer, 1991; Gergen and Gergen, 1991). Thus, these sources combine to offer a rich view of everyday language practices, and, in isolation, provide insight into notions of similarity, difference and transformation as theoretical and real-world concepts. The focus on transformation raises two sets of questions about variability and change within each site:

- First, along the theme of *syntagmatic relations* and *intertextual chains*: In each of the three sites, what changes between the ‘original’ and the transformed text? Is the transformed text ‘like’ the original in any recognisable way and if not, why not? How does it differ and what consequences might this have?
- Secondly, along the theme of *paradigmatic relations* or *polyvocality*: In each site, are there any similarities among the various transformed texts which are produced by various speakers and writers and if not, why not? How do transformations differ from one another and what consequences might this have?

“Not all texts are created equal. Some occupy special positions within a culture and become the focus of multiple realisations ... others fade away” (Silverstein and Urban, 1996:12). All of the texts examined here occupy “special positions” and centre on multiple realisations. The police caution is distinctive and recognisable within contemporary Anglo-Welsh society, even to many who have never encountered arrest. Individual instantiations of written rights notices and witness statements occupy “special positions” within the legal system where they underpin interactions.

CHAPTER 2: LAW AND TRANSMISSION

2.1 Characterising *legal language*

The excerpt at the beginning of the introduction to this thesis evidenced some rather distinctive features which could be said to characterise not only the interaction it depicted but also other interactions between police officers and lay people. It is reproduced below:

- P do you wish to have a solicitor present or speak to one on the telephone?
D I don't know [no?]
P no? and I just have to ask you your reasons for waiving the right (.) why you don't want one?
D .hhh why I don't actually want a?
P yeah I just have to ask you why you don't want one?
D .hhh
P if it's because you just don't (.) you just don't?
D I just don't at the moment no
P OK right you can have one at any time though u::m if you can just confirm we haven't affected your decision in that at all?
D no you haven't no
P right that's good

In this excerpt, both speakers are experiencing *difficulty* in understanding and in being understood. For both, the interaction is *multifunctional*. The police officer, for example, uses the exchange to offer, elicit, suggest and even to safeguard his own position through the request for confirmation that *we haven't affected your decision*. The excerpt is *performative*; the officer's talk 'does' rights administration and the detainee's verbally waives a right. For both speakers the exchange is deeply *political* in the sense that it concerns a transaction in which social goods (specialist advice) are in play. The exchange concerns *literacy*, recalling a written rights text which the detainee may or may not have read or even recognised. Finally, the exchange has the potential to have been *different*. The officer might have asked different questions or listened more or the detainee might have been more willing or able to speak. No doubt, if the two had to do the same thing again in a different interview, the exchange might be totally different. Whilst the notion of a homogenous legal language is untenable, much language in legal settings shares some or all of the characteristics exhibited in the exchange:

- a reputation as 'difficult';
- multifunctionality;
- performativity;

- political potential;
- a particular relationship with literacy;
- the capacity to change.

Below, I briefly consider each characteristic in turn in order to sketch the sites examined in this thesis and the perspective I will take on them.

Language from legal specialists is perceived as *difficult*, particularly by those who enter legal domains infrequently. The ubiquitous police drama *The Bill* implies that viewers may be unfamiliar with even fictionalised police language by offering, on its website, a glossary of officers' slang, abbreviations and acronyms (The Bill, 2004a). Whilst the glossary and programme are intended only as entertainment, this positioning of police language as foreign to lay people indicates the potency of potential lay-legal miscommunication. Some attribute such difficulty to "vagueness" (Endicott, 2000:1) or "ambiguity" (Walton, 1996:260). Many lawyers believe, erroneously according to Charrow and Charrow, that legal concepts themselves are simply too complex for many people to understand (1979:1318). Researchers concerned about legal language's difficulty for novice interactants note the *two audience dilemma*, which afflicts texts which simultaneously address both lay and legal audiences (Gibbons, 2003:183-4). They propose two solutions. First, "easification" (Bhatia, 1983:218) which involves "making legal language identical to ordinary English to the extent feasible" (Tiersma, 1999:200). Secondly, the "two document solution" (Jackson, 1995:133), which "accepts the existence of both legal and ordinary language" and encourages "translation" to the "monolingual" public (Tiersma, 1999:200) which creates "two different genres" (Bhatia, 1983:218). For some, the only equitable option is a single, universally accessible version of all legal texts (for example, The Law Reform Commission of Australia, in Kimble, 1995:2). For others, such simplification erodes legal meaning, reducing semantic depth for specialists, rendering two documents preferable (Bhatia, 1993:110; Jackson, 1995:123). In the settings examined here, translation predominates.

Individual instantiations of language in legal settings are highly *multifunctional*. Studies of courtroom language, for example, propose that examination phases do not simply display facts but do a wide range of other things, notably, controlling the *content* (Atkinson and Drew, 1979; Danet, Hoffman, Kermish and Rafu, 1980; Woodbury, 1984; Penman, 1990;

Harris, 1994; Luchjenbroers, 1997; Matoesian, 2001) and *form* (O'Barr, 1982; Philips, 1984; Conley and O'Barr, 1988; Thompson, 2002) of witnesses' and defendants' contributions. Such multiplicity is not restricted to spoken interactions, but occurs widely whenever "people appropriate texts for their own ends" (Barton and Hamilton, 2000:12). This is evident in rights administration and interviewing, where, I claim, much more takes place than might be expected.

Performativity, the capacity to 'do' something, defines some legal texts, being manifest in "documents, or functions of documents ... which relate to some change in [people's] status" (Danet, 1997:13). Performativity has imperceptibly been transferring to writing (Danet, 1997:19) such that the few remaining oral formulae tend to require an exact official wording. In rights administration, providing the officially sanctioned wording (or a close approximation) through either speech or writing at the officially sanctioned time is crucial. I will illustrate that not only making, but also being seen to have made, rights provisions underpins this performativity, marking a change in status. Through statement-taking interactions too, lay people are recast as witnesses.

Legal language has a *political potential* which means that such language influences, and is influenced by, structures of power and equality. Gee defines 'politics' as "anything and anyplace where human social interactions and relationships have implications for how "social goods" are or ought to be distributed". Social goods are "anything that a group of people believe to be a source of power, status or worth" including control and knowledge (1999:2). In this sense, the recontextualisations examined here are deeply political, influencing whether and how individuals are classified, afforded a voice and empowered through language. Linguistic power in these settings then resides in recontextualisation, but also in "literacy, access to information, and effective communication" which all contribute to "the way inequalities of power are systematically reproduced" (Crowther and Tett, 2001:108). Of course if rights are administered, or statements taken, in ways which routinely create disadvantage, this is a matter of political concern, which should prompt us to ask whether there are "significant ways in which the features of legal language are *dysfunctional*, for the individual, and, ultimately, for social justice" (Danet, 1984:1).

Text and *literacy* are productive points of departure because written language “does not just amplify spoken language. It extends the functions of language” (Barton, 1994:44). Written legal texts have a particular status, formalising relationships between law and society (Goody, 1986:142) and receiving particular forms of attention. In legal settings, writing’s capacity to fix things in time and space (Barton, 1994:43) is particularly potent. This thesis examines literacy events (Heath, 1983). Each setting examined is underpinned by written texts. Thus, each Part of the thesis is also concerned with literacy practices or “common patterns in using reading and writing in a particular situation” (Barton, 1994:37).

A defining feature of most written legal texts is that readers cannot ask questions of them (Goody, 1986:139); they must stand alone (Tiersma, 2001:433). Yet, in each setting examined here, either police officers or witnesses themselves are sanctioned to ‘speak for’ each text. These texts are therefore less autonomous than some other legal texts, relying on interaction (Tiersma, 2001:433, after Kay, 1977). As an illustration, the caution is autonomous. It is intended to be self-contained, possibly not read until “months or years after it [was] created”, and it offers the reader “little or no opportunity to ask questions or request clarification” (Tiersma, 2001:433). Yet officers might explain the caution, turning autonomy on its head.

Change can be identified in police language in the form of *technologisation*, a process which alters communicative styles by “importing communicative features” across social positions (Scheuer, 2001:224), leading various discursual activities to assume “the character of transcontextual techniques, ... resources or toolkits that can be used to pursue a wide variety of strategies in many diverse contexts” (Fairclough, 1992:215-6). These discourse technologies “have particular effects on publics ... who are not trained in them” (Fairclough, 1992:215-6; see further Iedema and Wodak, 1999:13), therefore having immense potential in institutional lay-legal interactions. Increasingly, technologisation blurs the technical-versus-vernacular distinction as professional voices become powerful through their apparent informality, and institutions move towards *conversationalisation* (Fairclough, 1994) and *informalisation* (Fairclough, 1992:204-5) in addressing the public (Fowler, 1992:128). These changes render depersonalisation no longer characteristic of institutional interactions (Wodak and Iedema, 1999), yet without invalidating the notion of formal institutional talk because organisational life remains “*generally* characterised by formality and depersonalisation, and *occasionally* characterised by informality and personalisation” (Scheuer, 2001:238).

This thesis encounters two forms of technologisation. The first involves simplification, using “plain English” and informal explanation in delivering rights. The second involves endorsing particular ways of speaking and discouraging others in conducting witness interviews. In the conduct of cautioning, change is from “below” (Fairclough, 1992:239). It is a speech activity within which the institution has created a space for technologised forms (informal explanations) but has not specified what should fill that space. Witness interviews fit the ‘classic’ model of technologisation more closely in that interview training offers models which synthesise close personal relationships in pursuit of institutional ends and are grounded in empirical research (Clifford and George, 1996:232; Shepherd, 1999:139; National Crime Faculty, 1998:13-15).

The effects of technologisation are, as yet, a matter of speculation. Fairclough notes the increase in “information-and-publicity” texts within institutions, which he claims evidences a colonisation of such institutions by advertising. He links this to commodification and consumerism, which are triggering “a shift in the relative power of the producer and consumer in favour of the latter”. However, Fairclough questions whether this power-shift is “substantive or cosmetic” (1992:117). This crucial question is pursued in this thesis. I ask, for example, whether the move from simply stating the caution, to stating and explaining it is one which empowers those cautioned or only *appears* to do so.

Perhaps the two most important themes raised by the initial excerpt concern how the officer and detainee achieve anything. Through the excerpt, ‘an understanding’ was reached and the detainee’s words were recontextualised as institutionally meaningful. In the remainder of Part A I will illustrate the approach to understanding and recontextualisation which will be taken here.

2.2 Comprehension and comprehensibility

Police officers expressed sophisticated ideas about comprehension and comprehensibility.

One officer who regularly explains the police caution illustrates this:

it's not actually the words that [detainees] don't understand it's the meaning of the words and I don't just - I mean ... the meaning of the words as in a sentence the possible repercussions of them failing to understand what they're being told at that time

[Tony]

This officer makes subtle distinctions around words and sentences. For him, whilst meaning revolves around words and their combinations, more importantly, understanding is about consequences – situated meaning for particular addressees. Detainees also presented meaning as much more than a simple one-to-one correspondence between words and mental processes. Bob, who is regularly arrested, articulated this, describing his experience of written rights texts:

I know the words on their own that's fine but when they are all together
there I don't know (.) what they mean for me when everything's going on

[Bob]

For him, understanding lexical items in isolation was straightforward, but understanding their combinations and, crucially, implications (*what they mean for me*) in context (*when everything's going on*) presented problems. During my conversations with Bob, he demonstrated that he could also paraphrase rights information convincingly, yet he described the frustration caused by difficulties in applying the information. Ultimately, this frustration had very negative consequences – leading him to disregard information on his rights.

Comprehension, *comprehensibility* and *understanding* are “commonsense expressions” with “fuzzy and imprecise” meanings (Kintsch, 1998:2; cf. Barton, 1994:19). Scholarly definitions of these words overlap and shift (for example, Kintsch, 1998:2-3; House, 2003:21; Kreidler and Kreidler, 1985:185). For the interactants above, this fuzziness is real, manifesting as an awareness that comprehension is about more than just identifying denotations and recognising word classes (Barton 1994:64-5; Guthrie, Britten and Barker, 1991; Orasanu and Penney, 1986:3; cf. White and Gunstone, 1992:8).

2.3 Senders, texts and receivers?

The transmission model of communication envisions *senders* linked to *receivers* via *texts* which ideally transmit the sender's intention (Shannon and Weaver, 1949:34). At its most extreme formulation it views *misunderstanding* as “a strictly moral category, in that it figures as a disturbing factor in communication which has to be removed in order to guarantee or recover smooth conduct” (Hinnenkamp, 2003:59). The transmission model underpins most attempts to simplify text or measure its difficulty, yet its pervasive influence is matched only

by the criticism it has attracted. Complaints target each stage of the model, identifying: the difficulty of isolating a *sender*, particularly in institutional contexts; the diversity of *receivers* and the multiplicity of forms, functions and content of *texts* (Renkema, 2001:37-38).

The *sender* concept has been unsettled by, for example: Goffman's discussion of principal, author and animator (1981); Levinson's detailed pronominal distinctions (1988); Cameron's description of speakers and stylistic agents (2000); Renkema's recognition of the "plural sender" and Bakhtin's delimiting of "the direct intention of the character who's speaking" as distinct from "the refracted intention of the author" (1981:324). All of the texts examined in this thesis have plural senders. Similarly the unitary *receiver* has been problematised (Fairclough, 1992:79-80; Bell, 1997:246-247; Heritage, 1985:101), as has the very place of the listener who, if recognised as active, imbues understanding with response, such that he or she "becomes the speaker" (Bakhtin, 1986:68). Problems around grouping both senders and receivers have led Scollon to distinguish within and between those groups (1998:5). The notion that *texts* contain *a* message, waiting to be unpacked, has been discredited (Barthes, 1977:146; Fairclough, 1992:105). Critiques surrounding processes implied by the model have centred on the credibility of interference (Steiner, 1978:18), noise (Dixon and Bortolussi, 2001:22) and feedback (Gibbs, 2001; Sanford and Garrod, 1981).

However, the model has certainly not been universally dismissed. It is useful if acknowledged as an abstraction of one aspect of communication (Bakhtin, 1986:68; Dixon and Bortolussi, 2001:21). It is also difficult to talk about communication without resorting to the transmission metaphor (see, for example, Danet, 1984:6; Gibbons, 1990:161-2); the metaphor is a useful shorthand. However, the model creates a view of comprehension as a skill which, along with comprehensibility, can be measured and influenced. This precipitates two areas of claims:

- Product claims – some text features are universally, inherently problematic. Examples cited include particular words;
- Process claims – some readers or hearers are troubled by texts. Such readers invariably misunderstand.

These claims and underlying universalistic stance are as unresolved as they are pervasive. Seeking features which 'cause' difficulty in general, in particular registers or particular texts,

is an established pursuit. Yet questions remain about whether (and which of) the matrix of graphemic, phonological, lexical, syntactic, discursial, pragmatic and extralinguistic features truly influence comprehension and in what circumstances. The transmission model has dominated thinking on comprehension and comprehensibility. Specifically, it has informed examination of texts in legal settings through, for example, the plain language movement and examination of readers through, for example, paraphrase tasks.

2.3.1 Transmission and text: Seeking comprehensibility

The plain language movement is thriving, widely commended and internationally recognised. It is at the sharp end of a shift in public debate from blaming readers for their comprehension problems, to blaming writers and the organisations they represent (Solomon, 1996:283). Although its methods and boundaries remain somewhat ill-defined, the movement is underpinned by two laudable aims: First, propagating a form of English “that reflects the interest of the reader and consumer” rather than “legal, bureaucratic, or technological interests” (Steinberg, 1986:153); secondly, campaigning for “greater accountability in public institutions”, for value for money and for citizens’ right to understand (Danet, 1990:538). The movement attends to:

- Access and equity (people have the right to information);
- Safety (accidents are avoided through comprehension);
- Economy (“misunderstanding ... costs time and money”).

(adapted from Solomon, 1996:281)

Early plain language activists, such as Charrow and Charrow (1979), worked directly on texts. The movement now also has a pedagogic agenda, offering technologies to assist writers (for example, Nyström, 2002; Plain English Campaign, 1993:27-29). Predominantly, these technologies take the form of guidelines which raise linguistic awareness (Solomon, 1996:289) and seek to instil confidence in would-be writers (Gunning, 1968:120). In the USA, plain language ideals have also triggered unwieldy legislation (Bowen, Duffy and Steinberg, 1986:155). The movement’s recommendations range from the researched and attested to the bizarre and ill-conceived (for example, Gunning, 1968:177-183). Incredulous

responses to the movement stem from popular perceptions of prescriptivism and purism, which drive comparison with other activists, such as 18th century English grammarians (Joseph, 1987; Leith, 1997; Milroy and Milroy, 1991; McMahon, 1993; Baron, 1994; Wardhaugh, 1999; Baugh and Cable, 2002).

Criticism of the movement claims that it disregards social context, prescribing as if documents “exist in a social vacuum” (Solomon, 1996:289) and all writing tasks (Schrivver, 1986:244) and writers (Gunning 1968:163-4) are alike. The guidelines ignore seminal linguistic theory (Solomon, 1996:295) such as Hymes’s SPEAKING mnemonic (1974:54-64), and thus ignore the position of rewriting as an expansive textual process, a process which potentially hides or destroys “generic integrity” (Bhatia, 1993:207, in Jackson, 1995:117). In principle, guidelines could address the diversity raised by sociolinguistic paradigms by illuminating approaches to specific sociolinguistic environments, detailing, for example, which guidelines are likely to apply and when (Solomon, 1996:297; Walton 1996:265). However, such attempts would probably prove futile due to the large number of linguistic, sociolinguistic and extralinguistic variables and their combinations (Jansen and Steehouder, 2001:29). Thus the transmission model lacks sophistication when applied to texts. How does it fare when investigating readers?

2.3.2 Transmission and readers: Testing comprehension

Attempts to investigate readers have taken a number of forms. Some contemporary comprehension tests draw on estimations of likely comprehension (Finn, 1995:241); others examine readers’ performance directly (Figure 2.1).

- **Cloze procedure** (Taylor 1953) asks readers to fill textual blanks. Texts judged “appropriate” if readers “can guess about a third to half of the missing words” (Finn, 1995:241);
- **Protocol analysis** asks readers to “think-aloud” whilst reading. The method has been used to investigate inference generation, “social meaning construction” and reading as a situated act (Afflerbach, 2000:163-4);
- **Questioning** using broad open questions or yes-no questions (Clare and Gudjonsson 1992; Charrow and Charrow, 1979:1309n; cf. Woodbury, 1984);
- **Multiple-choice tasks** (Charrow and Charrow, 1979:1309n);
- **Focus groups** (Schrivver, 1989; Myers, forthcoming);
- **The plus-minus method** (van Woerkum, 1982), asks readers to indicate in texts’ margins “positive and negative reading experiences” then to discuss their allocations in interviews (de Jong and Schellens, 2001:64);
- **Performance-based measures** assessed comprehension through doing (For example, after reading patient information, would one know how to take the associated medicine?) (Morell, Park and Poon, 1989 in Wright, 1999:95);
- **Usability studies** which investigate how documents are or might be used (Danet, 1990:541; Diehl and Mikulecky, 1981:5 Gunning; 1968:136).

Figure 2.1 – A sample of the diverse methods for directly assessing comprehension

Some of the methods illustrated in Figure 2.1 have moved away from the transmission model. Those which have been used to measure comprehension of the caution have not. A reasonably established method has evolved for examining responses to police warnings (Figure 2.2).

Part 1 Experimental analogue of police procedure:	<ul style="list-style-type: none"> • Entire warning or caution read aloud to detainee, slowly and clearly • Respondents asked whether they understand • Respondent asked to paraphrase whole wording (in writing or speech)
Part 2 Additional opportunity to understand:	<ul style="list-style-type: none"> • Respondents given a written copy of the warning or caution • Each sentence read in isolation • Respondents asked to paraphrase each sentence (in writing or speech)
Part 3 Analysis	Investigators decide what subjects must do to demonstrate comprehension, typically devising binary ‘correct’ or ‘incorrect’ criteria of comprehension for each sentence (Appendix 1)

Figure 2.2 – The paraphrase task (not all researchers draw on all components)

Persuasively used by Charrow and Charrow (1979), this paraphrase task was introduced to studies of rights information in the USA by Grisso (1981) and subsequently was used there by Fulero and Everington (1995). It is routinely applied to the caution (Gudjonsson, 1990; 1991; Gudjonsson and Clare, 1994; Clare, Gudjonsson and Harari, 1998; Fenner, Gudjonsson and

Clare, 2002)¹. Advocates believe that the task provides “the maximum possible opportunity for people to demonstrate their understanding” (Clare, Gudjonsson and Harari, 1998) and gives subtle insight by eliciting reformulations of concepts which readers find most comprehensible and important (Charrow and Charrow, 1979:1310). The paraphrase task rests on the notion of transmission. It assumes that subjects will not be able to explain information which they do not understand (Charrow and Charrow, 1979:1310) and will be able to explain that which they do. It risks measuring skill at explaining (Owen, 1994:286), at explaining innovatively (Wright, 1999:94) or orientation towards explanation (Clare and Gudjonsson, 1992:23) rather than measuring comprehension. It also relies on readers’ having read or heard the test material verifiably, a situation which even Clare and Gudjonsson observe is far removed from reality (1992:24) and the “sociocultural contexts of the people under study” (Gergen, 1988:95, see also Clark, 1997:581).

This study, in contrast, rejects the intervention which simulates a situation in which transmission is sure to take place. Accordingly, it triangulates semi-structured interviews, police station ethnography and analysis of naturally-occurring data. This combination of sources makes it possible to consider not only what readers have to say about the information they have read but also what they do with it, positioning understanding as something which one does rather than something which one has (White and Gunstone, 1992:1). The interviews illustrate the approach. They were semi-structured, loosely scripted. Two of the original schedules are included in Appendix 2 but interview sessions were ultimately driven by interviewees, the questions used as a guide and removed or resequenced on the basis of interviewees’ contributions. Thus if transmission-related questions proved irrelevant, they were ignored. However, interviews themselves are potentially unwieldy investigative tools. Interview data may be clouded by the risk of assessing incidental factors such as memory (Schrivver, 1989:25) and by interviewees’ uncertainty about questions, their position as responders and the difficulty of their contributing “in the fast give-and-take of the discourse” (House, 2003:21). Indeed “eliminating all biasing influences” from research questioning is “not feasible” (Morris, Lechter, Weintraub, and Bowen, 1998:89). This was apparent in comments from detainees who did not find the interview situation conducive to articulating the difference between rights and entitlements:

¹ The method has been used to assess caution comprehension by groups including ‘A’-level students, people with learning difficulties (Gudjonsson and Clare, 1994), young offenders (Cooke and Philip, 1998), police officers and detainees (Fenner, Gudjonsson and Clare, 2002).

um I do [know the difference] but I don't know how to put it into
words if you know what I mean I know there is a difference but

[Occasional arrestee]

mm um I know there's a difference I just can't say it if you know what I mean

[Regular arrestee]

Recognising and responding to such comments is crucial to analysing semi-structured interviews. Accordingly, the interview analysis recognises the influence of the interview situation itself on the data gathered (Briggs, 1986:4; Rapley, 2001:317; Kvale, 1996; Mishler, 1986). We cannot see interview data simply as a resource which will illuminate the interviewee's world (Seale, 1998) – “an accurate description of the participant's internal state” (Potter and Wetherell, 1987:164) – but as an insight into what the speaker discloses about facets of what they (wish to) present. The interview data is, indeed, an artefact of at least five levels of abstraction. Whatever appears here from the interviews has been mediated by ‘selection’ of a sample of interviewees, detainees’ selectivity in speaking during interview, the interview situation, the transcription process and the analysis itself. Both ethnography and the analysis of naturally occurring data are similarly mediational means themselves. Therefore “work of this kind is not suited to the production of the kind of broad empirical laws which are commonly the goal of social psychological research” but “is intended to do justice to the subtlety and complexity of lay explanations as they are deployed in natural contexts” (Wetherell and Potter, 1988:182-3). In other words, these methods provide little insight into transmission but much into its materialisation in practice, providing opportunities to investigate not only ‘what?’ but also ‘how?’ and ‘why?’ (Holstein and Gubrium, 1995). Each is “fundamentally dialogical” and “unfinalisable” through dialogue with other researchers and with those investigated, leading the researcher to “reject a privileged claim to omniscience” (Scollon, 2000:142).

2.4 Reconsidering senders, texts, readers and meanings

This rejection of purely transmission-based conceptions of comprehension, comprehensibility and understanding permits recognition of the complexity and multiplicity of senders, texts, readers and meaning which are the focus here.

Beginning with *texts*, transmission-based perspectives saw meaning residing “in the text, the reader’s task being to ferret it out” (Orasanu and Penney, 1986:2). Through new perspectives “the reader creates meaning based on the text, and her or his existing knowledge about its content, language and structure” (Orasanu and Penney, 1986:2; see also Barton 1994:65; Brown, 1994:10). The lack of universal fit between text and meaning renders the possibility of universally improved comprehensibility untenable. However, not all commentators are convinced by such relativism. Short, whilst acknowledging that “texts mean different things to different people and even to the same person on different occasions”, suggests that this has been so overrated that “it is difficult to see how communication takes place at all” (1994:171). Johnson too provides evidence of probabilistic modes of interpretation (1990:298). Nonetheless, variability has been acknowledged in investigating legal settings (for example, Shuy, 1993:16). This perspective is adopted in this thesis, making it possible to examine different readings as different rather than simply problematising and disregarding them as wrong (meaning ‘at odds with intended (authorial) meaning’).

Moving now to reading, rather than envisaging readers passively absorbing texts, an enriched perspective considers readers’ characteristics (Meyer, Marsiske and Willis, 1993:235) and activities with particular texts. Empirical study suggests that readers’ *prior knowledge* (a reader-characteristic) influences comprehension much more than “word difficulty” (a text-characteristic) (Freebody and Anderson, 1983). This perspective avoids hypothesising *the* “reader’s experience” (Gunning, 1968:153-160), focusing on a single hypothetical ideal reader, and recognises instead readers’ diversity. Clark, for example, discourages assuming a shared mental lexicon (1996:580), urging that understanding varies along such dimensions as “nationality, residence, occupation, employment, hobby, religion, ethnicity, clubs, subculture, age, cohort and gender” (1996:581).

This expanded conception of readers invites a redefinition of reading itself. The established perspective saw reading as applying a skill (Barton 1994:65), plodding “letter-by-letter and word-by-word through a text” (Orasanu and Penney, 1986:3), using only a process in the head – cognition (Barton and Hamilton, 1998:20). The new view reinterprets literacy as multiple, flexible, embedded in interaction. In perhaps its most diluted formulation, “good readers [use] many strategies depending on their purpose, the nature and organisation of the material and their moment-to-moment success in understanding” (Orasanu and Penney, 1986:3). A

stronger formulation has readers accessing not multiple strategies, but multiple literacies (Heath, 1983; Street, 1984; Crowther, Hamilton and Tett, 2001; Kell, 2001). Here, readers are engaged communicative participants, “thinking and using language [as] an active matter of assembling the situated meanings ... for action in the world” (Gee, 2000:199). Thus understanding “constitutes nothing other than the initial preparatory stage of a response” and speakers themselves orient towards “actively responsive understanding” in the form of “agreement, sympathy, objection, execution and so forth” (Bakhtin, 1986:69).

2.5 Close

A focus on linear comprehension and comprehensibility is unsuitable for examining texts in use. Neglecting a ‘real-world’ focus tends to conceal substantive issues around lay-legal communication. Penman dismisses the transmission model because altering the form of a message will not alter its content, meaning that complaints about “communication problems” tend to distract from real issues of socio-economic inequality (1998). Similarly, Jackson is ultimately dissatisfied with producing simplified versions of legal texts for lay people because such documents do not reduce “the problem of the ideological pretensions of the Rule of Law” (1995:134). Thus any attempts to alter comprehension operate in their socio-political contexts “as vehicles for wider ideological and societal reproduction” (Clayman, 1990:80). In the settings examined here, meanings are constructed moment-to-moment by individuals with particular social roles, operating in particular speech situations. Through these data, then, comprehension and understanding are social phenomena, constantly created and recreated through language.

CHAPTER 3: TRANSFORMATION

3.1 Introduction

Having illustrated limitations of the transmission model as a basis for this investigation of legal language, I now demonstrate an alternative theoretical orientation to legal language, by sketching an approach to textual change. The officers cited at the beginning of the discussion of comprehension and comprehensibility were concerned about how meaning materialises through words and sentences. Officers also had other concerns about understanding. They described reflecting on ‘relating that which is to be interpreted and understood to something, a set of contextual properties, which is already known or partially understood’ (Linell, 1998:144). Jim, for example, discussed how this materialises when he delivers the police caution:

P I think [detainees] understand the spirit of it but they often don't understand exactly what it means to them at that point [Jim]

Other officers agreed that detainees recognise the caution only as a generalised legal formulation with no significance in the lifeworld, in their own local decision-making:

F do you think people [in police interviews] have any sense of why you're saying all the stuff you do at the beginning of the interview?
P yeh well no a lot of people will say "ur well yeh but it doesn't affect me it doesn't affect me" they only pick the odd words up but "it doesn't affect me it doesn't affect me" [Cath]

Difficulty for officers, like many other institutional actors, centres on “contextualising [information] in a manner of personal relevance” (Adelswärd and Sachs, 1998:194, 207). Ideally, officers’ recontextualisations should “aid the process of decision-making” (Sarangi 1998a:312) for detainees.

Various aspects of the activity which I have called, so far, *transformation* (after Gibbons, 2001b) are explored under such headings as: *repetition* (Johnstone *et al*, 1994); *formulation* (Garfinkel and Sacks, 1970; Heritage, 1985; Atkinson and Drew, 1979); *reformulation* (Merritt, 1994); *recontextualisation* (Linell, 1998; Sarangi, 1998a, 1998b); *reanimation*, *intertextuality* (Fairclough, 1992); *representation* (Goodwin, 1994; Mehan, 1993);

multivoicing (Candlin and Maley, 1997; Barthes, 1997; Bakhtin, 1981; Bazerman, 1995; Mishler, 1984; Silverman and Torode, 1980); *recurrence* (Gault, 1994:150); *versioning* (Potter and Wetherell, 1987); *accounting* (Rapley, 2001); *decontextualisation* (Bernstein, 1990:60); *entextualisation* (Urban, 1996); *interdiscursivity* (Foucault, 1984); *paraphrase* (Steiner, 1975); *repetition* (Cushing, 1994; Merritt, 1994; Tannen, 1989); *overlay* (Johnstone and Kirk, 1994:185); *replay* (Merritt, 1994:30); *polyvocality* (Linnell, 1998:149) and *explanation* (Antaki, 1994; White and Gunstone, 1992) (see also Sarangi, 1988b:243). These headings are not synonymous, but complementary.

Textual change is an established focus of discourse-level studies. Johnstone goes so far as to gloss discourse analysts' main questions as: "Why is this text the way it is? Why is it no other way? Why these particular words in this particular order?" (2001:8). Change is fundamental to cognition and communication (Linnell, 1998:154) and to the capacity for decontextualised thought (Denny, 1991:66). Its occurrence "offer[s] up to the analyst what is, in other stretches of talk, less graspable and obvious: the social reasoning that people go through in order to make sense of their worlds, and (perhaps) impose that sense on others" (Antaki, 1994:1).

3.2 Key concepts

Here, I use three terms somewhat interchangeably, as each has helpful, complementary connotations. I will begin by illuminating each term. The first two, *reformulation* and *recontextualisation*, feature the evocative prefix *re-*, which alludes to 'doing again', "as in words like *recopy*, *reprint*" but also 'doing differently', changing, as in "*redefine*, *revise*, *rework*" (Linnell, 1998:155, see also Sarangi, 1998a:304). Turning to specifics of these two *re-*terms, *reformulation*, through associations with *formulation* in second language learning, connotes pedagogy (Allwright, 1988) and in functional linguistics connotes system (Gledhill, 1995). This root *formulation* in Conversation Analysis denotes abstraction, "saying-in-so-many-words-what-we-are-doing" (Garfinkel and Sacks, 1970:351). Thus, reformulation connotes concern both with form (in-so-many-words) and with function (what-we-are-doing) (see also Heritage, 1985:100; Heritage and Watson, 1979, 1980; Fairclough, 2001:113-114).

Recontextualisation invokes transferring texts between contextual matrices and “dragging along of some aspects of contexts from one situation of use to another” (Linell, 1998:148) or moving something of an earlier discourse to a later one (Urban, 1996:21). It does not mean textually importing context itself (Sarangi, 1998a:305). Coupland and Coupland suggest that recontextualisation may be too pervasive to be interesting as “all accounting and narrative discourses entail the recontextualising of experience” (1998:182). Bakhtin, in contrast, revels in this ubiquity:

Any speaker is himself a respondent to a greater or lesser degree. He is not, after all, the first speaker, the one who disturbs the external silence of the universe. And he presupposes not only the existence of the language system he is using, but also the existence of preceding utterances – his own and others’ – with which his given utterance enters into one kind of relation or another.

(Bakhtin, 1986:69)

In *transformation*, *trans-* conveys “across, beyond, through” (Chambers Dictionary, 1994) encapsulating textual change as intrinsic to text, whether the term is a main point of departure (Hodge and Kress, 1988; Gibbons, 2001a; 2001b) or a general shorthand (Polanyi, 1981; Bernstein, 1990; Fairclough, 1992:79).

3.3 The possibility of identity

Transformation which features identity at any level could be seen as inconsequential and meaningless, simply saying again something already established. Yet the predominant theoretical view is that any instance of discourse is unique and irreproducible, thus one cannot say the same thing twice. This view is supported by those who maintain that transformations involve shifts in:

- the contexts in which each version is embedded (Urban, 1996:21; Norrick, 1994:15);
- meaning, realigning or even removing some semantic content (Linell, 1998:148; Bernstein, 1990:60-61);

- reciprocity and participation through the audience's reinterpretation (Tannen, 1989:52);
- the text's "position in relation to other texts, practices and positions" (Bernstein, 1990:60-61).

Even literal repetition influences and is influenced by its original, so is inescapably different from its source (Jefferson, 1972:303; Kasper and Ross, 2003:86; Parker, 1988:188; Norrick, 1994:15). Polanyi cautions that at some levels this does not hold. She explains that "multiple tellings may reduce to the same underlying semantic structure", communicating "the same global 'point'" (1981:315). However, generally she agrees that text-to-text identity is unattainable. In relation to narrative, she summarises the ethnomethodological position that a transformed text will be influenced by:

- circumstances of telling;
- participants;
- participants' concerns in the form of recipient design;
- participants' relationships to events and circumstances represented;
- content;
- the story's place within the particular unfolding discourse structure;
- the story's situated relevance;
- the story-teller's "awareness of the state of ongoing talk".

(summarised from Polanyi, 1981:315 and 319)

Having noted the "theoretical principle that, when something is repeated, its meaning changes", analysts must next "say what the different meaning is" through scrutiny of the minutiae of change in repetition (Johnstone *et al*, 1994:12). I undertake such scrutiny in this thesis, identifying similarities and differences between originals and reformulations produced by police officers and the lay people they encounter. Moreover, I consider how and why those similarities and differences arise. Research literature is unanimous in rejecting even the possibility of direct repetition, yet the criminal justice system expects it. It falls to officers, detainees, witnesses and ultimately courts to work with this conflict. Recontextualisation holds many tensions for these participants. First, it involves selectivity, potentially resulting in "competition over the correct, appropriate, or preferred way of representing objects, events or

people” (Mehan, 1993:241; see also Bernstein, 1991:184; Linell, 1998:151; Sarangi, 1998a:307; Gibbons, 1995). Secondly, related to the challenge of selectivity is that of reification, which potentially creates reformulation texts which contain “a form of codified knowledge that obscures the dissonances and disjunctures among many different voices and texts that have preceded it” (Ravotas and Berkenkotter, 1998:233).

3.4 Transformation: Form and function

Transformation relies on repetition at some level. In order for a segment to be identified as transforming a preceding segment, something of that previous segment must identifiably remain. Some studies, working at various levels of language, focus on the constant, others on the change (for example, Korolija, 1998:108-112; Bean and Patthey-Chavez, 1994:207-214; Kasper and Ross, 2003; Johnstone *et al*, 1994).

Recognising that repetition resides at particular linguistic levels permits fresh insights on transformational phenomena. *Paraphrase*, the focus of this thesis, is described by Johnstone *et al* as ‘pragmatic repetition’ “in which there really is nothing palpable that’s the same” (1994:3-4). Yet an enriched perspective recognises that paraphrase involves repetition at clausal and pragmatic levels (Wales, 1989:336). Thus failure to recognise paraphrase as a repetition phenomenon risks invoking “folk ideologies about language” by implying that repetition which “happens to be grammatically segmentable” is “somehow more real” than other forms of repetition (Johnstone *et al* 1994:15). A focus on levels also reveals patterns of features which, apparently, correlate with, or map onto, systematic efforts to achieve something through language. There is, accordingly, a focus in this thesis on “ways in which the lexico-grammatical, semantic and textual-discursive ... options available to and chosen by individuals serve to construct, reinforce, perhaps question social roles and social behaviour” (Candlin and Maley, 1997:202; see also Smith, 1978:23; Goodwin, 1994:606).

Although repetition involves “the reproduction of a prior occurrence of some form or function” (Kasper and Ross, 2003:86), it is helpful to distinguish form from function. To exemplify, ‘explanation’ is an exclusively functional category (Antaki, 1988), but explanation

is accomplished by exploiting form – using paraphrases, lexical substitution, even simple repetition.

Transformation serves wide-ranging interactional purposes, of particular relevance here: creating cohesion (Halliday and Hasan, 1976; Halliday, 1985; Johnstone, 1987; Johnstone *et al*, 1994:8); creating coherence (Tannen, 1987); maintaining, refocusing or augmenting meaning; pointing; summarising; dividing and correcting (Kasper and Ross, 2003:86; Johnstone *et al* 1994:6; Norrick, 1987:254-263). Transformation also serves experiential functions. Relevant examples include: controlling (Fairclough, 2001:113-114); achieving agreement (Heritage and Watson, 1979:123); persuading; disagreeing; collaborating; acknowledging; aiding memory; exploring and reassuring (Johnstone *et al*, 1994:6-11). This potential for particular text features to perform particular functions is, of course, widely recognised. It has, for example, been extensively proposed that writers may (deliberately or incidentally) make particular linguistic choices which systematically represent events (Fowler, 1991; Bell, 1991; Bell and Garrett, 1998; Hall, 1997; Winston, 1986; van Dijk, 1988; Hodge and Kress, 1993; Levinson, 1983; Fang 2001). A substantial body of research centres on the functionality of transformation in learning, teaching and socialisation (Swales, 1990:220; Ravotas and Berkenkotter, 1998:218; Bean and Patthey-Chavez, 1994:207; Johnstone *et al*, 1994:9). Whilst issuing rights and making statements are not instructional *per se*, they share with instructional settings the fact that “the novice’s goal is to accomplish the task at hand, ... the expert’s goal is to approach an optimal point of information transfer ... so that the novice can make use of it” (Bean and Patthey-Chavez, 1994:207). This thesis will consider interactional, experiential and pedagogic functions of transformation realised in the sites of scrutiny. In the case of witness statements, the institution is the novice, learning about the witness’s account.

Perhaps most centrally for this thesis, recontextualisation is multifunctional (Mertz, 1996:232). For example, it potentially influences perceptions at the same time as obtaining confirmation, exhibiting empathy and isolating important points (Candlin and Maley, 1997:208). In examining function around transformation, I note Johnstone *et al*’s warning that “function is in principle indeterminate, at the moment of occurrence ... function is always a hypothesis” (1994:10). This is particularly relevant in these legal contexts where

transformations are simultaneously part of a local interactional and global institutional agenda.

3.5 Transformation and polyvocality

One of the most widely discussed functions of representation is that of creating order out of chaos, or at least, foregrounding one privileged order from a chaos of possible orders. A major resource here has been the identification of voices (Silverman and Torode, 1980). Mishler distinguishes a “voice of the lifeworld” associated with lay people from a professional voice. He examines the interface between the two and the prioritisation of the professional (1984). Mehan pursues this theme, studying representation in order to ask how “the clarity of social facts” such as “intelligence” or “deviance” are “produced from the ambiguity of everyday life” (1993:242; 1996). This shift from ‘everyday’ to specialist is often linked to a move “towards technological or exo-somatic materialities: from talk to print” (Iedema and Wodak, 1999:13) as “decisions made or meanings constructed ... through talk in informal and personal meetings between individuals – are depersonalised and formalised in written reports” (Scheuer, 2001:237). Police interviews have already been identified as serving this ordering function, in bridging “the gulf between the precise technical language of the law, and the vagueness and multiperspectivity of life as lived” (Aronsson, 1991:217) and forcing “disambiguating distinctions onto matters which may have been vague in the lay world” (Linell, 1998:149). In this thesis I consider processes of production surrounding this shift and its implications for officers, witnesses and investigations. I also consider similar shifts from drafting and debate to the production of rights texts.

The legal world not only features shifts from lay to legal, from speech to writing, and from specific to general – the explanation of rights exemplifies shifts in the opposite direction too. We shall see how the depersonalised, formalised written caution is re-peopled in the police interview. This shift is well illustrated through analogy. In classrooms of naïve learners, students are “not only mastering ... information” but also working on “ways of looking at, thinking about, and reacting to it” (Bean and Patthey-Chavez, 1994:215). Upon hearing the rights information in detention, detainees are expected to assimilate and respond to information swiftly. I will show how some officers’ explanations of the caution detail how

detainees might do this and will consider the implications of this legal-lifeworld shift. These devices are not necessarily used predictably. Indeed, on occasions institutional actors appropriate a lifeworld voice whilst lay people employ a professional voice (Silverman, 1987). These unpredictable voicing features are present in these data. To illustrate through analogy once more, in job interviews, “applicants personalise accounts by drawing on informal language practices such as ... telling jokes ... It seems that varying speech style is tantamount to personalising the interaction” (Scheuer, 2001:238). Such shifts have interpersonal significance in rights-giving too, where officers delivering institutionalised messages find little space for the individual unless they exploit institutional turns.

The distinction between lifeworld and professional voices has not been taken up without considerable discussion. A number of scholars identify a greater plurality of voices than only two (Maynard, 1991; Linnell, 1998:149). Candlin and Maley, for example, describe mediators drawing on a rich tapestry of professional discursive practices and even discourses emergent through the practices of mediation itself which revalue existing discourses (1997:209-211). Amongst other critics of the lifeworld concept, Coupland and Coupland argue that distinguishing two voices hardly begins to cover the interactional complexity of the narratives and re-evaluations which their work uncovers (1998:182). This raises “doubts as to whether the professional and the personal should be seen as distinct modes of social life” (Scheuer, 2001:238). This thesis seeks to contribute to this debate.

3.6 Transformation, organisations and power

Recontextualisation is closely linked to organisational talk (Heritage, 1985:101; Linnell, 1998:143; Atkinson and Drew, 1979). Iedema and Wodak indeed place recontextualisation “at the heart of organisationality” (1999:5). Yet ‘whose’ are these influential transformations? Does the transformation process give power to those who transform or those who regulate transformation?

Iedema and Wodak are so convinced that speakers are powerful in bringing meanings to the texts which they transform that they take transformation to be constitutive. They assert that “organisations are continuously created and re-created in the acts of communication between

organisational members, rather than being independently ‘out there’” (1999:7). Mumby and Clair agree that “organisations exist only in so far as their members create them through discourse” (1997:181). Wenger too foregrounds people, explaining “the power – benevolent or malevolent – that institutions, prescriptions or individuals have over the practice of a community is always mediated by the community’s production of its practice” (1998:80). However, Fairclough counters that this creativity or productivity is not available to all, being “socially limited and [itself] constrained upon relations of power” (1992:102-103).

Urban observes that “the power in replication appears to reside with the copier. After all, once originators have produced their initial discourse instances, there seems to be nothing they can do to control the replication process”. However, he also notes others’ “stake in the replication”, for example in settings where copies are produced “for public inspection, appreciation or approval” (1996:41). This also characterises the sites examined in this thesis. He concludes that “Replication ... while open to manipulation by the copiers, is also subject to control by others, including the originator. The question concerns how far the copier can go in effecting changes. When will the editorial work draw criticism for its modifications?” (1996:41). This thesis will examine in detail the constraints and freedoms on copiers, whether they are rearticulating rights or transforming a witness’s words. Consideration of these frameworks surrounding copiers also draws attention to the raw materials with which they are provided. The caution, for example, has been frequently identified as incomprehensible; similarly, these data suggest that witnesses’ words can present a complex, contradictory picture of events. Bean and Patthey-Chavez (1994:211-12) note that in using instructional discourses, instructors were “willing to take up and work from a technically flawed narrative” in order to achieve situational and interpersonal ends. This raises the question, which will be addressed here, of whether reformulators in each setting perceived any flaws in the texts they worked with, and if so, how they responded to them. This again raises issues of hegemony (Gramsci, 1971).

Consideration of individuals’ influence in institutional processes “only comes with a deeper understanding of situated demands” (Merritt, 1994:24-5). This thesis scrutinises very localised aspects of police work, making it possible to identify appropriations of the practice of transforming text in its lived diversity. Scollon’s view of texts as mediational means clarifies this possibility, because it sees texts as “the tools by which people undertake

mediated action. The purpose is not the production of the text but the production of the action which the text makes possible” (1998a:14). This offers a significantly enriched perspective on what transformation does:

It is possible, on the one hand, to focus our attention to just those aspects of texts which are of relevance to the actions taken by participants in any particular situation. At the same time, it is possible to focus our attention not on the texts themselves, but on the actions being taken and to see how the texts become the means by which sociocultural practice is interpolated into human action.

(Scollon, 1998a:14-15)

The study of transformation offers the opportunity to study this interpolation as if in slow motion.

3.7 Transformation and intertextual chains

Fairclough, following Foucault, Kristeva and Bakhtin (1992:101), develops the notion of intertextual chains or series of texts related through “regular and predictable” transformation (1992:130; see also Linnell, 1998:149; Ravotas and Berkenkotter, 1998:217-222). The question of whether the chains examined in this thesis feature regular and predictable transformation is a major concern. Ravotas and Berkenkotter, examining intertextuality around psychotherapists’ consultations with patients, illustrate that therapists’ written records are intertextual “in a number of ways” because they work on immediate oral interactions; fit with broader talking and writing “cycles”; become integrated into the agency’s “communicative economy” or “network of texts” and connect to institutional manuals (1998:212). Similar layers of intertextuality underpin the sites examined here, with officers’ texts joining existing intertextual chains and precipitating others. Bernstein’s depiction of the agencies of recontextualised texts in the pedagogic setting offers, by analogy, an overview of manifestations of recontextualisation examined in this thesis. He identifies:

- *The primary context* where ideas and an associated discourse are produced, modified and altered. This is a context of production, not reproduction. In the settings examined

here, this conveys contexts where legal ‘facts’ are agreed, laws debated and encoded, or where witnesses experience that which they ultimately describe;

- *The secondary context* where selective reproduction takes place through classification and framing of the ideas and discourses produced in the primary context. This is key in the legal setting: it is where officers transform the rights texts and witness statements they receive;
- Around and mediating between these contexts, Bernstein distinguishes the *recontextualising context*. From the perspective of this thesis, such contexts would include (i) police training and policy units; (ii) individual officers and teams making recontextualisation decisions formally or informally; (iii) groups surrounding the police force such as interest groups representing witnesses or those in a regulatory role including Home Office departments (1990:60).

Bernstein points out the importance of distinguishing and examining both contexts of reproduction (1990:61). The extended intertextual chains beyond the scope of this thesis have an undoubted influence on the few links which the thesis deals with (cf. Solin, 2001).

Extended intertextual chains present a challenge, for example, to officers who, at the end of long intertextual chains, “must accommodate their expertise, knowledge and messages to meet the needs and expectations of people with other interests and backgrounds” (Linell, 1998:151). This will inevitably involve some selectivity (Bell, 1991:190-195) and interdiscursivity using “elements in one discourse and social practice which carry institutional and social meanings from other discourses and social practices” (Candlin and Maley, 1997:208).

Parts A, B and C which follow, expand upon these themes.

PART A: WRITING RIGHTS

CHAPTER 4: WRITTEN RIGHTS COMMUNICATION

4.1 Introduction

How should the police communicate with those they detain? The experiences of two people in custody, both arrested for the first time, illustrate the unique discomfort occasioned by the unfamiliar and unnerving detention setting:



Figure 4.1 – Police cell

I've heard people in the cells while I've been here this weekend and they've played up here at the front desk played up blind shouting and swearing and kicking and then they've [police officers] stuck them in the cells to try and calm them down and they've [detainees] demanded this and they've demanded that [Novice 34]

I've never seen the inside of a cell before and I sat there and I thought "I'm only going to be here a few minutes and then I'll be told off and that you know" and hours later I was still in there and I thought "good grief" and then the lights went on and I thought "we're going to be here all night" [Novice 25]



Figure 4.2 – Cell corridor

Police-lay communication in detention is fraught. Detainees need to know what detention is, in legal terms, and how it will affect them. This knowledge might appear to them to be

tangential to the reasons for, or circumstances of, their detention, making the challenge of conveying it even greater. Two written texts, the *Notice to detained persons* (hereafter the *Notice*) and *Notice of entitlements* (hereafter the *Notices*) are the communicative channel of choice between the police and lay people, explaining detainees' rights and entitlements and, implicitly, officers' obligations to detainees. The texts are offered to each person who is arrested by the police in England and Wales, usually at the beginning of their detention¹. (Both are included in Appendices 3 and 4)².

This rights documentation, along with some complementary verbal explanation, is apparently intended to enable detainees to make vital decisions about whether, when and how to exercise particular rights. Nonetheless, concerns have been raised about the adequacy of the documents, by researchers, by news reporters, even by police officers themselves. Accordingly, predominantly quantitative, positivistic studies have examined the current rights documentation and proposed alternative rights texts. These studies have not considered the documentation or its users in context (Gudjonsson, 1990, 1991; Clare and Gudjonsson, 1992; Gudjonsson, Clare and Cross, 1992). Studies which have scrutinised the custody environment closely have not focused on language (Bucke and Brown, 1997) and those which have examined language in custody have done so only briefly (Cotterill, 2001). This invites a detailed, multiperspectival study of written rights administration in context.

4.1.1 So what?

Telling detainees clearly about their rights in custody might be seen as a moral obligation of the nation state. Nonetheless, some claim that issues around rights, entitlements and their explanation should be a low priority for officers and detainees. The 104 deaths in custody in 2002-3 (Home Office, 2003); the heavy work-load of the Independent Police Complaints Commission which investigates most deaths in custody³; the high-profile coverage of cases like that of Christopher Alder, whose death, captured on a custody suite security camera, was

¹ On occasions, police officers may decide that a detainee is not fit to receive the notices and the accompanying explanation. For example, a detainee may be felt to be too drunk or violent. In such cases officers should give all information "as soon as practicable" (*Codes of practice*, Code C, paragraph 1.8).

² The text which was used as the source text for the revisions discussed in this thesis is the current *Notice*, last nationally revised in 1995. I will call this 'the original *Notice*' or 'the source *Notice*' although it is not the prototypical *Notice* text (see 4.3).

³ The Police Complaints Authority was responsible for investigations of deaths in custody before April 2004.

screened on national television (BBC, 2004), and the activities of civil rights groups like *Inquest* (established in 1981 to campaign against deaths in custody), *Amnesty International* and *Liberty* illustrate the potential for rights communications issues to appear trivial. However, as well as its moral dimension, attention to rights communication has three further consequences: First, to position treatment of detainees as socially important and avoid a ‘thin-end-of-the-wedge’ acceptance of sloppy detention practice; secondly, to help to prevent miscarriages of justice (Baldwin and Bedward, 1991; Coulthard, 1993; 1994; 1996; 1997; 2000; Gudjonsson, 2002) which involve unjust denial of rights; finally, to halt the development of a discourse which marginalises conscientious rights communication by representing it as the concern only of pedants and busy-bodies.

4.2 The *Notice*’s legal background

Until 1986, those arrested by police faced considerable indeterminacy in custody. They were not necessarily told about their rights or even given access to a solicitor, under the guidance of the *Administrative directions to the police* (Home Office Circular 89, 1978) and the quasi-legal *Judges’ Rules*, created in 1912 (last revised in 1964). However the Police and Criminal Evidence Act (1984) (PACE), born of the Royal Commission on Criminal Procedure, sought to “codify and rationalise statutory and non-statutory provisions relating to the powers and responsibilities of police officers” (Home Office Circular 88, 1985:2) through *Codes of practice* issued to officers. Whilst the *Codes* themselves are not statutory, they were intended to have teeth; officers were made well aware that their breach could result in disciplinary action and the exclusion of evidence (Home Office Circular 88, 1985:2). These new provisions, then, sought to provide “the powers the police need[ed] to enforce the law while at the same time clarifying the safeguards for the rights of citizens” (Home Office Circular 88, 1985:2). An important part of this related to change s in and around custody. PACE stipulated that the *Notice to detained persons*, which replaced the former *Notice to prisoners* (Home Office Circular 88, 1985:9), would be a central component of rights administration along with provision of a dedicated police officer, the Custody Officer, to oversee detention environments. Paragraph 3.2 of *Code C* of the *Codes* introduced the new *Notice* which came into force on 1st January 1986 (Home Office Circular 88, 1985:2). The current version of that paragraph states:

The Custody Officer must give the [detained] person a written notice setting out [the right to free, independent legal advice, the right not to be held incommunicado and the right to read the police *Codes of practice* or rule book], the right to a copy of the Custody record ... and the caution The notice must also explain the arrangements for obtaining legal advice.

(*Code C*, paragraph 3.2, 2003)

The complementary *Notice of entitlements* details “entitlements over and above the statutory rights which are set out in the notice of rights” (*Code C*, note 3A, 2003). The two *Notices* have a close topical relationship. Both, for example, contain information about contact with people outside the police station and both contain information about interview. However the *Notices* do not flag this intertextuality. Talk accompanies the *Notices*, particularly between Custody Officers and detainees. PACE specifies that one of the Custody Officer’s “most important tasks ... is to ensure that suspects are aware of their rights at the police station” (Brown, 1992:76). Administering rights notices is integral to detention procedure (Figure 4.3):

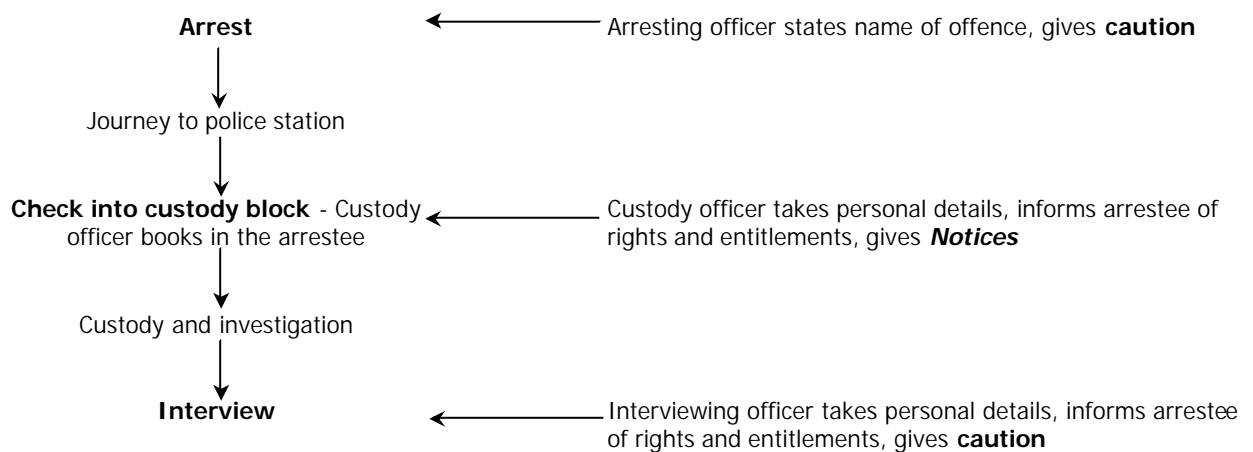


Figure 4.3 – Rights communication within arrest procedure

4.3 The *Notice*'s textual background

Previous studies use the definite article to present, critique and discuss **the** *Notice*, a single text. However, scrutiny of considerable temporal and spatial variation which surrounds the text is, I suggest, important to characterising it.

Looking firstly at variation across time the *Notice*, circulated nationwide by 1986, sits within an intertextual chain. As well as the influence from its predecessor, the *Notice to prisoners*, its original template was *National form 7*, prepared by the Association of Chief Police Officers (Home Office Circular 88, 1985:9). There have been two major subsequent revisions to the 1986 *Notice*. First, in 1991, along with revisions to the *Codes of practice*, a new *Notice* was distributed by the Legal Aid Board (Home Office Circular 15, 1991:3); secondly, in 1995, to accommodate changes arising from the Criminal Justice and Public Order Act 1994. Thus, the *Notice* has evolved repeatedly. Criticism of the *Notice*'s comprehensibility has surrounded this evolution, focusing initially on the 1986 *Notice* (Gudjonsson, 1990, 1991; Clare and Gudjonsson 1991). Improving comprehensibility of that document was not a stated aim of the 1991 revision (Home Office Circular 15, 1991), nonetheless, that revision added metalanguage and made lexical replacements (for example, *the person you nominate* (1986 version) → *the person you name* (1991 version)), suggesting that comprehensibility may have been considered informally. That 1991 text was, in turn, subject to criticism by Clare and Gudjonsson who claim that some sections had become more difficult than their 1986 equivalents (1992:7).

On the spatial dimension, police forces have discretion to adopt, adapt or replace the recommended *Notice*. When offering the 1991 *Notice*, for example, the Home Office provided camera-ready copy for “forces wishing to take advantage of this” (Home Office Circular 15, 1991:3-4). Cotterill asserts that the *Notice*, whilst “standardised in content, ... may vary in layout and typeface from one police authority to another” (2000:4-5). In fact both layout and content vary. Some of this variety may be due to a perception amongst forces that the original *Notice* is poorly formulated (see 4.7). Three police forces were so dissatisfied with the *Notice* supplied that they implemented substantial changes. Kent County Constabulary included a large amount of additional information; West Midlands Police adopted a completely novel layout with significant alterations to content and form; whilst Greater Manchester Police commissioned the Plain English Campaign (PEC) to devise an entirely new version of the

text, although the resulting document was apparently never used. Other Forces made more *ad hoc* changes: the version used by Thames Valley Police includes handwritten additions (all four texts are included in Appendix 5). Every police force has made some changes to the original Home Office text, most commonly adding a reference number which labels the text for institutional actors, a date of revision or amendment, or something which identifies the issuing police force. Strangely, 70% of police forces have added information for people who are not under arrest, but attending the police station voluntarily (illustrated in Appendix 5, the *Notice* from Cleveland Police). This is a particularly odd extension of a *Notice to detained persons*. Figure 4.4 summarises the additional information provided across police forces (a force-by-force breakdown is included in Appendix 6):

Additional material supplied	Number of forces supplying this material, Total forces = 43 (100%)
Information which will specify and identify the document:	
Reference number	38 (88%)
Revision or amendment date	30 (70%)
Information for persons attending voluntarily	30 (70%)
Force branding:	
Force name	29 (67%)
Force crest or logo	10 (23%)
Force motto	1 (2%)
Information about aspects of custody or police procedure:	
Information about DNA Profiling	1 (2%)
Information about Fingerprints/Photograph	1 (2%)
Information about video and audio recording in the custody area	1 (2%)
Information about the lay visiting scheme	1 (2%)
Information about drink-drive procedures	1 (2%)
Information about the Road Traffic Act	1 (2%)
Information about the administration of "Personal/Medical matters"	1 (2%)
Text organisation:	
Additional titles or revised titles	4 (9%)
Page numbers	3 (7%)
Miscellaneous:	
Information about help with drug, alcohol or other substance abuse or addiction	4 (9%)
A version of the whole text in English and Welsh	2 (5%)
Information about the Data Protection Act 1998	1 (2%)
Information about the paper "...made with woodpulp [sic] from sustainable forests"	1 (2%)
Chart to be used for monitoring ethnicity	1 (2%)
Information about the copyright and printing of the form	1 (2%)
Crimestoppers telephone number	1 (2%)

Figure 4.4 – Additional information on *Notices* around England and Wales

Forces add information in response to their own circumstances. This may be dictated by issues which are particularly salient to officers (e.g. procedure around the Road Traffic Act),

management (e.g. data protection information) or external organisations (e.g. information about the lay visitor scheme and drugs referral schemes). This study is the first which has taken a holistic view of *Notices* around England and Wales.

4.4 The *Notices*' international place

The *Notices* raise two questions in relation to multilingualism. First, within the Anglo-Welsh jurisdiction where they are used, are they available in languages other than English or Welsh? Secondly, in countries outside the Anglo-Welsh jurisdiction, how do they compare to equivalent documentation? Taking England and Wales first, migration has led to “increased diversity in the cultural, educational and linguistic background of readers” (Solomon, 1996:282). The *Notices* have been distributed by the Home Office in 29 languages, although it seems that versions in languages other than English may not be readily accessible to custody staff, particularly where they are needed infrequently. The 29 languages provided for are:

English, Welsh, Arabic, Bengali, Cantonese, Danish, Dutch, French, German, Ashanti, Twi, Greek, Gujarati, Hindi, Iranian (Farsi), Italian, Mandarin, Yoruba, Ibo, Hausa, Norwegian, Polish, Portuguese, Punjabi, Spanish, Swedish, Turkish, Urdu, Vietnamese

Officers were unclear about whether BSL or Braille versions are available. The availability of non-English versions of the *Notices* challenges officers to make judgements about when a detainee needs to be given a copy in a language other than English or Welsh, whilst the small number of languages provided creates challenges to officers who encounter detainees who cannot read any of the languages listed. Certainly this list of available languages improves on the six languages of translation of the original *Notice* (Arabic, Urdu, Hindi, Gujarati, Bengali and Welsh (Home Office Circular 88, 1985:9)). However, whether simply offering written translations is an adequate response to the diverse knowledge, resources and experiences of detainees from many different ethnic, cultural and linguistic backgrounds deserves further consideration.

Rights information is not distributed in other parts of the world as freely as in England and Wales. Komter (2002:pc) describes the understated system in the Netherlands, for example. There, leaflets detailing rights are provided but “no policy” governs their distribution, and officers are unsure whether the written information is available in languages other than Dutch

and English. In Scotland, similarly, the Criminal Procedure (Scotland) Act (1975), which governs rights administration, specifies only that detainees must be asked whether they wish to have a solicitor and to have any other “reasonably named person” such as a relative or friend informed of their detention. No written documentation supports that verbal procedure (Malone, 2003).

4.5 The revision texts

Scrutiny of rewriters’ practices shows how writers influence their texts on social and cognitive-psychological levels (Janssen, 1991, in Janssen and Neutlings, 2001:5), acting as intermediaries between their own socio-psychological environment, context and text (Janssen and van der Maat, 2001:173). Scrutiny of practices also illuminates the writer by highlighting “not just what people do, but what they make of what they do and how it constructs them as social subjects” (Clark and Ivanic, 1997:90). I begin, therefore, by sketching writing practices around the revision texts. Each text is included (in Appendices 7-9); the reader is encouraged to browse through them before reading on.

4.5.1 The officer revision

This text was produced by an established, working Custody Sergeant who had used the original *Notices* daily for several years. After attending a training session, which aimed to raise awareness of the needs of detainees with learning difficulties, he became sceptical about the original *Notices* and investigated them using readability tests, particularly the Flesch index (Appendix 10). He explained how this led him to action:

I thought “mm terrible and we’re handing all these out?” and I spoke to a couple of solicitors and they said “yeah they’re bloody awful aren’t they I’ve always thought that” (.) “nothing’s been done about it?” (.) “well no” (.) so I made some enquiries and no (.) nothing had been done about it and (.) I hear then about the Home Office research grants so I applied through my force

Following the award of a Home Office research grant, the officer began researching and revising in 1999. By the time I began working with him, he saw his version as largely finalised.

The officer's revision practices were driven by the belief that, on one hand, complex language is needed to express law and, on the other, simple language is needed for lay readers, a perspective also attributed to lawyers (Charrow and Charrow, 1979:1318). He explained:

that's been the interaction if you like ... keep it legal (.) keep it understandable

This legal-understandable balancing act informed his writing and shaped his writing process. Writing scholars recommend involving colleagues and readers “as an integral part of [writing] not just a final ‘stamp of approval’” (Wright, 1999:92; see also Hartley, 1981:26). Some suggest casting the net more widely – like Schriver, who advocates combining expert-judgement-focused methods (calling on “individuals who possess high knowledge about the text, its audience or writing itself”; text-focused methods (such as readability formulae and writing guides); and reader-focused methods (evaluating readers' comprehension) (1989:244-5). The officer unilaterally incorporated such strategies, actively seeking out relevant ‘authorities’ to engage with his writing, in particular combining authorities on law (to ‘keep it legal’) and on language (to ‘keep it understandable’, or as he disparagingly glosses it here, to *dumb down*):

if the Plain Language Commission⁴ say “yes you’ve made that simpler” but the Home Office say “you’re still legal with it” I’ve meshed it together nicely (.) I haven’t dumbled it down as far as it could go because you have to stay legal

The officer created a sophisticated support network from which he sought:

- Sanction – these sources provided approval which is ‘official’ in coming from an authority on the matter in question (Indicated in Figure 4.5 by {*sanction*})
- A check – these sources proofed or problematised (Indicated by {*check*})

Figure 4.5 shows how the officer used each authority (If authorities provided both sanction and check, their predominant role is listed first).

⁴ The Plain Language Commission is a language consultancy akin to the Plain English Campaign. They advise on and ultimately sanction texts, awarding the “Plain English Standard”, akin to the PEC’s ‘crystal mark’. The officer found them a more affordable option than alternatives.

Language authorities	
• Flesch readings	{check}
• The Plain Language Commission	{sanction} {check}
• The Plain English Campaign	{discounted}
• A teacher and ex-head of a school for children with learning difficulties. She provided a secondary source – a young man she has been working with as a probation volunteer	{check} {sanction}
Legal authorities	
• The Home Office	{check} {sanction}
• The Legal Aid Board	{sanction}
• The Law Society	{sanction}
• The Crown Prosecution Service	{sanction}
• The local Law Society	{sanction}
• Force solicitor	{check} {sanction}
• Chief Constable	{check}
Authorities on law who also commented on the text – ‘Legal’-‘simple’ intermediaries	
• Solicitors	{check}
• Colleagues in custody suite	{check}

Figure 4.5 – How the officer used each authority

The officer additionally evaluated and rejected other authorities, for example Clare and Gudjonsson’s Royal Commission (1992), despite their potential to bridge the ‘legal’ - ‘simple’ dichotomy. He also rejected treating detainees as a resource. His work illustrated how the “social and material resources” available to drafters influence their texts (Ormerond and Ivanic, 2000:99-100).

4.5.2 The Enterprise Information Design Unit (EIDU) revisions

Information Design (also called Document Design) has a broader remit than the plain English movement, in terms of its methods and aims (Pettersson, 2002; Janssen and Neutlings, 2001). This remit concerns “defining, planning, and shaping ... the contents of a message and the environments it is presented in with the intention of achieving particular objectives in relation to the needs of users” (International Institute for Information Design, 2004). Information Design has, from its inception, enjoyed links to research – practitioners typically having an academic background in a language or design-related discipline which they are expected to use (Wright, 1979; 1981; see also Waller, 1979). Some information designers nonetheless tend towards transmission models, (for example, Pettersson, 2002:58; although cf. Pettersson, 2002:81) although most avoid this through such techniques as *in-situ* user-testing (see, for example, papers in Janssen and Neutlings, 2001). Whilst information designers share with

plain language campaigners a desire to disseminate good writing practice, their guidelines tend to be more complex and theoretically sophisticated (for example, Renkema, 2001:40).

The information designers' brief presented writing objectives which mirrored those of the officer (replicating his task) and it asked the information designers to write as they normally would (replicating a real brief) (see Appendix 11). Ultimately, however, the EIDU texts were first-draft revisions written alone, unlike the officer's text, which had been refined and redrafted over time and through extensive consultation, as their own authentic texts would be. Yet their revisions and discussions of rewriting practices illustrate how 'expert writers' respond to the *Notice*.

4.5.3 The Home Office revision

This text was a revision of the officer text. It arose through an iterative process during which I formulated and presented findings of text and revision analyses, detainee interviews and police station observations to the officer reviser and policy-makers at the Home Office, and then worked on the officer text, with those participants, using those findings. This created an analysis-feedback-reanalysis dialogue, which permitted contestation of the author's global and local decisions and the Home Office source material. Labov and Harris note that asking policy-makers about legal texts uncovers inconsistencies and misunderstandings even amongst those people (1994:268). In this case contestation led the officer to reanimate the text, legitimising decisions in sometimes unexpected ways, or recognising that his original drafting had not functioned as he had anticipated. The process also illuminated Home Office proscriptions. For example, our meetings explored the possibility of exploiting the written medium in presenting the caution in the *Notice*. Ultimately, this was abandoned as Home Office officials felt that even minor changes to the wording or punctuation of the caution in the *Notice* would be too radical. Bhatia reports an extremely similar encounter (1993:217). This text production environment shows the relationship between "the characteristics of the collaborative writing process and ... the text features appearing in the documents that result from that process" (Janssen and van der Maat, 2001:172). Whilst "bad writing" may be caused by writers having to "deal with language mandated by the government and with the difficulty of writing documents by committee" (Williams, 1986:166), the group sought to

avoid allowing the text to become a means to group consensus (Janssen and van der Maat, 2001:208). Nonetheless, this text is from a “plural sender” (Renkema, 2001:38).

4.6 Detainees

Although the sample of detainees in this study is small (52 detainees), it is broadly representative of the national average across both age and sex (Appendix 12 provides demographic details). Whilst the interview data could have been analysed along dimensions of age or sex, a different characteristic is more salient – detainees’ prior experience of detention. It is not always straightforward to classify lay people as such within institutional settings. One cannot simply identify a “dichotomy between professionals’ possession of professional/technical knowledge and clients’ ... possession of lay knowledge” (Drew and Sorjonen, 1997:100). Sarangi suggests that the defining factor separating professionals from lay people is the relative uniqueness of the professional-lay interaction to each. However, he acknowledges a continuum of lay participants, for him, ranging from proto-professionals to lay clients. He proposes that clients at the professional end of the spectrum might be advantaged as they can “potentially embed their lifeworld narratives in an institutionally recognisable fashion in order to bring about a desirable outcome to their situations” (1998:303). In detention, the language practices of novice and experienced detainees were very different from one another. Novices are important for this study because of their likely unfamiliarity with the information on rights notices; however, more experienced detainees too, are not necessarily familiar with custody. For example, at one extreme, three reported regular arrests, most recently within the past two to fourteen days. Detainees arrested so frequently and recently had a particular perspective on rights information. At the other extreme, three could only remember last having been arrested ten, seventeen and twenty-nine years ago and so could almost be viewed as novices. Of those interviewed:

- 16 had never been arrested before. (‘Novices’);
- 14 had been arrested before but not within the preceding 12 months. (‘Occasionals’);
- 22 had been arrested frequently and within the preceding 12 months. (‘Regulars’)⁵.

⁵ Throughout the analysis excerpts from interviews will be followed by the word *Novice*, *Occasional* or *Regular* and a number for identification.

Their proportions within the sample are as follows (Figure 4.6):

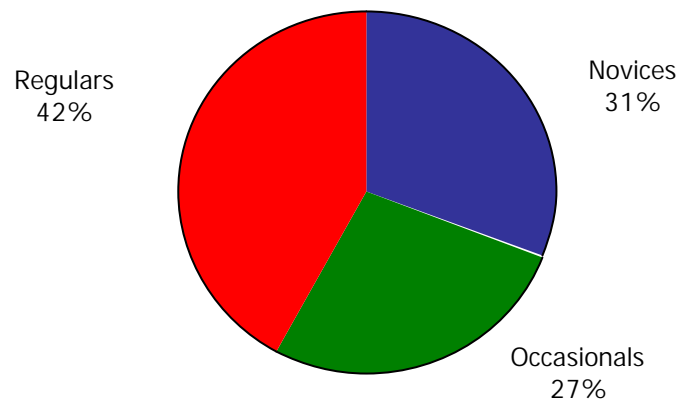
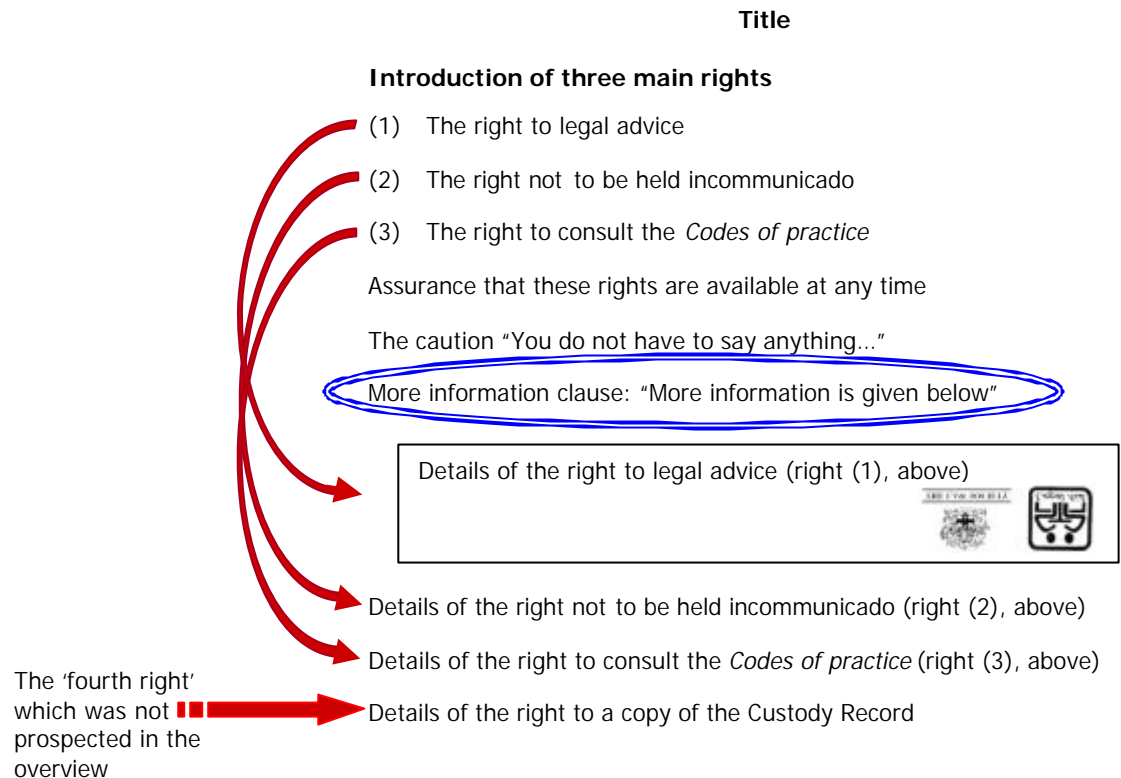


Figure 4.6 – Arrestees' experience of detention

4.7 Revision practices

When illustrating different forces' modifications to the 1995 *Notice*, I suggested that forces had attempted to 'improve' that text. One area which shows particular variability between forces is the macro-sequence of the *Notice*. The 1991 and 1995 *Notices* begin with a summary of three main detention rights, followed by the caution and then the words *More information is given below:* (highlighted in blue in Figure 4.7). This odd sequence creates ambiguity about whether readers should expect *more information* about the immediately preceding caution or the more distantly mentioned three rights, the colon prospects more on the caution, particularly in the absence of a prepositional phrase suggesting otherwise. What follows, however, is an explanation of four rights, the three introduced in the initial summary and an additional right which cannot be invoked during detention and was not introduced earlier (highlighted in red in Figure 4.7). Thus, the anaphoric *more information* is intended to leapfrog back over the caution to the rights summary which preceded it.

Figure 4.7 – The macro-sequence of the *Notice*

Summaries can improve some readers' comprehension in some settings (Abrahamsen and Shelton 1989, in Kempson and Moore, 1994:48) yet, in terms of cohesion, this initial rights summary has a sufficiently uncomfortable relationship with subsequent sections that readers may find it disorientating. The relationship can be summarised:

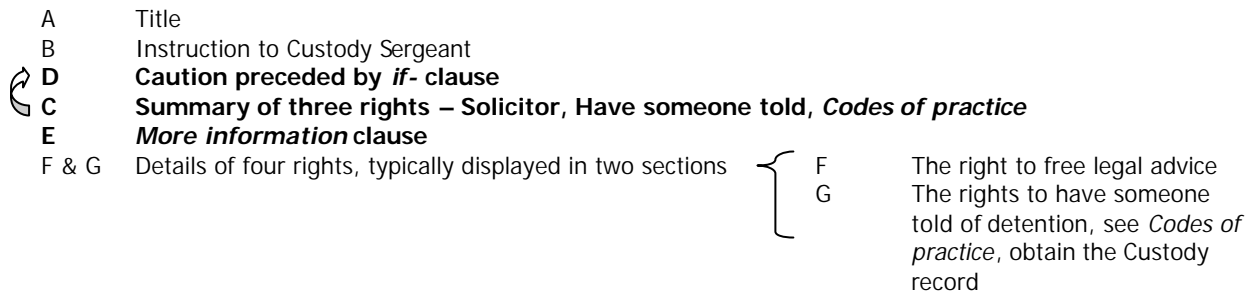
Sequence 1

A	Title	
B	Instructions to Custody Sergeant	
C	Summary of three rights – Solicitor, Have someone told, <i>Codes of practice</i>	
D	Caution preceded by <i>if</i>- clause	
E	<i>More information</i> clause	
F & G	Details of four rights, typically displayed in two sections	<div style="display: flex; align-items: center;"> <div style="font-size: 3em; margin-right: 10px;">{</div> <div> <div style="display: flex; flex-direction: column; gap: 5px;"> <div>F The right to free legal advice</div> <div>G The rights to have someone told of detention, see <i>Codes of practice</i>, obtain the Custody record</div> </div> </div> </div>

65% of police forces have simply adopted this sequence (a force-by-force breakdown is included in Appendix 6). Others innovated, placing the caution before the rights summary.

Through this revision, the *More information* clause links the summarised rights and their full versions (exemplified in Appendix 5 [Derbyshire Police]):

Sequence 2



This sequential innovation, by over 25% of police forces, suggests some disquiet about the formulation of the original *Notice* (Appendix 6). Indeed, West Midlands Police’s novel layout removed the *more information* clause altogether, although without replacing it with any alternative orientation device (Appendix 5). Possibly these 25% of police forces were somehow issued with a different version of the source text, which would mean this re-sequencing is not of their choosing. However, the EIDU rewriters’ activities suggest that this aspect of the *Notice* is important to drafters, as they all changed cohesive relations between the overview and subsequent sections. They did this by making changes which were:

- **Visual** – using page-layout, lines and colour (EIDU5)
- **Textual** – using explicit cataphoric cross-references (for example, EIDU3 follows her summary of the right to free legal advice with the cataphoric directive *see the section called ‘Getting free legal advice’*) (EIDU3)
- **Structural** – by summarising each right immediately before introducing it, rather than in a separate, initial summary (EIDU4) or by extending the initial summary section to include a summary of the additional fourth right (EIDU3).

Reasons for including ‘the fourth right’ (see Figure 4.7) alongside other, more immediate, rights are unclear, particularly in view of its exclusion from the initial overview. Detainees cannot invoke this right whilst in custody. Logically, one cannot expect a copy of a record of custody when custody is ongoing. It seems odd, then, to offer this record at all in the *Notice*, which is administered early in detention. This section may be intended to reassure detainees that their detention is being monitored and recorded accountably, particularly in view of high-

profile controversies, such as deaths in custody (Bennetto, 2002; Home Office 2002; Police Complaints Authority, 2003). Indeed, EIDU2's text hoped to highlight this function by pointing out that detainees could validate or condemn the record by signing it or refusing to do so.

Of the EIDU staff, EIDU2 relocated presentation of the fourth right in order to distinguish it. The officer's redraft, in contrast, had not addressed this conundrum. His first-page summary detailed three rights, numbered 1-3, whilst the main body of his text explained four rights, numbered 1-4. This incongruity troubled detainees. Some, for example, failed to identify that the initial rights overview did indeed overview subsequent text, due to the lack of parallelism. Some proposed that they could see or have the record whilst in detention or at any time by analogy with the adjacent rights. Few apparently realised that they could have a copy up to 12 months after release. Detainees' confusion suggested this needed to be addressed. A response which would have been, in some ways, ideal would have removed this 'fourth right' from this *Notice*. This was, however, precluded by the *Code*'s dictates and the need to ensure accountability. In response, writers at the Home Office proposed inserting the following text at the end of the explanation of the right:

NB. Your right to a copy of the Custody Record cannot be exercised while you are in police detention.

Whilst this addition addressed detainees' comments by flagging the difference between this right and the others, it did not really address the problem of three rights becoming four and, in order to be successful at all, required close, thorough reading and some inferencing from detainees, who would need to work out how this non-information was relevant. It is a negative sentence which carries "special types of presupposition which ... work intertextually, incorporating other texts only in order to contest or reject them" (Fairclough, 2001).

Having discounted the possibility of removing the fourth right from the officer's *Notice* and encountered the shortcomings of textually marking its difference from the other rights, another response would remove numbering throughout. Numbering helpfully separates each item but potentially misleadingly links them, implying:

- a sequential relationship, suggesting stages which must be traversed in turn;
- a dependency relationship, suggesting ‘2’ depends, in some way, on having invoked or declined ‘1’ and so on;
- a significance relationship, suggesting that right ‘1’ is more important than ‘2’ and so on.

As a by-product of removing the numbering, the proposed new *Notice* would have avoided such connotations. However, without numbers, rights became less distinct, in the overview and main body (Frase and Schwartz, 1979; Hartley, 1981:20; Jackson, 1995:128; Goldman and Rakestraw, 2000:319; Tiersma, 1999:209). Furthermore, removing numbering would merely conceal three rights becoming four. The Home Office revision adopts a different approach. Each right is numbered in the rights overview and the corresponding rights are numbered identically in the document’s main body, giving cohesion. The fourth right, when finally introduced (page three), is not numbered, is separated from the other rights and presented in a different format. This visually and conceptually separates that right from its fellows, reflecting its difference from them.

Scrutiny of this macro-organisation of the original *Notice* offered a good starting point, providing orientation to the text as a whole, indicating higher-level differences between authors’ responses to the source text and demonstrating how comments from detainees informed revision processes. Chapter 5 uses these sources to examine micro-syntactic, lexical and semantic issues and Chapter 6 applies them to intra- and intertextuality. Finally, Chapters 7 and 8 examine the officer’s texts in use. This combination of examining texts in detail and in context avoids an “atomistic approach” which simply ‘measures’ sentences in isolation (Owen, 1994:292), but allows examination of “what elements of the text are causing difficulties” and why (Owen, 1994:292-4).

CHAPTER 5: WORKING WITH SYNTAX AND LEXIS

5.1 Introduction

Some readers persevere with written texts which they find difficult. They will “re-read a difficult sentence slowly and more than once” until they have “grasped its meaning” (Jansen and Steehouder, 2001:18). On the whole, however, writers do not demand such sterling efforts, and instead seek to avoid creating ‘difficult’ texts. Researchers who believe that it is possible to identify difficult texts suggest doing so through scrutiny of particular features at their distinctive levels of language (for example, linguistic philosophers Gillon, 1990; Atlas, 1989; Walton, 1996:260-3). Features which are problematised at the levels of lexis, syntax, discourse, prosody and beyond (summarised in Appendix 13) are, not coincidentally, also said to characterise legal language (Danet, 1990:359; Melinkoff, 1963). Level-based characterisations have come to typify linguistic critiques and revisions of legal texts. These critiques have made some spectacular claims. For example, they have identified legal notices which were “so inadequate ... as to be unconstitutional” (Levi, 1994:7-9) and jury instructions which affected “jurors’ ability to appropriately compensate ... plaintiffs” (Horowitz, Foster-Lee and Brolly, 1996:757). Redrafting using similar characterisations has caused such phenomena as insurance claims around a particular document decreasing (Danet, 1990:541) whilst welfare entitlement appeals around another increased (Labov, 1988:169-170; Labov and Harris, 1994:277).

The annotated version of the original *Notice* in Appendix 14 summarises the text’s most obvious potentially difficult features at various levels. This Chapter focuses on features at just two levels, syntax and lexis, exploring four syntactic features (grammatical metaphor, particularly nominalisation; passivisation; negation and modality) and three lexical matters (jargon, orientation and register). It considers revisers’ complex, sophisticated responses to these features and presents those responses as moves in revision practice (cf. Faigley and Witte, 1981; Davidson and Kantor, 1982; Duffy, Curran and Sass, 1983). The Chapter maintains a critical approach to the presence or absence of these features as indices of difficulty; questioning their place in a sociolinguistic approach to language in legal settings (cf. Solomon, 1996), by observing how they play out in context. Davidson and Kantor assume

that adaptors' changes are motivated by a desire to "increase ease in reading", they accordingly seek to "recreate the line of reasoning" behind particular changes (1982:191). Here, interviews and focus groups with the authors permit more direct access to their motivations.

5.2 Syntax

5.2.1 Grammatical metaphor

Halliday (1985) introduces the notion of grammatical metaphor, showing that when ideas are first introduced, they are generally congruent, "things appear as nouns, processes as verbs, attributes as adjectives ... and so on". Yet, in writing, congruence is often lost, skewing "the relationship between the underlying semantic concepts" (Gibbons, 2003:19).

Nominalisations, which are said to be "vague because they share the weak characteristics of both nouns and verbs", attract particular criticism (Onrust, Verhagen and Doeve, 1993, in Jansen 2001:133). Plain language organisations consistently recommend their removal (for example, PEC, 1993:31-32) because verbs rather than nominalised forms are claimed to be:

- "more direct and effective" (Tiersma, 1999:206);
- more intuitive (Halliday, 1985; 1993);
- "preferred and read more quickly" except widely used forms like *investment* and *reduction* (Wright, 1985, in Kempson and Moore, 1994:42);
- more informative (Charrow and Charrow, 1979:1321);
- less abstract (McCawley, 1968, in Charrow and Charrow, 1979);
- capable of marking relationships between syntactic elements (Halliday, 1985; 1993);
- less likely to lack an unambiguous referent and overtly expressed agent (Onrust, Verhagen and Doeve, 1993, in Jansen 2001:133).

The exact mechanism by which grammatical metaphor brings difficulty is somewhat unclear. Jansen, who neatly reviews empirical work which aims to clarify this (2001:132-4), explains that initially the notion of transformations led analysts to believe that readers would find nominalisations difficult because tracing the nominalised form back to its 'source' noun and

verb “was supposed to be costly in terms of processing time and cognitive energy” (2001:132). However, lay people might not realise that a particular usage is non-congruent and non-congruent usages may become normalised to such an extent that they appear more ‘normal’ than their congruent counterparts. Even Gibbons, who stresses the importance of avoiding grammatical metaphor in legal-lay communication, acknowledges that problematising non-congruent forms is not always straightforward in these respects (2003:pc). Walton, who calls the phenomenon “inflective ambiguity”, is more critical of shifts between grammatical categories within a text than shifting to a non-congruent category *per se* (1996:261).

Solomon demonstrates that despite their proscriptions, even plain English writers do include nominalisations in their texts. Grammatical metaphor potentially improves comprehensibility, by permitting syntactically more simple sentences (Gibbons, 2003). It allows packaging of concepts which have been explained or accumulated already (Gibbons, 2003:21; Halliday, 1989; Halliday and Martin, 1993) reduces words and allows writers to “progress” (Solomon, 1996:295-296). It is accordingly “a linguistic resource for making specific types of meaning in written documents” (Solomon, 1996:296). Although nominalizations offer pros and cons for both writers and readers, these are unlikely to be universal. Spyridakis and Isakson’s review of relevant experimentation, for example, suggests that expert writers “have no difficulty at all with [reading] nominalisations” whilst second-language learners and novices “in some cases profit from denominalised text” (1998, in Jansen, 2001:134). The original *Notice* contains much grammatical metaphor:

In the text ...	Congruent → incongruent
suspected offence	[verb <i>suspect</i> → adjective, verb <i>offend</i> → noun]
access to legal advice	[verbs <i>access</i> and <i>advise</i> → nouns]
exceptional circumstances	[preposition <i>except</i> → noun <i>exception</i> → adjective <i>exceptional</i>]
provision of breath	[verb <i>provide</i> → noun]
investigative and administrative action	[verbs <i>investigate</i> and <i>administer</i> → adjectives, verb <i>act</i> → noun]
procedures	[verb <i>proceed</i> → noun]
record of your detention	[verbs <i>record</i> and <i>detain</i> → nouns]
a copy of the Custody record	[verbs <i>copy</i> and <i>record</i> → nouns]
this entitlement	[verb <i>entitle</i> → noun]
your release	[verb <i>release</i> → noun]
on request	[verb <i>request</i> → noun]

All revisers tended to replace these forms. For example all replaced the pervasive combination of nominalisation and ellipted possessive determiner *on request* with a complete

clause, either declarative *you can ask* (officer) or directive *please ask a police officer* (EIDU3). Similarly:

Original formulation	Occurrences	Became	Writer
your/police detention	(5) →	you have been arrested	[EIDU1]
the Custody Officer has discretion	(1) →	up to the Custody Officer	[EIDU1, EIDU3, EIDU5]

The revisers' work suggests that nominalisations were of concern to them, yet, despite the pervasiveness of this concern, its influence on comprehension cannot be measured here with any certainty.

5.2.2 Passivisation

Gunning warns against passive constructions, explaining “strong-flavoured, active verbs give writing bounce and hold a reader’s attention” (1968:108). He describes writing in the passive as excusable from “a scholar out of touch with life” but unacceptable from “men of action” (1968:107). Others are less florid but similarly stoic in their criticisms of passivisation (for example, Hartley, 1981). Yet, for some “whether passives cause comprehension problems is a bit less clear [than whether nominalisations do]” (Tiersma, 1999:206) with “no evidence that the passive is more difficult [than active constructions] ... *per se*” (Wright, 1969, in Jansen, 2001:135). The PEC too are cautious, permitting passivisation in three circumstances: first, if an active construction would move the topic to the end of the sentence; second, if the agent is obvious (although they do not explain how authors might determine what readers will find obvious) and thirdly, “when an active verb would sound too hostile” (1993:31). Charrow and Charrow provide caveats too, claiming that agentless passives presented less difficulty than those with agents¹ (1979:1325) and passives in subordinate clauses were the only really troublesome form (1979:1337; see also Jackson, 1995:119). Others suggest that passive constructions may only trouble particular groups, such as deaf people (agentless passives only) (LoMaglio, 1985) and adolescents with learning difficulties (Abrahamsen and Shelton, 1989, both in Kempson and Moore, 1994:48). Jansen concludes that, as with nominalisations, difficulties around processing passives centre not on the constructions themselves, but on “the fact that both constructions allow agent deletion, which can create ambiguity for inferring readers” (Jansen, 2001:136). The creation of ambiguity becomes particularly problematic

¹ Although this finding was not statistically significant.

when it is deliberately exploited (Fang, 1994; Fowler, 1991:70-80). The original *Notice* contains extensive passivisation:

A record ... will be kept by the Custody Officer
The section in capital letters **is to be read** by the Custody Officer

And agentless passivisation:

You have the right to ... **have** someone **told**
You **have been arrested**
Whilst you **are detained**
More information **is given**
Access to **legal advice** can only **be delayed**
If the person ... **cannot be contacted**
If they too **cannot be contacted**
until the information **has been conveyed**
can only **be delayed**
will be made available
to **be delayed**
When you ... **are taken**
You ... **will be supplied**

As with nominalisations, the revisers tended to replace passives, for example:

If the person you name cannot be contacted	→	
	If the police cannot contact ...	[EIDU3, EIDU4, Officer]
	If the police cannot get in touch ...	[EIDU2]
If they too cannot be contacted	→	
	If they cannot contact these people	[EIDU3]
	If the police cannot get in touch with them	[EIDU2]
	If the police cannot contact [them]	[Officer]

Some passive constructions were universally reformulated, like the string *The Codes of practice will be made available*, from which all authors also removed all nominalisations, EIDU1, for example using *to*+infinitive (*to see*) rather than *made available*. However, some agent deletion is desirable (Gibbons, 2003:166) because a focus on the object of a verb may aid comprehension (Tiersma, 1999:206) and a constantly active voice can adversely affect experiential meaning and thematic progression (Solomon, 1996:299). Some authors included passives deliberately. EIDU2 inserted a passive into his section on the right to see the *Codes*:

The rules about way [*sic*] that the police deal with people who have been arrested **are set out** in a legal document – ‘The Codes of practice for the Detention, Treatment and Questioning of Persons by Police Officers’, also called the PACE Code.

This passive is strategic; it allows the author to avoid either: specifying who has written the *Codes*, which would be irrelevant by any measure; or placing the long noun phrase, beginning *a legal document*, sentence-initially (cf. Solomon, 1996:296). Davidson and Kantor present such practices positively, observing “adaptors are often able to foresee the effects of changes and compensate for them”, calling this the “Domino Effect” (1982:196). As with nominalisation, however, it was impossible to measure the results of such specific changes within detention.

5.2.3 Negation

Jackson unites negatives, passives and nominalisations as all concealing narrative structure, explaining ““doing” [represented in verbs, rather than nominalizations] is more typical of narrative structure than either “not doing” (negatives) or “being done to” (passives)” (1995:121). Negatives, including hidden negatives (Gibbons, 2003:171) or lexical negation (Swales, 1990:155) such as ‘unless’, ‘except’, and ‘deny’, should be avoided because they are “well established” as a cause of reading difficulties (Kempson and Moore, 1994:42, see also Hartley, 1981:19; PEC, 1993:33). As with passivisation, evidence is hedged. Charrow and Charrow cite extensive evidence that processing demands rise in direct proportion to the number of negatives per sentence (1979:1324; see also Tiersma, 1999:208) whilst Wright and Wilcox find no directly proportional relationship reported between quantity of negatives and degree of difficulty (1979). In the *Notice*, possibly troublesome multiple and hidden negations combine within interposing noun phrases:

Normally the police must **not** question you **until** you have
The right to ... does **not** entitle you to **delay** ... **neither** does it allow

Negation attracts rewriters’ attention (Davidson and Kantor, 1982:202). Rewriters here, agreed that *It will cost you nothing*, did not adequately convey that invoking legal advice has no financial penalty, leading to the following revisions:

It will cost you nothing →	
It/ This will not cost you anything	[EIDU3(a), EIDU2]
It won’t cost you anything	[EIDU5]
It will not cost you any money	[EIDU1]
It/ This is free	[EIDU4, Officer]
Getting free legal advice	[EIDU3(b)]

These reformulations attended to:

- **Syntactic ambiguity** – The original *it* anaphorically invoked ‘speaking to a solicitor’ or functioned as dummy *it* implying a subsequent ellipsed infinitival clause (...*to speak to a solicitor*):
 - writers replaced *it* with more obviously demonstrative *this* (EIDU2, EIDU4)
- **Negation** – Originally appeared within the direct object indefinite pronoun *nothing*:
 - writers moved negation or contracted negation into the verb phrase (EIDU3(a), EIDU2, EIDU5, EIDU1)
 - writers replaced negation with hidden negation (*free* = no cost) by using:
 - the copula (EIDU4, Officer)
 - *free* as an attributive adjective, premodifying *legal advice* (EIDU3(b))
- **Semantic specification** – The original did not specify that the clause concerned financial cost, writers specified, by:
 - inserting the direct object *any money* (EIDU1)
 - following *free* with the prepositional phrase *of charge* (EIDU2)

Unlike particular examples of nominalisation and passivisation it is, to some extent, possible to examine detainees’ responses to treatment of this negation, by asking whether they understood that legal advice is free. Of the detainees who used the officer revision containing *it is free*, one was totally unsure whether legal advice was free (Novice 19) and three were rather doubtful. Yet this did not necessarily stem from the *Notice* itself but from attitudes to it:

F	do you have to pay to speak to a solicitor?	
D	according to this [the officer revision] no	[Occasional 45]

This detainee distinguishes having to pay from what the *Notice* says about it. The interviews revealed a difference between understanding the text and ‘believing’ one’s understanding. Novice 11 also reported that the *Notice* stated that advice was free, but remained doubtful:

they reckon if you’ve got too much savings you’ve still got to pay	
so I don’t know if that’s true or not [indicating the <i>Notice</i>]	[Novice 11]

Other detainees similarly suggested criteria governing eligibility for free legal advice:

you get free legal aid if you're not working	[Regular 14]
[you have to pay] if you've got a job	[Occasional 38]
the first time I think it's free	[Regular 28]

Every detainee who selects a solicitor within the Legal Aid scheme² will receive free advice, therefore none of these criteria apply. Rights information apparently fares poorly when competing with expectations. In response to detainees' comments, the Home Office revision added *The duty solicitor is free* (paragraph 2). This addition repeats the claim that legal advice is free and specifies without muddying the more general assertion. As a by-product, the formulation avoids ambiguous *it*. The influence of expectations was crucial to the *Notice*, so it is revisited in Chapters 7 and 8. Negation will also be revisited in discussing the caution (Section 12.3).

5.2.4 Modality

There is some agreement amongst language guidelines that modal auxiliaries are a necessary evil. Specific modals attract conflicting advice, however. Tiersma castigates *shall* with its "archaic and legalistic feel", advocating replacement with *must* in language directed at the public (1999:207). Others favour *shall* – Kerr, for example, urging "use *shall* not *must*" (1991, in Solomon, 1996:288). The *Notice* featured only one occurrence of *shall*, in explaining that a copy of the Custody record *shall be supplied on request*. All of the rewriters replaced this auxiliary. The officer revision, for example, altered the verb group, not only removing *shall* but adding detail which foregrounds the police obligation (*the police have to give you*). Despite avoiding *shall*, this reformulation would still attract Tiersma's condemnation, because he also criticises "circumlocutions" preferring "ordinary modal verbs (*can, could, may, might, must, should, will and would*)" (1999:207), although without explaining why. Modal verbs in the *Notice* and in some of the revised texts brought specific ambiguities, particularly in the police caution (see also Section 11.6).

² The officer-author compared the system of legal aid solicitors versus private solicitors to the current British system of National Health Service versus private medical care in which one can choose to 'go private'.

May is a particularly prevalent and important constituent of the original *Notice*. Most typologies of modal meanings recognise two possible meanings for *may*, one concerned with ‘possibility’ (epistemic modality) and one with ‘permission’ (deontic modality) (Von Wright, 1951; Perkins 1983; Lyons, 1977; Mindt, 1998; Coates, 1983), ‘extrinsic’ and ‘intrinsic’ modality respectively, in Quirk, Greenbaum, Leech and Svartvik’s terms (1985:219). Two sentences from the caution illustrate this duality clearly:

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.

The first occurrence is epistemic (extrinsic) ‘it is possible that *x* may harm your defence – only time will tell’. The subsequent occurrence, in contrast, seems predominantly deontic (intrinsic) ‘it is permissible to give your words in evidence – the law states this’, yet there is certainly possibility here too. If, following this caution, a detainee is not charged or says nothing consequential in interview, their words will not be used in evidence so this second *may* also means ‘it is possible that we will use your words in evidence – if the appropriate conditions pertain’. Such ambiguity is exaggerated in the *Notice* where *may* occurs a further six times, making eight *mays* in total:

Section where <i>may</i> occurs	Realisation
Rights summary	You may do any of these things now (1)
	If you do not [do any of these things now], you may still do so at any other time (2)
The right to a solicitor	the solicitor may come to see you (3)
	the police may question you without a solicitor (4)
The right to outside contact	You may on request have one person ... informed ... of your whereabouts (5)
	you may choose up to two alternatives (6)

Unambiguous modal verbs are the exception (Hodge and Kress, 1993:122), yet sometimes this is quite acceptable. Clauses 1, 2 and 6 seem to convey both, ‘you are permitted to do these things’ and ‘you can choose to do these things’ and the difference seems fairly inconsequential in these instances. Indeed readers might perhaps best take both meanings, as each clause concerns notions of ‘rule’ and ‘choice’³. However, this ambiguity is problematic in some of the clauses where modal choices create superficial rationality which masks coercion (Hodge and Kress, 1993:123). PACE suggests that clauses 3, 4 and 5 are intended to

³ Later sections of the *Notice* which introduce ‘prohibitions’ reveal that, here, the legal rules surrounding permission and possibility are complex, before one even begins to disentangle which meaning is being invoked here.

convey permission ('a solicitor is permitted to come to see you' (3); 'the police are permitted to interview you alone' (4) and 'you are permitted to have someone informed' (5)).

Unfortunately, detainees who instead take them to convey possibility, will be puzzled and unnerved. An epistemic reading of 3 leads to something like 'it's possible that the solicitor will come to see you', creating more questions than it answers – What will govern this? Who decides, how? By creating ambiguity about who decides about things which *may* happen, epistemic readings allow detainees to believe that the police have unregulated power; in other words, 4 could mean 'the police might choose to interview you alone'. Thus, *may* creates "systematic ambiguity about the nature of authority" (Hodge and Kress, 1993:122) concealing "power relational struggles" (Iedema, 1999:53-58). Yet, ambiguous modals "can be 'translated' into unambiguous forms" (1993:126). Each EIDU translation used fewer *mays* than the original (Figure 5.1):

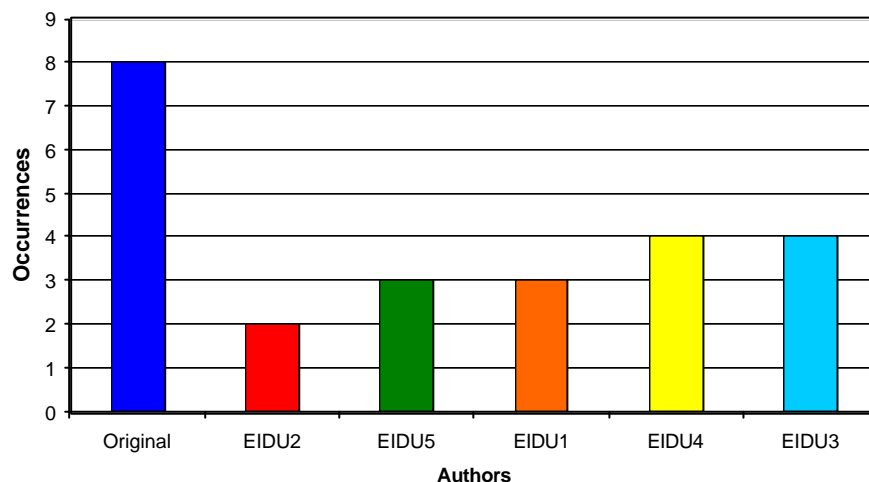
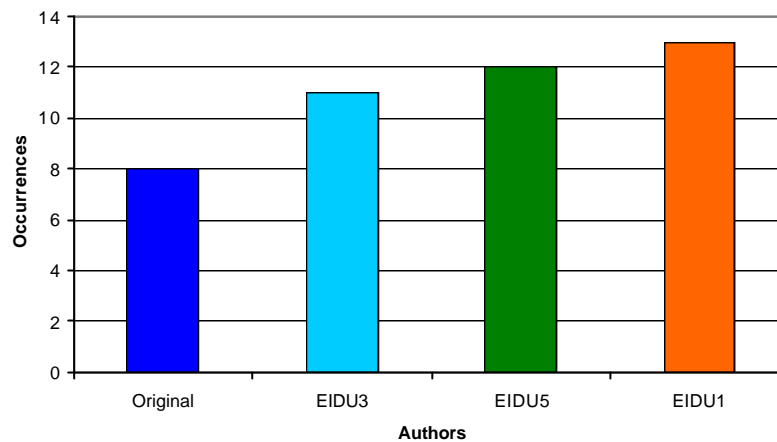


Figure 5.1 – Decreased use of *may*

When discussing their revisions, the EIDU writers suggested that they rejected *may* to avoid ambiguity. Frequently, they replaced *may* with *can*. For example, all who reformulated the clauses which contained occurrences 1 and 2, did this:

You can exercise these rights ...	[EIDU1, EIDU4]
You have 3 rights which you can use now ...	[EIDU5]
You can do any of these three things ...	[EIDU3]

Three of these revisers preferred *can*, using it more than the original did (Figure 5.2):

Figure 5.2 – Increased use of *can*

The officer replaced *may* with *can* more extensively than any other redrafter, incorporating only 4 *mays* to 17 *cans*. Yet, *can* is also deontic-epistemic ambiguous, as its occurrences in the original demonstrate:

Section where <i>can</i> occurs	Realisation
The right to a solicitor	You can speak to a solicitor (1)
	Legal advice can only be delayed (2)
	Or you can ask to see a list (3)
	You can talk to the solicitor in private (4)
	You can ask for the solicitor to be there (5)
	You can ask for legal advice (6)
	You can change your mind (7)
The right to outside contact	The right can only be delayed (8)

In some cases the original *Notice* juxtaposes *can* and *may*. Here *may* 3 and *can* 4 occur in one sentence, for example:

You **can** talk to the solicitor in private on the telephone and the solicitor **may** come to see you at the police station.

Both uses are deontic-epistemic ambiguous, yet their combination suggests that the text perhaps intends each to convey different meanings here. The text's situation of use reveals that it is indeed more likely that detainees would speak to solicitors by telephone (conveyed by *can*) than in person⁴ (conveyed by *may*) and that the detainee would choose whether to

⁴ Solicitors usually decide, themselves, whether they are needed at the police station by particular detainees, on the basis of case details, the detainee's condition and the time, for example.

speak by telephone (*can*) whereas the solicitor would choose to speak in person (*may*).

Therefore *can* perhaps intends to connote greater certainty than *may* or to flag the difference in decision-makers. These distinctions are unlikely to be apparent to readers. This notion that writers may attempt to devise and use a system of modal verbs is more than an intriguing possibility. It emerged, during discussions with the officer reviser, that his decisions in assigning modal verbs were far from arbitrary or isolated, but rather were part of a ‘modality scheme’ which he had devised. Consider the following equivalents from the original *Notice* and the officer’s revision:

Original		Officer
(i) You can speak to a solicitor ... at any time	→	You must be allowed to talk to a solicitor at any time
(ii) You can talk to the solicitor ... on the telephone	→	You can talk to a solicitor on the telephone
(iii) And the solicitor may come to see you	→	A solicitor may come to see you

The officer illustrated how his modality scheme functioned, by explaining how he had selected these modal verbs systematically (underlining indicates his emphasis):

PACE says (.) that you must (.) be allowed to talk to a solicitor (.) at any time ... so you’ve got to be allowed to talk to him [*sic*] (.) you can talk to him on the ‘phone (.) and he might come and see you at the police station (.) because in some cases they just give ‘phone advice (.) so it was a sort of must (.) can (.) might (.) you know ... as in careful choice of words (.) differentiating ... in terms of how it’s represented

The officer’s system addressed clauses of the original which he felt expressed deontic modality ambiguously. Through the scheme he hoped to convey permission, possibility and the relative likelihood of actions, accurately and transparently. However, understanding his scheme would require agreement to and knowledge of the scheme. Attempting to build on the officer’s attention to modal verbs but remove dependence on this impossible insider knowledge, the Home Office revision revisited several verb phrases. Example (i), above, had replaced the intrinsic-extrinsic confusion of *can* with an alethic-epistemic-deontic ambiguity through *must* (Lyons, 1977)⁵. Whilst alethic or epistemic readings would be somewhat far-fetched, some readers might invoke them because the intended deontic meaning is obscured by the absence of a party obliged through *must*. By specifying that party, through an active structure, the deontic reading becomes more apparent:

⁵ These modalities would interpret the sentence respectively as ‘it follows (perhaps from preceding text) that you will be allowed to talk to a solicitor’, ‘surely it is true that you will be allowed to talk to a solicitor’ and ‘someone is obliged to allow you to talk to a solicitor’.

The police must let you talk to a solicitor at any time.

In example (ii), the officer hoped to convey through *can* ‘permission’ – solicitors are normally permitted to come to see detainees – and in (iii) through *may* ‘decision’ – solicitors choose to come to see detainees if circumstances require. Interviews with detainees revealed that *may* said less than the officer anticipated, potentially leaving detainees, whose solicitor had simply decided against a personal visit, in confusion about whether a right had been withheld. A possible revision would remove the modal auxiliary:

A solicitor is allowed to come to see you...

This removes permission-possibility ambiguity but addresses only the first part of the officer’s intended meaning, failing to introduce solicitors’ autonomy. The Home Office *Notice* therefore adopted:

A solicitor can also decide to come to see you...

Here, *can* conveys possibility, permission or both whilst *decide* presents the solicitor’s autonomy. *Also* was inserted to reinforce cohesive links with the preceding sentence which introduced a telephone consultation. The redrafters used circumlocutions like this freely. Rather than only converting *may* to *can*, EIDU2, for example, used fewer *mays* and *cans* than the original, aiming to increase explicitness by avoiding modal auxiliaries:

You **can** talk to the solicitor
[Original]

→ You **have the right** to speak to a solicitor
→ [EIDU2]

The officer revision also tended to exclude modal verbs in this way. For example:

Normally the police **must not** question you
questions
[Original]

→ Usually the police **are not allowed to** ask you
→ [Officer]

Of course, as well as ignoring Tiersma’s aforementioned advice to avoid circumlocution (1999:207) this method of disambiguation brings what plain language advocates would see as other syntactic problems, typically increasing complexity within verb groups.

5.3 Lexis and semantics

5.3.1 Jargon

Jargon expressions “have a special trade or professional meaning” which is unfamiliar to non-specialist readers. It might be used ‘accidentally’, without considering readers, or ‘maliciously’, intending to “impress, confuse or humiliate the reader” (PEC, 1993:26). The section of the original *Notice* which offers the police *Codes of practice* begins:

The right to consult the Codes of practice

The Codes of practice will be made available to you on request. These Codes govern police procedures.

Discourse sequence here is illogical, sentence 1 offers the *Codes* through the jargon, *Codes of practice*, yet they are only glossed in sentence 2. Owen problematises this sequence, explaining, “one assumes that people who know what something is are more likely to know whether they want to look at it” (1994:290). More generally, he also suggests more detailed glosses (1994:292). This particular gloss neglects the *Codes*’ function, content and relevance to detention. Peculiarly, a lengthier gloss of the *Codes* appeared in the summary section which began the *Notice* than in this section, which ostensibly adds detail. Revisers who identify jargon might replace it with a less specific paraphrase (Davison and Kantor, 1982:205). However, the rewriters here maintained *Codes of practice*, to avoid presenting police officers with two tiers of terminology. They therefore also maintained a gloss, for lay readers. Most addressed the issues of sequence and of superficiality, placing a fuller gloss of the *Codes* in an initial position, as the officer revision demonstrates:

The Codes of Practice is a book that tells you what the police can and cannot do while you are at the police station. [→ **Gloss** – in initial position and with a focus on the detainee]
The police will let you read the Codes of Practice... [→ **Offer**]

The gloss, like that of Clare and Gudjonsson (1992), assumes no prior knowledge from detainees, therefore explaining first that the *Codes* is a book. This gloss also focuses on the *Codes*’ relevance to detainees in regulating police activity *while you are at the police station*, rather than foregrounding (Danet, 1984:5) its institutional relevance in governing *police procedure*. Three of the EIDU rewriters similarly adopted a detainee-centred perspective, for example (my bold):

The Codes of practice tell the police how **you should be treated while in custody**.

[EIDU3]

→ Presents police use of the *Codes* in relation to detainees

You have the right to read the Codes of practice that cover **your treatment while you are under arrest**.

[EIDU4]

→ Through subordination and passivisation removes reference to police completely

The original *Notice* does gloss a different term *Custody record*, to some extent, before offering the relevant right:

A record of your detention will be kept by the Custody Officer. [→ **Gloss**
When you leave police detention ... you ... shall be supplied on request with
a copy of the Custody record [→ **Offer**]

Whilst in this case the initial sentence potentially clarifies the jargon term, that sentence is not presented as a gloss and detainees are left to infer its explanatory function. Surprisingly, several rewriters were unconcerned about glossing this term. EIDU1 removed the gloss and EIDU3 reduced its prominence and level of detail. In contrast, the officer revision makes the following change:

A record of your detention	→	Everything that happens to you while you are at
[Original]	→	the police station is ... called the Custody record
		[Officer]

This revision glosses *Custody record* more fully than the original and explicitly links the gloss to the headword.

Despite both of these revised and repositioned glosses in the officer revision, some detainees who had been offered that text in detention remained confused. Some patterns of misunderstanding emerged. First, detainees misassigned labels, offering the following definitions of these jargon terms:

- *Codes of practice* means:

all the records that you're allowed to see ... where they fill out what time you have a cup of tea and what time you have exercise and all that [Regular 20]

This detainee has instead glossed the *Custody record*, fairly accurately.

- or it means:

they were quite clear I'm on record now for 5 years caution [Novice 18]

This detainee has instead glossed the *Criminal record*, an institutional database of individuals' offences which is not even mentioned in the *Notice*.

- *Custody record* means:

all the things you've done like illegal things [Regular 43]

all your files on record ... who you are what you've done what's your previous [Occasional 37]

Criminal records like information about yourself like and who you are [Regular 52]

These detainees too have glossed the *Criminal record*.

These misassignments may stem from the graphological and phonological coincidence of the initial 'c' /k/ shared by *Codes of practice*, *Custody record* and *Criminal record*. Other detainees who similarly appeared confident that they understood these terms also glossed them incorrectly by misappropriating other artefacts of the legal process, claiming:

- The *Codes* specifies offences:

say I get done for 'A B H section 18 with intent' then that's what it will be in there ... and then it will tell you in there everything about it [Regular 50]

it would be a good book to get like and all the different laws and the different situations they can charge you with and different offences and that [Regular 28]

- The *Custody record* is a time-limit, perhaps through analogy with some sporting records measured in time:

F and do you know what the *Custody record* is?

D no- 24 hours is it?

F yeah?

D them to keep you in custody?

...

F no there's an actual document called the *Custody record* and I'm just wondering if it's clear from those forms =

D = no no no

[Novice 18]

Other detainees attached the label *Custody record* to only part of its true referent, proposing it contained only:

- initial information:

I think it's where they book us in where they book them in isn't it?
it's all the stuff they write down when you come in

[Occasional 31]
[Occasional 32]

- details of property taken from detainees on entering custody:

that was what was took off me and sealed away

[Occasional 49]

How should rewriters respond? The officer revision text had glossed technical terms using a discourse sequence which is recommended in relevant research literature, yet confusion remains amongst its readers. These readers did not fail to recognise these terms at all, but simply misassigned labels (Chapters 7 and 8 examine this in detail).

Jargon in both *Notices*' titles also presents difficulties (cf. White and Gunstone, 1992:10-11). Clare and Gudjonsson found some detainees unsure of the meaning of *right*, taking it to have some evaluative connotations, through alignment with *correct* (1992:8). Interviews with detainees who had been offered the officer revision revealed that the title *Notice of entitlements* was similarly baffling. Several misassigned this label, proposing, for example, that *entitlements* are:

- possessions:

if they arrest you and they take your possessions off
you and stuff like that these are what your entitlements are

[Novice 09]

- things one cannot have:

F do you know the difference between rights and entitlements?
D what you are allowed and what you're not allowed

[Regular 12]

Others believed rights and entitlements were *the same thing* (Regular 50) and many described the distinction between rights and entitlements as *not really* clear (Novice 23), using the words interchangeably. Their comments suggest, at least, that the title *Notice of entitlements* does not prospect content for its target audience. This is unsurprising as the *Notices* themselves use the word imprecisely. The *Notice to detained persons* uses *entitle* twice when discussing restrictions on rights, not entitlements, and in detailing the right to a copy of the Custody record, it states:

This entitlement lasts for 12 months...

EIDU5, whose author saw the potential for such confusion, replaced the confusing occurrences in her rights notice with *allow*. EIDU2 provided glosses at the beginning of his document:

You have rights which affect what you can do, and entitlements which affect what you can expect the police to do.

Entitlement is not only jargon, but may also be unfamiliar, which may cause additional reading problems (Wright, 1979, in Kempson and Moore, 1994:41; Jackson, 1995:117; Gunning, 1968:75). By *unfamiliar*, guidelines mean: “in terms of the lexicon of the ordinary, non-legal speaker” (Jackson, 1995:117-118); according to dictionaries and word lists (Gunning, 1968:75-92) or to frequency in print (Kempson and Moore, 1994:42). The Government’s recent moves to introduce *Entitlement cards* (Home Office, 2004) may increase lay people’s familiarity with this word. The Home Office revision responded to confusion about *entitlement* by eradicating it altogether. Its entitlements document uses the title *How you should be cared for* which encapsulates the document’s content, fits with cotext, and presents the document in terms of its relevance to detainees. It also presupposes that detainees should receive a level of *care* whilst in detention, a desirable connotation.

The string *Road Traffic Act* contains “high frequency” or at least “short” words, yet they combine into a label which might mean little to detainees (Owen, 1994:292). Both the officer and EIDU2 replaced reference to the *Road Traffic Act* with reference to *offences*. Whilst subject to the *Act*, detainees will be accused of *offences*, so both reasoned that mention of *offences* would be more salient to detainees. The officer refers not to *road traffic offences* but *drink driving offences*. This increases specificity and accuracy, and responds to Owen’s observation that collocational familiarity of terms like this might assist detainees (1994:294).

5.3.2 Institutional orientations

Reformulations potentially realign the social world:

Since the processes of categorisation and selection are often problematic, they may function as the site of contestation, where participants attempt to impose their own modes of interpretation on others or negotiate a way through the social tensions that inevitably arise from difference.

(Lee, 1992:21)

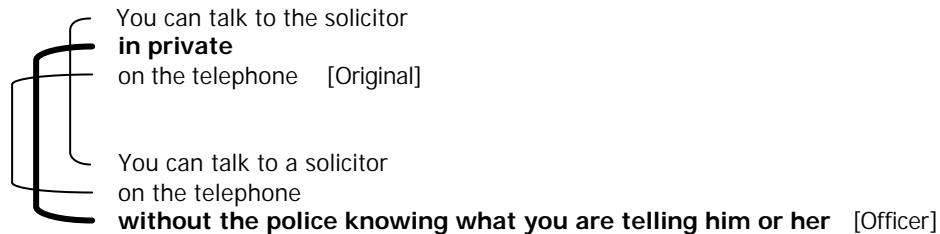
This is exemplified through different authors' treatment of the notion that detainees can receive specialist legal help, introduced in the original *Notice* through the noun phrase *independent solicitor*. This formulation presents the solicitor through their relationship to police, not detainees, yet does not elucidate this perspective, rendering *independent* ambiguous. The officer revision transforms this noun phrase, not by simply finding a more 'simple' or 'familiar' word for *independent*, but by representing solicitors' independence in terms of its implications for detainees:

An independent solicitor	→	a solicitor to help you while you are at the police station
[Original]	→	[Officer]

Here, detainee-oriented postmodification also explains what a solicitor will do and, crucially, through the verb *help*, notes that their presence might benefit detainees, recognising the detainee's lifeworld (Schutz and Luckman, 1973). Similarly, the original section on the right to contact someone outside detention presents the cost of invoking that right from an institutional point of view (*at public expense*) rather than from that of the detainee (*free to you*) (cf. Gunnarsson, 1984). We can only speculate on possible motivations for adopting this perspective, but interviews with detainees illustrated that the original formulation discouraged those who wished to minimise imposition, or to be seen to minimise imposition, from invoking rights.

Similarly, paragraph 4 of the section on the right to legal advice states that detainee-solicitor encounters will occur *at the police station*. Whilst some authors removed this somewhat redundant prepositional phrase, both EIDU3 and EIDU4 transformed it, replacing it with *in person at the police station* and *face-to-face* respectively. These reformulations present a

possible detainee-solicitor encounter through its interpersonal nature rather than (only) its location. In reformulating the same section, the officer expanded the notion of privacy:



Here, privacy is presented from detainees' perspective. Paragraph 5 of the same section states:

If the police want to question you, you can ask for the solicitor to be there. **If there is a delay, ask the police to contact the solicitor again.** Normally the police must not question you until you have spoken to the solicitor.

The highlighted sentence neither states who or what might be delayed, nor who or what by, rendering it fairly meaningless. Cotext suggests two possible readings:

if there is a delay...:

- '...in beginning the interview' (assumes anaphora with preceding text);
- '...in the solicitor's arrival' (assumes cataphora with upcoming text).

The EIDU rewriters took it to refer to delay in solicitors' arrival but doubted its relevance, suspecting that police would chase-up absent solicitors routinely. Accordingly, EIDU2 and EIDU1 removed it. In contrast, the officer was convinced that mentioning this delay was important because his experience alerted him to its potential to encourage detainees who erroneously believed they had requested a solicitor to seek clarification. His experience also led him to insert an extra proposition, coordinated through *or*:

If there is a delay, Ø ask the police to contact the solicitor again. [Original]	→ If a solicitor does not come, or you need to speak to the solicitor again, → ask the police to contact him or her again. → [Officer]
---	---

Inclusion of this additional proposition was motivated by his experience of anxious detainees. The officer-reviser's close focus on detainees' experience influenced his lexical choices too, leading his text to take a unique approach to representing the right to a solicitor. Rather than

beginning as if presenting novel information, the officer text assumes that detainees will already understand something about this right from cotext (the rights summary within that text) and from context (custody desk talk). Its section on legal advice thus begins with the subheading *Getting a solicitor to help you* which expects that detainees will, having opened the document, be wondering how to invoke a right which they already recognise. Use of *help* in this subheading, as in the officer's rights overview, highlights the solicitor's role and alignment with the detainee. Whilst the officer does not share readers' naivety (cf. Davison and Kantor, 1982:207), he sought to orient to detainees through his knowledge of the reality of detention. Some of his lexical choices attend to areas which his familiarity with custody suggested needed attention. These changes:

- **Explain processes:**

Ø [Original]

They will contact someone for you [Officer]

The officer explains why detainees need to tell police if they wish to get a message to someone, whereas the original did not specify.

- **Increase specificity:**

you can ask for the solicitor to be...

... there [Original]

... in the room with you [Officer]

The officer replaces anaphoric *there* which could imply that the solicitor might be at the police station, but not in the interview itself, with a more detailed formulation.

your whereabouts [Original]

at the police station [Officer]

The non-specific prepositional phrase of the original becomes a specifying subordinate relative clause.

- **Reduce specificity:**

A record of your detention will be **kept by the Custody Officer** [Original]

Ø [Officer]

The officer removes detail about who maintains the record as this is irrelevant to detainees.

Of course, the officer may not be best placed to evaluate readers' needs, because "authors use certain conventions of meaning ... based on shared language, culture and communication. Obviously if the shared knowledge assumption is not met, the author's message may be misunderstood" (Orasanu and Penney, 1986:2). However, the officer had thought carefully in orienting to readers, as he explained:

when they're sat in their cell they're thinking ... what are they going to be saying (.) they're not going to say "I wonder what's for lunch" I mean the regular criminals do ... but I mean if you've been arrested for the first time and thrown in a cell (.) the thoughts that are going through your head are "who can help me" [reads from his revision text] "tell the police if you want a solicitor" [mimics] "um I was due to see my mom and dad this afternoon" [reads] (.) "tell the police if you want somebody told" (.) and then we do have to say- they're not going to say the *Codes of practice* but if they do (.) [mimics] "ooh what's happening what's going on what's the process"

The officer recursively asks "what would the reader do next?", projecting likely psychological processes (Wright, 1981:12) and using his conception of the situated meanings that will accompany his text to reflect on the socioculturally defined experiences of readers and to envisage what they will need for action in the world.

In some sections, the officer orients to detainees subtly. For example, his revision of the section on the right to a copy of the Custody record, which, atypically for him, contains more words than the original, shifts from the abstract formulations of the original to more concrete representations:

the record will be kept	→	everything that happens is put on paper
this [right] lasts for 12 months	→	you can ask for up to twelve months
when you leave police detention	→	when you leave the police station

In the first excerpt, the officer moves from prospection into certainty by removing auxiliary *will*. He also replaces *kept* by specifying how the record will be kept, *on paper*, objectifying the record by presenting it as a real, written text. When referring to time, he replaces the tricky abstract entity, an entitlement lasting for a duration, with the more concrete idea of making a request within a time-limit. The final excerpt sees the notion of leaving an abstract state (*police detention*) replaced with that of leaving a physical place (*the police station*).

5.3.3 Simplification and affect

Despite calls for legal drafters to use short words (Gunning, 1968:302-315; PEC, 1993:80-81), the original *Notice* is peppered with words which have shorter near-synonymous alternatives (Gunning, 1968:65). Accordingly, systematic lexical replacement occurred throughout these revision texts too, rewriters substituting "easier words ... for what the readability formulas would predict are more difficult" (Davidson and Kantor, 1982:204):

Original formulation	Occurrences		Becomes	Writer
request	(3)	→	ask	[Officer]
to consult the <i>Codes</i> [Metaphorical ⁶]	(3)	→	to see the <i>Codes</i> to read the book to look at the <i>Codes</i>	[EIDU1] [EIDU2] [EIDU3]
informed	(2)	→	ask the police to contact told	[Officer] [EIDU5, EIDU1]
as soon as practicable	(2)	→	as soon as... ... possible ... they can ... it's available	[EIDU3, EIDU1] [EIDU4, Officer] [EIDU5]
govern	(1)	→	cover covering set out tell	[EIDU4] [EIDU5] [EIDU1, EIDU2] [EIDU3]
spoken to	(1)	→	talk to	[Officer]
normally	(1)	→	usually	[Officer]
independent	(1)	→	nothing to do with	[EIDU1]
telephone	(2)	→	'phone	[EIDU2, EIDU3, EIDU4]
which require	(1)	→	which means that you must	[EIDU5]

Although these revisions ‘simplify’ they might also be characterised as performing register shift, thus changing the character of the *Notice*. As far back as the 1940s, when Flesch devised his readability formula, he also developed a complementary measure of ‘Human Interest’ to investigate writers’ “tone” (Wright, 1999:91). More recently, Jackson has proposed that the preference of texts like the original *Notice* for ‘long words’ stems from a feeling that such words are part of a “familiar style” which “is sensed as “the” right and appropriate one” by those within the legal in-group, but certainly not by outsiders who may find such “ploys” alienating (1995:132-133). “Complex and technical language ... carries a social message concerning the power and authority of the person using it” (Gibbons, 1999:160, see also Mehan, 1981; Iedema, 1999:63). The potential for legal language to instil fear or obedience through its affective force is not lost on police and lawyers, who may resist other forms (Gibbons, 1999:160) claiming that reducing formality “might compromise the “majesty” of law” (Jackson, 1995:117). This compares with a tendency for medical practitioners to exploit knowledge asymmetries, controlling patients and interactions through vocabulary choices

⁶ Readers might expect this verb to denote more literal consultation with a person and may thus conflate this consultation with a legal consultation.

(Roter and Hall, 1992). Generally, then, conviction has grown that texts which are rewritten to be more ‘simple’ or ‘informal’ unavoidably also undergo change in affect (Hayes, 1996) or experiential meaning (Nevile, 1990). Nonetheless, much research on legal language ignores the experiential potential of either formal language or its simplified analogue, assuming that “only propositional information is communicated by, for example, police cautions” (Gibbons, 1999:160).

Rewriters in this study considered experiential consequences of their revisions (cf. Dixon and Bortolussi, 2001:18-19). The officer, for example, initially contemplated discarding a conventional written format in favour of cartoon presentation, a format which has been found valuable elsewhere, “especially [for] less able readers” (Hartley, 1981:23). Indeed, cartoon versions of the *Notice* already exist (Cotterill, 1999:pc). However, the officer explained that a text adviser whom he had appointed, the head-teacher of a school for children with learning difficulties, problematised drastic simplification:

if you ... say “OK how simple can you get?” (.) “do it as a cartoon” that - then ... you’re going to say “here’s a cartoon” they’re actually going to feel quite insulted and they won’t read it because it’s too dumb for them

Thus, the officer rejected what he felt was a potentially patronising format. However, he maintained a focus on the affective potential of his text, hoping to engage readers by “pitching” his text at an appropriate “level”. The EIDU rewriters too were articulate about connotations of register-shift, aiming to produce a relatively “gentle”, more “reassuring” and “less intimidating” text than the original⁷. Research literature problematises register shift, warning that if the *Notice* is simplified for disadvantaged subjects, it might become more difficult for able readers (Owen, 1996). Furthermore, simplification can create texts which appear “friendly” “as if this kind of relationship can be assumed non-problematically even in official documents” (Solomon, 1996:289). Detainees in this study commented on the register of the officer’s text. Some felt that informality was present but necessary:

F was [anything] being repeated too much or being too simple or
D I didn’t think so because some people are simple and they need it explaining to them
[Occasional 03]

⁷ EIDU3 proposed producing separate documents for detainees from overseas and juveniles, because she intended these documents to be particularly reassuring yet not patronising.

Others felt, like Solomon, that simplification can be overdone:

it comes across as being “**we’re here to help**” you know what I mean that’s I mean you’ve only got to read a few lines of it and **it’s more like being in a hotel** really isn’t it ur ‘phone you know “‘phone down if you want a sandwich”

[Novice 25]

Some concluded the document and associated custody practices were ultimately too informal:

these guys shouldn’t be friendly to me they should be scowling at me and saying “you’re a naughty boy aren’t you”

[Novice 25]

Readers seem to agree that they “may need clues in the text to help them see that, in fact ... policy information is not negotiable” (Solomon, 1996:298). The officer made other changes which influenced affect too. In Section 12.4 we will see that some police officers’ explanations of the caution present speaking to police, during detention, as an *opportunity* or *chance*. The police officer revision of the *Notice* draws on the positive semantic prosody (Louw, 1993:157ff, after Sinclair, 1991:74, see also Firth, 1968:40) of *chance* more appropriately in representing talk with a solicitor, transforming:

have spoken to the solicitor	→	have had the chance to talk to a solicitor
[Original]	→	[Officer]

He also made extra-linguistic changes which generated affective evaluations from detainees. One, for example, suggested that the pink wrap-over sheet would deter some potential readers as it *looks girlish* (Regular 44). Finally, the officer revision contained concepts which had negative affective consequences:

[reads aloud] “when they take your clothes off you” I thought “my God I thought that only happened on the Bill” you know what I mean

[Novice 26]

Even though this detainee’s clothes had not been removed and were not likely to be, the text generated concern. Rewriters may be unable to avoid affective responses to content like this. Other detainees described the affective potential of the officer’s formulations when combined with stresses of detention, which are also unavoidable. The novice below, for example, commented on the way an implicature, that lengthy detentions are the norm, had contributed to unease as his detention period lengthened:

[reads aloud] "each day" good grief (.) "each day" sounds even worse ... it's just looking at it though and you think of it "each day" oh my God [Novice 25]

The EIDU revisers represented affect as important to good rewrites. For example, EIDU2 converted a formulation which he saw as intimidating: *breath, blood or urine specimens* to simply *samples*. These rewriters were accordingly thwarted by a lack of affective clarity in the original *Notice*, which closes:

This entitlement lasts for 12 months after your release from police detention.

EIDU2 dismissed this whole proposition as unimportant to detainees during their detention. The other writers were convinced it was relevant, but were unsure whether to present it as a restriction or benefit: is 12 months stingily short or generously long? EIDU5, EIDU4 and EIDU3 hedged, but EIDU1 presented it as restrictive (*only available for 12 months*).

In language from police to lay people, "it is not single complexities that cause the problems, it is their accumulation" (Gibbons, 2003:190). This chapter has illustrated that syntactic and lexical choices in these revisions are, for readers and writers, about much more than simply seeking increased comprehensibility.

CHAPTER 6: 'SOLVING' STRUCTURAL 'PROBLEMS'?

6.1 Introduction

Rewriters' changes at different levels of language interact with one another (Davidson and Kantor, 1982:205), illustrating the limits of writing guidelines. Moving to the levels of the phrase, clause, paragraph, section, *Notice* (intratextuality) and beyond (intertextuality), some potential difficulties are not universal across texts and only emerge through close textual scrutiny.

6.2 Phrase-level changes

Noun phrases incorporating strings of qualifiers are said to produce difficulty (Wright, 1979, in Kempson and Moore, 1994:42). The rewriters problematised and altered the many such strings in the original *Notice*. This became a particular focus in revising personal reference in the explanation of the right to contact with someone outside detention:

Original

- | | |
|------------|---|
| Sentence 1 | You may on request have one person known to you, or who is likely to take an interest in your welfare , informed at public expense as soon as is practicable of your whereabouts. |
| Sentence 2 | If the person you name cannot be contacted you may choose up to two alternatives . |
| Sentence 3 | If they too cannot be contacted the Custody Officer has discretion to allow further attempts Ø [to contact other people] until the information has been conveyed. |

Reference to people (highlighted in bold, above) in all three sentences presented three structural 'problems':

- long noun phrases which are difficult to delimit and, in two cases, involve rank-shifting and anaphora:
 - one person known to you, or who is likely to take an interest in your welfare;
 - the person you name;
 - up to two alternatives.
- pronouns with unclear antecedents:
 - they (possibly denoting *the person you name*, one of the *alternatives* or all of these).
- elision:
 - a final tier of possible contacts is not expressed, it is added inside square brackets above.

Some of these noun phrases attracted fairly straightforward rewording, although only EIDU4 and the officer significantly shortened phrases, for example:

the person you name [Original]	→		
	the person		[EIDU4]
	the person you choose		[EIDU1]
	the person you have told them about		[EIDU2]
	your first choice of person		[EIDU3]
up to two alternatives [Original]	→		
	two others		[EIDU4]
	2 other people		[EIDU1]
	the names of two more people to try to contact		[EIDU2]
	2 more		[Officer]

The longest noun phrase, however, contained semantic oddities:

one person known to you or who is likely to take an interest in your welfare [Original]

Known to you connotes relative unfamiliarity: a public figure may be *known* to me, but I may not *know* them. The coordinated *who*-prefaced relative clause incorporates rank-shifting and may be difficult to delimit, and the coordinator *or* suggests a very odd choice. The officer drew on his participant knowledge to change this to *someone who needs to know*. Whilst the original suggests that detainees might contact anyone with a general interest in them, the officer's version specifies, that contact depends on *need*. The officer explained his choice:

when you get down to kids (.) if you say "who do you want to know?" (.) they don't want their mum and dad to know (.) but their mum and dad do need to know and we have a need to tell them ... it's not down to what they want

He therefore risks over-specification for adult readers who are not affected by *need*, in order to achieve precision for children. However, when the officer's text refers to this person again, it refers to *want*:

the first person you want to know that you are at the police station

This long noun phrase incorporates two levels of rank-shifting and its boundaries are easily mistraced. A possible replacement is *that person*, yet this makes only a weak anaphoric tie with its antecedent in the previous paragraph. The Home Office revision therefore reduced length and embedding whilst maintaining robust anaphora: *the first person you ask for*. This

represents the detainee's chosen contact as someone they have nominated, without the inappropriate implicature of *want*.

The officer simplified around these noun phrases in other ways too, reducing the complexity of the network of contacts introduced. Where the original introduced three layers of contacts:

- the person you name
- up to two alternatives
- further attempts

The officer condensed the second and third levels into *at least two more*:

If the police cannot contact the first person ..., they will try at least two more until someone knows.

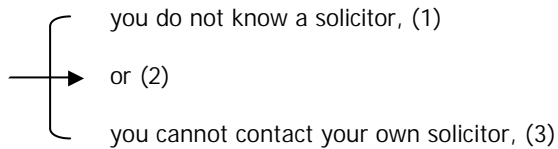
[Officer]

This reduced the risk of detainees incorrectly tracing anaphoric ties from pronouns by providing fewer potential antecedents. The officer additionally replaces the notion that Custody Officers can please themselves about whether to continue attempting contact with the certainty that they *will* keep trying *until* successful. This alters the sense of the original.

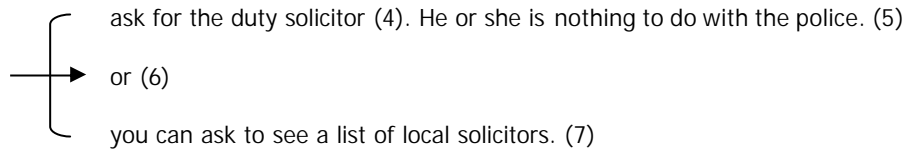
6.3 Clause relations: Subordination and coordination

Some research suggests that conjunctions affect comprehension. They claim, for example, that any conjunction might improve readability for particular groups (Irwin, 1980, in Davison and Kantor, 1982:206) or that particular conjunctions change comprehensibility universally (Wright, 1979a, in Kempson and Moore, 1994:46). Certainly, a text's surface structure provides "potential processing instructions for constructing the intended connections among concepts" (Goldman and Rakestraw, 2000:313). Therefore, even subtle changes to clause connections might unexpectedly alter markedness, salience or topic orientation (Davison and Kantor, 1982:206). All of the rewriters made surface-structure changes to paragraph 3 of the section on the right to legal advice (mapped below, numbering clauses and coordinators):

If



[then]



[Original]

This rests on potentially unfamiliar concepts. It assumes that readers will know what a *duty solicitor* is and who to ask should they wish to speak to one. It introduces a list which can be requested but ignores the matter of how such a list would be used. All of this is compounded, however, by the paragraph's reliance on coordination. Clause 4 apparently resolves the previous two conjoined clauses yet, after an intervening clause, comes an *or* conjunction (6), which asks readers to temporarily disregard clauses 4 and 5 in order to coordinate the coming clause 7 to the opening units (1-3). In other words, resolution of 6 and 7 involves cataphoric reference to 1-3, whilst 4 and 5 interpose in a parenthesis relation (Beekman, Callow, and Kopesec, 1981). As a result, *nothing to do with the police* implies that either duty solicitors are less familiar with police procedure than list solicitors or that list solicitors are less impartial than duty solicitors. All of the rewriters responded to this structure and resulting implicature. EIDU4 removed all reference to the solicitors' list and the other writers re-sequenced, introducing the list before independence. This generated some problems itself. Authors who moved clause 5 to a final position found that its original subject, *he or she*, no longer tied cataphorically to its original antecedent, *duty solicitor*, closely enough to ensure cohesion. EIDU3, EIDU1 and EIDU5 therefore reinserted *duty solicitor* into their relocated clause 5. Unfortunately that suggested, perhaps even more forcefully than the original, that duty solicitors are independent from police whereas list solicitors are not. For example:

You can ask for the duty solicitor or ask to see a list of local solicitors.
The duty solicitor is nothing to do with the police.

[EIDU1]

For these writers, attention to one potential difficulty (lengthy anaphora) maintained, or intensified, another potential difficulty (vagueness about independence), illustrating Davidson

and Kantor's Domino Effect (1982:196). Only EIDU2 specified that independence characterises all solicitors, but he had to dedicate a sentence to this:

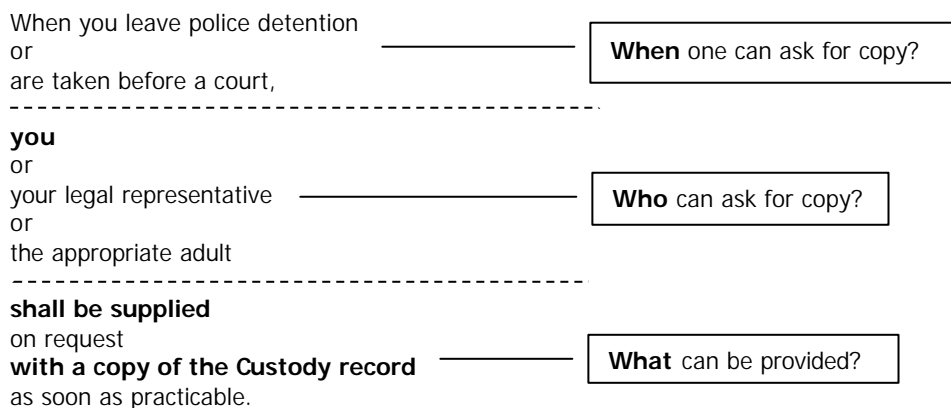
Both the duty solicitor, and the solicitors on the list are completely independent of the police. [EIDU2]

The officer's specialist knowledge of detention informed his reformulation, enabling him to sidestep these matters:

If you do not know a solicitor **in the area** or you cannot get in touch with your own solicitor, there is a person called the duty solicitor. **The police will help you contact him or her.** He or she is nothing to do with the police.

His experience is that officers rarely offer an extensive solicitor list to detainees, therefore, he deleted all reference to lists. His background knowledge also enabled him to augment the paragraph with the items highlighted in bold above.

The second sentence of the section on the right to a copy of the Custody record also contains extensive subordination and coordination. Its passive main clause (bold below) is accompanied by an array of other components, resulting in a complex, almost periodic sentence:



= when x, you shall get y.

The when-who-what sequence indicated above is quite disorientating. Commentators advocate presenting 'what' first (Owen, 1994:290; cf. Section 5.3.1). Additionally, the sentence introduces two temporal referents and three people, requiring readers to hold much in mind. Most redrafters signalled dissatisfaction with all this by using multiple sentences or

reducing the number of coordinated noun phrases which introduce people who can request the record. The officer, for example, unpacked the subordination which occurs towards the end of the original sentence, creating one sentence outlining the detainee's right and a separate sentence explaining officers' obligations:

Detainees' right	When you leave the police station, you, your solicitor or your appropriate adult can ask for a copy of the Custody Record.
Officers' obligation	The police have to give you a copy of the Custody Record as soon as they can.

Within the sentence, too, syntactic issues bring potential problems:

- **Active-passive combinations** – Active *When you leave police detention* is coordinated to passive *are taken before a court*. This changes voice and agent mid-sentence. We might expect two active clauses with detainee as agent (*when you leave custody or go to court*) or two passives with police as agent (*when you are released from custody or are taken before a court*). Rewriters responded here. EIDU1 used passive + passive. The officer, on the other hand, removed this active-passive combination by removing all reference to court, consequently removing some detail of the right's flexibility.
- **Inconsistent use of determiners** – The detainee's legal representative is specified using possessive *your* while the appropriate adult is denoted using the definite article. This suggests that the solicitor is exclusive to the detainee and the appropriate adult is not, which is unlikely. The officer attended to this, using the possessive in both cases.

This sub-section has illustrated that subordination and coordination raise ambiguity throughout the original *Notice* in combination with other features. The rewriters responded to these matters, although not necessarily in ways which writing guidelines would recommend.

6.4 Intratextuality within the section

The excerpt below sees a detainee asked to explain his rights waiver by a police officer as his police interview is about to begin:

- P do you want to have a solicitor present at this interview?
 D [carefully] I don't think I require a solicitor
 P you have continued to decline legal advice and we'll now have to ask the question what
 were your reasons for this it's just (.) to clarify
 → D u:::m (5.6) ur I'm not clear how a solicitor would help me=
 P =yep understand that's
 absolutely fine I'm going to caution you again sir ...

[B16]

This detainee, who would have been offered the original *Notice*, appears to have passed through the entire detention process without having developed an understanding of the solicitor's role. When he finally voices this uncertainty, immediately before his interview, it is dismissed as *absolutely fine* and his expression of doubt apparently taken as a rights waiver. Some courts overseas see such "ambiguous statements" or "uncertainty about what to do" as not constituting rights waivers (Shuy, 1997:192, see also Eades, 2003:210), preferring "direct and unqualified assertions" of rights invocation. This renders those who adopt 'powerless language' (Lakoff, 1975) vulnerable (Ainsworth, 1993:285). The right to legal advice is perhaps the most important in the *Notice*, particularly in contemporary detention. However, the *Notice*'s presentation of the right combines lexical, syntactic and micro-structural difficulties with disorganisation on every level, but then also fails to specify how or, indeed, whether a solicitor might help; an omission from Miranda warnings too¹ (Shuy, 1997:186).

Looking first to the *Notice*'s organisation, Figure 6.1 overviews the section's trajectory using notions of 'specific' and 'general':

¹ Shuy also notes the failure to specify why a lawyer in particular, rather than any other authority figure, will be helpful to a detainee. This seemed to be less of an issue in these data, perhaps because the appropriate adult scheme here and the right not to be held incommunicado make other authority figures somewhat available.

paragraph 3 which details selection of a particular solicitor following that initial request. This is unhelpful according to Zwaan and Radvansky, who propose that congruence between text structure and the structure of the related situation aids comprehension (1998, in Goldman and Rakestraw, 2000:318).

Both between and within paragraphs, most redrafters re-sequenced, they claimed, more appropriately. EIDU4 offers the most radical example, cleaving the section into two parts, one concerned with those aspects of the right which apply before interview, the other with those which apply during interview. Appendix 15 presents two charts which overview all authors' changes, removals and additions by dividing the original text into units and tabulating each author's response to each unit. Although each has responded very differently, their treatments have some themes. For example, all authors incorporated part of what was originally paragraph 1, which could be seen as summarising the right to a solicitor. Additionally, each has maintained this paragraph's position, early in their document, although the officer incorporates it later than any other writer. Most indicated that the original *Notice's* first paragraph was incomplete by moving various later propositions into the first paragraph, informing detainees, early on, that they can:

invoke this right during detention having initially declined it	[EIDU3, EIDU1]
speak to a solicitor either by telephone or in person	[EIDU4, EIDU2]
speak to the solicitor in private	[EIDU4, EIDU2]
ask, if they want to invoke this right	[Officer]

In responding to the whole section, the officer resequenced, removed some propositions, divided the remaining texts into more paragraphs than any other rewriter, and reformatted using a combination of bullets and paragraphs to flag functionally different parts (Figure 6.2):

Original paragraph number and topic	Moved to...	
1 General statement of right to speak to solicitor - when, where and how much it will cost		1. Getting a solicitor to help you <ul style="list-style-type: none"> If you want a solicitor, tell the Police Custody Officer. The police will help you get in touch with a solicitor. If you do not know of a solicitor in the area or you cannot get in touch with your own solicitor, there is a person called the duty solicitor. The police will help you contact him or her. He or she is nothing to do with the police. You must be allowed to talk to a solicitor at any time, day or night, when you are at a police station. It is free. You can talk to a solicitor on the telephone without the police knowing what you are telling him or her. A solicitor may come to see you at the police station. Usually the police are not allowed to ask you questions until you have had the chance to talk to a solicitor. When the police ask you questions, you can ask for a solicitor to be in the room with you. If a solicitor does not come, or you need to speak to the solicitor again, ask the police to contact him or her again. <p>There are some special times when the police can ask you questions before you have talked to a solicitor. Information about these special times is given in the Codes of Practice. This is the book that sets out what the police can and cannot do while you are at the police station. If you want to look up the details, they are in paragraph 6.6 of Code C of the Codes of Practice.</p> <p>There is also one special time when the police can stop you having a solicitor. Information about this is given in the Codes of Practice. If you want to look it up, see Annex B of Code C of the Codes of Practice.</p>
2 Non-specific conditions which might allow the police to delay the detainee's access to legal advice before interview		
3 Introduction of different types of solicitor, particularly the duty solicitor		
4 Possible contact with the solicitor – before interview		
5(a) Possible contact with the solicitor – during interview		
5(b) What to do if the solicitor is delayed		
5(c) Possible contact with the solicitor – before interview		
5(d) Non-specific conditions which might allow the police to delay the detainee's access to legal advice during interview		
6 (a) How to get a solicitor		
6 (b) What to do if you change your mind about speaking to a solicitor		
7 This right does not allow detainees to disrupt other aspects of detention procedure (drink driving)		

Figure 6.2 – The officer's reworking of the section on the right to a solicitor

The Home Office revision developed this sequence in response to analysis of each author's revisions and detainees' comments. It re-inserted some propositions from the original *Notice* which the officer had unintentionally omitted but also augmented the original content. It grouped paragraphs according to topic (Figure 6.3), thereby attempting to anticipate potential readers' questions and signal what questions are being answered (Hoey, 1988:57):

Paragraph	Summary of content	Macro-sequence
1	What a solicitor will do	Introduction
2	What to do if you want a solicitor - summary	Making initial contact with a solicitor
3	When you can talk to a solicitor – how much it costs	
4	What to do if you want a solicitor – detail – introducing duty solicitor	
5	Telephone and in-person consultations	What a solicitor will do during extended contact
6	Solicitor's role during interviews	
7	Implications of speaking to a solicitor	
8	What to do if the solicitor does not appear or further contact is needed	Re-initiating contact
9	What to do if one has not requested a solicitor but changes one's mind	

Figure 6.3 – Summary of the content of the Home Office revision

The original *Notice* uses several different nominal groups to denote solicitors, which contributes to the impression of disorganisation. *Solicitor* combines with an indefinite article at the beginning and end of the section and with the definite article in paragraphs 4 and 5, although both forms are intended to denote a hypothesised person (cf. Shuy, 1997:186). In paragraphs 1, 2, 6 and 7, and indeed in the section's title, *solicitor* is relexified through the nominalization *legal advice*. Selection between each form is not clearly motivated and readers may not recognise the different forms' intended synonymy and non-synonymy. The chart below shows the number of occurrences of the various nominal groups in each text:

Formulation		Original	EIDU1	EIDU2	EIDU3	EIDU4	EIDU5	Officer
A	solicitor	5	6	10	8	4	7	13
The		5	1		2		3	1
Your			3	3	5	5	1	1
Your own		2			1		1	1
An independent		1	1		1		1	
solicitors				1				
Legal representation / advice / representative		6	4		4	3	2	

Strikingly, each EIDU author reduced reference to a specific hypothesised solicitor, reducing the definite article and, consequently, mostly using indefinite *a* more than the original. EIDU2, in particular, used the indefinite article twice as frequently as the original and both he and EIDU4 excluded *the solicitor*. EIDU3 and EIDU4 both addressed detainees and highlighted their connection to the solicitor through possessive *your*. Additionally, each author uses fewer nominalizations than the original. The officer revision took this further, removing all nominalizations. He also preceded *solicitor* with indefinite *a* almost every time it occurred.

The original *Notice*'s failure to explain the solicitor's role may have affected the detainee above. Detainees do not all imagine that an authority figure like a solicitor, with apparent connections to the police, would greatly assist them. They expressed various forms of unease around invoking legal advice, describing cynicism and a desire to resolve their own situation, for example. Similarly, Barton and Hamilton have found people "ambivalent about professional experts, deferring to them though lack of confidence, but privately sceptical" and distinguishing "their own expertise from the expertise of professionals" (1998:244). The section's title *legal advice* hints at the solicitor's usefulness, but only late in the section does paragraph 5 even allude to solicitors' likely activities, and even then explaining only that they

can attend interviews. This contrasts with comparable informative texts, such as consumer product instructions, which feature carefully chosen and placed expressions of purpose (Murcia-Bielsa and Delin, 2001). The rewriters identified this void. One added information about solicitors' role and allegiances:

Solicitors help to protect the legal rights of people in custody, and also give them legal advice. [EIDU2]

The officer, too, introduced the solicitor, from the outset of his text, as someone who will *help you while you are at the police station*. The Home Office version built on this, adding an initial sentence to this section: *A solicitor can help and advise you about the law*.

The officer felt that this right was the most important for detainees, so he sought to prioritise his text's description of it through visual cues (affording it a whole, dedicated page; more space than any other right) and sequential cues (placing it first). Some detainees suggested this had been successful:

- Visual cues:

makes it say look more important because there's only a little section on everything else but there's a whole front page on the front

[Regular 50]

- Sequential cues:

I would have thought if you wanted a solicitor that would probably be your first thing it says that ... having the Custody record the *Codes of practice* I think those probably come at the right end

[Occasional 45]

Some indeed felt that the *Notice* was somewhat persuasive. Regular 12, for example, noted an implicature "*look get a solicitor*". Regular 45 agreed that those *in doubt* might particularly feel this. It seems that the officer's revision achieved his aim of highlighting this right.

6.5 Intratextuality between sections

The original *Notice* presented problems of sequence which were more pervasive than those which have just been illustrated. These deserve scrutiny because they generate misunderstandings which are likely to prevent detainees from invoking their rights and because they occur throughout the document. Remaining with the original explanation of the

right to a solicitor illustrates this. Its second paragraph indicates that the right might be withheld in *certain exceptional circumstances*. This flouts Tiersma's recommendation to present "the general before the specific and the overall statement or rule before any ... exceptions" (1999:208-9). By presenting restrictive circumstances so early, the section limits the right before even outlining it, thus implying that limitation is quite likely (Shuy, 1990:293-6). This early position may also suggest that the restriction circumstances are important, because early sentences are "given more weight [by readers] as measured by longer reading times and more frequent reinspections" than later ones (Goldman and Rakestraw, 2000:317; see also Kintsch and van Dijk, 1975; Tiersma, 1999:208). After several unrelated paragraphs, the section reiterates the existence of *certain restrictive circumstances* in its fifth paragraph, through that reinforcement suggesting that it is likely to be restricted often or for many detainees. Eventually the text returns to restrictions again in a completely different section. Thus, information about restrictions is scattered through the notice, twice in the section on the right to legal advice:

Access to legal advice can only be delayed in certain exceptional circumstances [Paragraph 2]

There are certain circumstances in which the police may question you without a solicitor [Paragraph 5]

and once in the section on the right to external contact:

The right can only be delayed in exceptional circumstances

Yet each could be glossed:

~ police → can delay → access to a right

These propositions are very different from their cotext in three main ways. First, and perhaps most obviously, they are topically distinctive. Secondly, they have a very different audience from their cotext, consisting of the relatively few detainees they affect, fewer than one in every 3950 according to Bucke and Brown (1997:viii). The *Notice* therefore delivers information which is not for all readers before and amongst that which is (cf. Dumas, 1990:349). Finally, these propositions have relative unexpectedness. Detainees in these data were surprised to learn of possible restrictions to their rights, more so than other details – writers must consider this.

Just as these restrictions are distinguished from their cotext by these three factors, they are correlatively connected to one another by these same factors. Each restriction shares topic-focus, a relatively small audience and unpredictability. Nonetheless they are not connected to one another in the original text, except through some lexical coincidences. Their prominence unduly foregrounds possible ineligibility for rights, potentially discouraging detainees from invoking them, even though, in reality, they are unlikely to be ineligible. This may particularly confuse the 6% of detainees who Bucke and Brown found did not receive their requested legal advice, for reasons other than those hinted at in these restrictions (1997:viii). The exclusion of those more mundane reasons for rights restrictions is highly misleading.

Any misunderstanding caused by scattering the restrictions is compounded by the detail of each occurrence. In paragraph 5 of the solicitor section, for example, the restriction is not even introduced in isolation (the paragraph's sentences are numbered below):

- 1 If the police want to question you, you can ask for the solicitor to be there.
- 2 If there is a delay, ask the police to contact the solicitor again.
- 3 Normally the police must not question you until you have spoken to the solicitor.
- 4 However, there are certain circumstances in which the police may question you without a solicitor...

Sentence 4 gives information about the restriction to the right. Sentences 1 and 3 also inform, however, not about withholding the right but about aspects of giving the right which pertain during and before interview respectively. Sentence 2 interposes with something different again, a circumstantially prescribed instruction. All rewriters attended to the chaos of scattered restrictions. Two EIDU writers were sufficiently convinced that these clauses were irrelevant to most readers that they removed some or all of them completely, either incorporating them in a separate document (EIDU2) or asking officers to explain, only when necessary (EIDU4). Others grouped restrictions and moved them to the end of the section in which they originally occurred (EIDU1, EIDU3, the officer²).

These were not the only anomalous propositions in the original *Notice*. It also contains equally different and unexpected propositions which circumscribe the conduct of those being offered rights. These too were distributed throughout the *Notice*, creating a muddled

² The paragraphs through which the officer presents restrictions on the right to a solicitor present slightly different information from the original *Notice*. The final revision which was circulated has been modified in line with the new version of *Code C* (2003).

patchwork of giving and withholding rights, offering and forbidding. One occurred in the section on the right to legal advice:

Your right ... does not entitle you to delay procedures under the Road Traffic Act [Paragraph 7]

and two in the section on the right to see the *Codes*:

The right ... does not allow you to delay unreasonably any necessary investigative and administrative action neither does it allow procedures under the Road Traffic Act ... to be delayed

These prohibitions dominated this section, which is ostensibly concerned with offering the *Codes*. 72% of its words deal with prohibiting rather than providing.

These could be glossed:

~ detainees → cannot delay → the investigation

These prohibitive clauses may appear somewhat superfluous, like the restrictions discussed above. Those which concern samples relate to situations which will be relatively unambiguous and in all cases the officers who wish to prevent detainees from delaying will be on hand, by definition, to explain their actions. Accordingly, some of the writers responded, as they had to the restrictions, by removing some or all of these propositions (EIDU1, EIDU3). However, interviews with Custody Sergeants revealed that these prohibitions were, for them, an important part of the *Notice* because they apply to the frequent activity of demanding a sample from a resistant detainee. Officers described using these sections as a written authority in potentially confrontational situations, holding up the paper to validate their position. The officer had, accordingly, moved the prohibition relating to the right to a solicitor to the back page of his text, and indeed Sergeants described finding this detached prohibition easier to invoke within their verbal explanations than when it had been buried within running text. Thus, whilst restrictions and prohibitions appeared to demand the same treatment as one another, their place for participants is very different, restrictions being a rarely used distraction and prohibitions an important tool for officers. The officer's text thus reflected his experience, relocating useful text to make it more useful and relocating largely irrelevant text for minimal interference. The Home Office revision built on the officer's

scheme by moving all text which noted restrictions out of the main body of the text, to its back page (Figure 6.4):

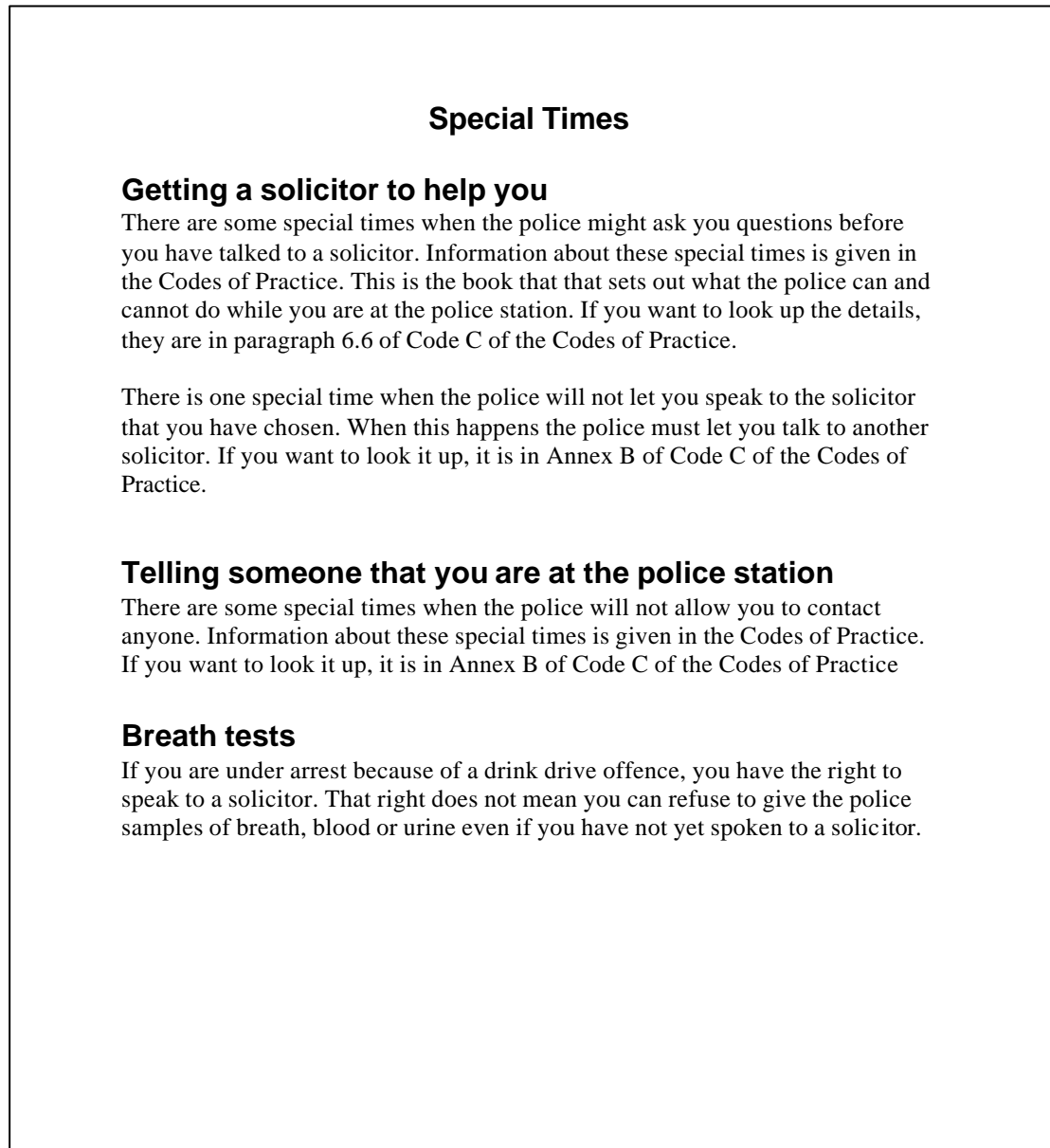


Figure 6.4 – Back page of the Home Office revision

This relocation is one of the most important developments of that version because it separates sections which give rights (the main body) from those which withhold or modify them (the back page), thus separating sections for relatively few readers from those for all, and unexpected sections from more predictable material. It also avoids the implication, stemming

from repetition, that the rights are likely to be withheld, and allows the rights-giving sections to be organised more cohesively. Understanding a text “includes understanding the connections between the points being made”, so “the more precise a writer is about the relationships he or she intends the easier will the reader’s task be” (Hoey, 1988:57). The visual separation of restrictions and prohibitions intends to make connections and relationships explicit, saving readers from the task of untangling them. This back page is organised around titles which correspond to those in the body of the *Notice*, to indicate the relationship between restrictions and the sections which they govern. This restructuring has knock-on effects on lower-level features.

6.5.1 Contradictions

The restrictions, which deny rights to some individuals, and the prohibitions, which deny rights in some situations, directly contradict reassurances which also permeate the *Notice*. It opened by summarising all rights and then assuring detainees:

- (1) YOU MAY DO ANY OF THESE THINGS NOW, BUT IF YOU DO NOT, YOU MAY STILL DO SO AT ANY OTHER TIME WHILST DETAINED AT THE POLICE STATION

Within the *Notice*’s body too, the prepositional phrase *at any time* stresses flexibility about invoking the right to legal advice:

- | | | |
|-----|---|---------------|
| (2) | You can speak to a solicitor at the police station at any time , day or night. | [Paragraph 1] |
| (3) | You can ask for legal advice at any time during your detention. | [Paragraph 6] |
| (4) | Even if you tell the police you do not want a solicitor at first, you can change your mind at any time . | [Paragraph 6] |

The phrase is used polysemously, describing flexibility within:

- **the 24-hour clock** – in occurrence 2, the recast *day and night* suggests rights pertain ‘even if it is 4am or lunch time, for example’;
- **the abstract, ongoing detention period** – in occurrences 3 and 1, the prepositional phrase *during your detention* suggests ‘even if you are being interviewed or have been delayed interminably, for example’;
- **an unspecified time-frame** – in occurrence 4, cotext does not delimit.

The original *Notice* thus suggests both that rights can be exercised at any time, and that they cannot, yet its chaotic organisation conceals this contradiction. The assertion that rights can be invoked at any time is also somewhat contradicted by a directive asserting that detainees seeking legal advice should do so *at once* (paragraph 6, the right to a solicitor). Most rewriters noted this, finding *at once* unnecessary, particularly in a directive, and accordingly only two maintained it (EIDU5, EIDU3). This contradiction was easily resolved. Conversely, the contradiction between the *at any time* phrases and the restrictions and prohibitions is somewhat unavoidable. Logically, a rights text should respond by stating that detainees can *normally* invoke their rights at any time. However incorporating *normally* would allow propositions which apply infrequently to dilute others which apply frequently. The Home Office text's relocation of restrictions and prohibitions resolves this. The repositioning avoids concealing the contradiction, by asserting that the rights are not time-restrained in the main body and only describing time-restrictions where they apply.

6.5.2 Pronouns

In addition, the relocation illustrated in Figure 6.4 addressed confusion caused by 'simplification'. The original *Notice* asserted *There are certain circumstances in which the police may question you without a solicitor*. As established earlier, *you* intends to address particular readers (Flesch, 1949; Jansen, 2001:131-2). However, second person address suggests that any reader might be questioned this way in particular circumstances. This was intensified in the officer's proposed new *Notice*, where attempts to simplify increased the incidence of second person pronouns.

... the police can ask you questions before you have talked to a solicitor ... the
police can stop you having a solicitor ... the police will not allow you to contact anyone ...

Rewriters often increase such "references to the reader in adapting a text whose original form may be rather impersonal" (Davison and Kantor, 1982:202). Some regular detainees correctly understood that these restrictions related to particular people detained for particular crimes, suggesting they applied *in situations around arms* or *if you're a terrorist* (Regulars, 35; 50). Others believed that the restrictions applied to them (Regular 12). One detainee even

erroneously believed that the restrictions had been invoked in his case (Novice 11). As Ng has observed, second person address can be a great motivator (1990).

6.5.3 Lexical ambiguity

Ambiguity caused by the discourse positioning of restrictions and prohibitions in the original is compounded by lexical and syntactic challenges within the prohibitions themselves.

Lexically, the three clauses which restrict rights feature the head *circumstances* and its modifiers *exceptional* and *certain*³ within two subordinate prepositional phrases and a subject complement. These lexical items are vague, having “no clear cut-off points or borderlines” (Walton, 1996:2-3). They hint at clarification through specificity without providing either (cf. Labov and Harris, 1994:266-276). Specifically:

- pluralisation on *circumstances* makes it unclear whether legal advice is only restricted if several different circumstances coincide or whether only one of several possible circumstances need apply;
- *certain* does not detail how numerous these circumstances are;
- *exceptional* might seem to specify *certain* but invites questions itself: Exceptional, in terms of what? To whom? By whose definition? Non-expert detainees may be unable to answer such questions and to thus distinguish an *exceptional* circumstance from any other;
- the whole string, as a description of frequency, may be understood by readers in unexpected ways, as are other frequency terms such as *seldom* and *regularly* (Wright, 1999:87-8).

Clare and Gudjonsson (1992:8) report that experimental subjects who read the original *Notice* were indeed “unsure of the meaning of *exceptional circumstances*”. We might expect the rewriters to respond to such ambiguous vocabulary (Davison and Kantor, 1982:205), and four did. EIDU1 was the most inventive, seeking to clarify by exemplifying *circumstances*. Others removed one or both words (EIDU5, EIDU1) or replaced them with *a few* (EIDU3) or *some* (EIDU5) – possibly more familiar words but still vague. The officer replaced *exceptional circumstances* with *special times*. This formulation, also employed by Clare and

³ *Certain* occurs in only one instance.

Gudjonsson's rewrite (1992), introduced unintended and, it appeared, distracting connotations. First, *times* convinced some detainees that there are particular *times* of day when rights might be denied (for example late at night) or particular *times* during an individual's detention (for example early in detention). Secondly, *special* for some detainees connoted 'treat', or 'as opposed to *ordinary*'. Most importantly, the formulation is no more informative than *exceptional circumstances*, both offering, what Owen calls, a "bureaucratic escape hatch", a flexibility which will "tend to favour the rule-makers over the governed" and about which readability can do nothing (1994:293). Oddly, there is no reason for such vagueness here. The *circumstances* referred to in this part of the text are tightly defined and clearly delineated, so it is not necessary for rights notices to focus on their vague aspects, their infrequency (*exceptional*) or importance (*special*). This might be addressed in any future rewrite.

The prohibitions also contain vague lexis, in noting that whilst exercising the right to read the *Codes*, detainees are forbidden from delaying *unreasonably any necessary investigative and administrative action*. Detainees are unlikely to know which police actions are *necessary* and by whose definition (Investigators? Custody staff? Rules?) or what would constitute an *unreasonable* as opposed to a reasonable delay. This renders the warning difficult to apply. If, for example, officers wanted to transport a detainee between police stations and the detainee wanted to delay, until having read the *Codes* to discover whether this was a *necessary investigative action*, would the detainee be delaying *unreasonably*? As with *exceptional circumstances*, redrafters removed or replaced these words and the associated difficulties, thereby also removing grammatical metaphor (EIDU2, EIDU4, EIDU3):

to delay... investigative and administrative action

→

to delay	{	anything that the police need to do [EIDU3]
		police work [EIDU4]
		the police [EIDU2]

This whole sub-section illustrates the power of discourse sequence. The officer was firm on maintaining both *Special times* and second person pronouns, due to their capacity to replace more formal vocabulary and avoid passivisation. Without the removal of these sections to the back of the document these features would have remained problematic. Once on the back page, the 'specialness' of each restriction becomes part of a general set of special times and

the second person pronouns address only a sub-set of readers directly. Other readers who know they are not *special* know that they are not addressed through those pronouns. The back page therefore offers a way to avoid omitting restrictions and prohibitions without foregrounding them.

6.6 Intertextuality

The *Notice* sits at the end of an intertextual chain (Fairclough, 1992:130) which runs predominantly from the Police and Criminal Evidence Act (1984) (PACE). Although the *Notice* does not mention PACE explicitly, it is manifestly intertextual with the intervening link, the *Codes of practice*, through a series of cross references (to *Annex B of Code of practice C*; and *paragraph 6.6 of Code of practice C*). Bhatia sees cross-references as “textual-mapping devices” which reduce the information load of particular points (in Jackson, 1995:195). Jackson, however, is sceptical as “cross-referencing can quickly involve complex intellectual operations, incorporating definitions from some sections, qualifications and exceptions from others” (1995:129). Sure enough, readers who move through the *Notice* linearly will encounter three cross-references to the *Codes* before they reach its full introduction or gloss. Indeed, if they do not read the document fully, they may never meet the gloss. These unexplained references assume that:

- detainees will know what the *Codes* are and how to obtain them when reading those earlier cross-references, in which case the later gloss is redundant;
- or
- readers will hold the cross-references in mind until they reach the gloss and then remember the references sufficiently to follow up or discard. This makes expectations about detainees’ literacy and memory.

Recognising this, the officer glossed the *Codes* alongside his text’s first cross-reference:

This is the book that sets out what the police can and cannot do while you are at the police station.

He also expanded the referential formulations. The original had simply provided the directives *see Annex B...* and *see paragraph 6.6...* which assumes that detainees will understand how the

referenced text relates to the *Notice*. In contrast, the officer, like several EIDU rewriters, combined a conditional (*If you want to look up the details*) and declarative (*they are in paragraph...*) which enunciate the relationship between the referring and referenced texts and explain the process of following a reference. Thus, he introduced the references in a way which renders familiarity with their use relatively unnecessary. This was not entirely successful. Some readers understood what the references were, but remained uncomfortable with using them:

I could have a book that's got the *Codes of practice* in it ... but what [reads aloud]
"paragraph 6.6 of *Code C* of the *Codes of practice*" is I don't know

[Novice 10]

Some detainees expected this kind of organisation (Regulars, 16 and 50) and used it comfortably (Novice 34). But for others, like Novice 10, the space between the idea and practice of using the *Codes* was wide. Indeed the cross-references are useless to readers who are unfamiliar with the text-organisation conventions of the references: annexes; paragraphs and sub-paragraphs. EIDU3 attended to this by removing all specifics, replacing them with a directive about talk: *Please ask to see the relevant part of the Codes...*), unperturbed by the reduction in detail. She optimistically proposed that, as a useful by-product, this interaction-based system might encourage detainees to ask officers other questions. South Yorkshire Police went further, removing all cross-references to the *Codes* from their *Notices* (South Yorkshire Police's *Notice* is included in Appendix 5).

Some detainees who had not engaged with the cross-references in the officer's *Notice*, or with their detail, did not simply ignore the *Codes*; they read the book but navigated using other reading practices. One suggested that detainees would read the book from start to finish as *it's not that big* (Regular 36). Others drew analogies with the organisation of other specific texts. A novice explained that he expected the *Codes* to be alphabetic through reference to dictionary conventions (Novice 26). A larger number invoked generic expectations about the organisation of informative books, proposing that, unconvinced by the references, they would have sought an index had they used the *Codes*. The officer anticipated this and capitalised. He proposed to supplement his cross-references by inserting a summary index into the back of each copy of the *Codes*, pointing only to parts which have particular relevance to detainees. He introduced this index at the beginning of his *Notice of entitlements*:

about tracing links and identifying glosses. Some detainees described being simply too nervous to even contemplate the *Codes*:

I was going to ask what the *Codes of practice* were but I thought well I'm in a whole new world of trouble as it is

[Novice 25]

For others, however, the references had an affective function, suggesting that the *Codes* and implicitly the *Notice* are not 'for' detainees, in two ways. First, their level of detail connoted, for some, a specialist audience. Secondly, all of the *Notice*'s references direct readers towards parts of the *Codes* which restrict rights, whereas the *Notice* does not provide any specific cross-reference to rights explanation. This is unfortunate because cross-referencing "authorises only those connections which are explicitly made; others by implication are implicitly excluded" (Jackson, 1995:129, after Hoey, 1985). Detainees' comments revealed that the resulting representation of the *Codes* suggests that it is concerned only with exception and irregularity. Even some who had read the *Codes* proposed that they related to *very serious crime ... terrorism ... bank robberies* (Occasional 45). As one detainee who claimed to have read the *Codes* closely observed:

there was sort of only probably one or two paragraphs that really involved me anyway um the rest was all sort of anti-terrorism and all this kind of thing

[Novice 34]

Perhaps as a result of this apparent preoccupation, relatively few detainees expressed any interest in reading the *Codes*.

Chapters 5 and 6 have explored and illustrated how text features function and combine to have various effects one on another and on readers. However these final two paragraphs, about readers' claims to expertise through engagement or claims to indifference through lack of engagement, place readers firmly in the picture by indicating that texts are only as comprehensible as their readers allow them to be. This theme is taken up in the final two Chapters of Part A.

CHAPTER 7: RIGHTS TEXTS IN CUSTODY

7.1 Introduction

Notions of ‘comprehensible’ and ‘incomprehensible’ have provided insight into one text and its revisions, illustrating that reformulation, even with tightly focused aims, can have very different outcomes for different writers in different writing situations. However, in seeking to improve comprehensibility, exclusively text-focused revision is insufficient (Dumas, 2000:56) and can even produce texts which are “worse” than their originals (Swaney, Janik, Bond and Hayes, 1988; in Schriver, 1989:244). Likewise, in examining revision, a focus only on text risks objectifying misunderstanding “as something to be grasped as exterior to the participants who are involved” (Hinnenkamp, 2003:60, see also Mumby and Clair, 1997:188). This could lead to disregard for the influence of “features of everyday language” like indirectness, listener’s role and prior knowledge (Clark, 1997). Therefore the final two Chapters in this Part consider how the officer revision, the main focus here, was received by detainees in custody. This makes it possible to “ascertain [the text’s] value in real life” (Clare and Gudjonsson, 1992:1) and explore “whether [it] is in fact understood by typical subjects” (Owen, 1994:285). Exploring reformulation in context requires “observation of the ways in which texts are being used [and] observations of the ways in which different participants construct what is going on for themselves and others” (Baynham, 1995:187).

7.2 The officer’s aspirations

Early in his writing process, the officer identified two main aims for his rewrite. The first aim, balancing *simple* and *legal*, was realised, as we saw in 4.5.1, through lexical replacement, using synonymy to pursue register shift away from the ‘formal’ or ‘legal’. However, this rendered his second aim, creating a one-page document, problematic. In the officer’s words *every complex word that you take and explain (.) it takes four, five, ten sometimes*; ‘simplifying’ lengthened the document. This led him to deconstruct his second aim and ultimately pursue the underlying motivation he uncovered – brevity. He achieved brevity by building his text on a *three-tiered* structure (Figure 7.1):

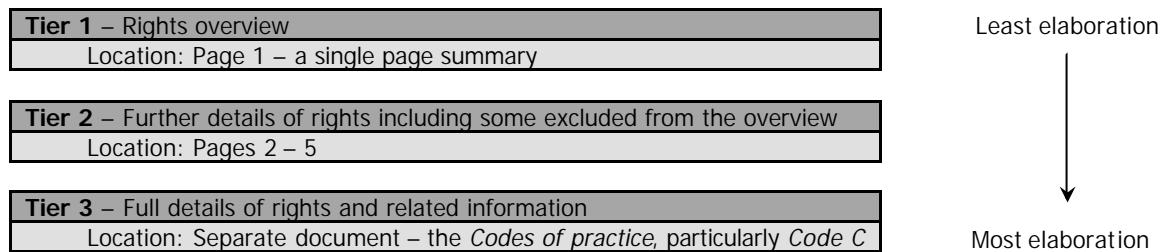


Figure 7.1 – The officer's three-tiered structure

The officer saw tier 1, the initial overview, achieving a modified version of his second aim. Whilst he had not secured a one-page rights document, he had achieved a one-page summary of rights supported by two more detailed tiers: the main rights documents, whose lexical and syntactic choices would address the 'simplification aim', and the *Codes*, which would *keep it legal*. The original *Notice* used an overview too, but the officer proposed that, whilst it fulfilled its function in terms of its position and content, its lexis and layout remained *intimidating*. In contrast, his overview, isolated and large, was intended to make reading the summary and reading it as summary almost unavoidable. The officer anticipated that whether detainees are unable or unwilling to read the whole *Notice* for whatever reasons, they could hardly avoid seeing the first-page overview, his first tier, which relays what he called *the key parts*. In this respect, this summary page is analogous to Clare and Gudjonsson's proposal for a card summarising key rights information (1992).

The officer saw the three tiers, of increasing elaboration, as crucial to his document. He anticipated that readers would take up this structure differently, depending on their:

- **Reading ability** – he explained that some would only view page 1, whilst *somebody who can read a bit better* might read pages 2-5 and very *able* readers would request the *Codes*;
- **Desire for detail** – he presented the first tier as available to minimal readers but *if they wanted any more they delve in a bit further*, reading pages 2-5 and could use the *Codes* to find out *even more*.

The officer anticipated that the structure would further function to give readers autonomy, enabling them to be *self-selective as to how far they ... go through it*, and would create clearly

defined links to the *Codes of practice*, which he saw as unavoidably impenetrable to some readers. This is how his document, containing his first two tiers, materialised (Figure 7.2):

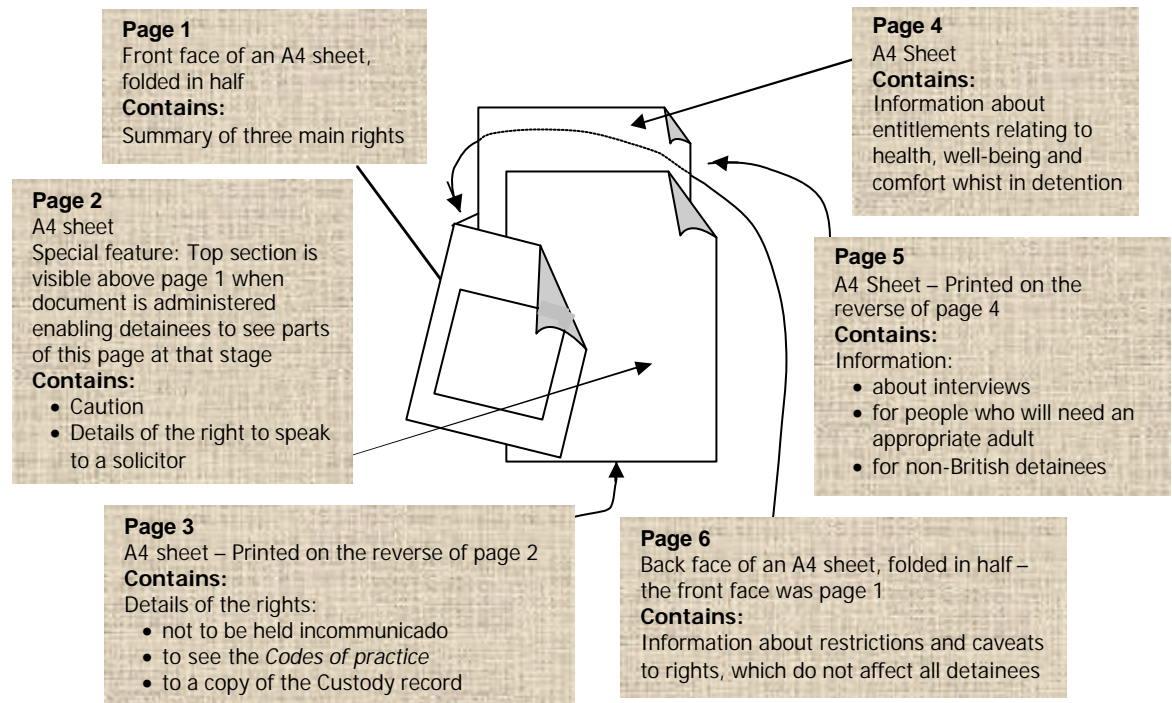


Figure 7.2 – The officer's text (A full copy is included in Appendix 7)

Particular lexicalisations were intended to reinforce this structure's potential to engage readers. For example, the officer explained the sub-heading *Getting a solicitor to help you*, and its location – on page 2 but visible above page 1 when the document was closed – saying:

it feeds you in to (.) opening it if you like it's "oh how do you get a solicitor to help you?" ... if they've just got that [unfolded A4 pages] ... they go (.) you know "is it something frightening that's inside the first page?"

He began each sub-heading with *-ing* participle verbs, reverbalising actions in each case (*Getting a solicitor...*; *Telling someone that you are at the police station*; *Looking at the Codes...*; *Having the Custody record*). Thus, each right was presented as given, which reinforced intratextual ties to the front-page summary and extratextual ties to earlier interactions when the Custody Officer first presented rights information verbally.

Some detainees appeared aware of, and comfortable with, this structure:

the way I saw it you read this [indicates page 1, the first tier] and it tells you what you can do and then you know if you're not sure about any of it see you can read this [indicates pages 2-3, the second tier] ... it was self-explanatory really here's your rights you know you don't understand it read the next page

[Novice 25]

Other detainees addressed the third tier, noting that the *Codes* would add detail:

[the *Codes* is] more detailed than this [indicates the *Notices*] like you know you couldn't give everybody a book like that to read (.) it would never get read would it?

[Regular 28]

they tell you everything in the *Codes of practice* this [indicates the *Notices*] just tells you basic

[Regular 50]

Others were oblivious to this, overlooking the difference between parts of the *Notice*.

Occasional 7, for example, saw the document as “one handout really” rather than a ‘further-details’ document within an ‘overview’ document or even two separate documents about rights and entitlements. Regular 12 could imagine no difference between the *Notices* and the *Codes*. Readers who had not identified the tripartite structure encountered an odd, repetitive text floating in textual space. Therefore revisions to the officer’s *Notice*, which transformed it into the Home Office revision, sought to highlight inter- and intra-textual relationships more fully through lexical changes and the addition of a metalinguistic sweetener *You will find more details about these rights inside*, making the intratextual relationship textually explicit from the outset. The officer initially intended to omit such metalanguage, feeling that encouragement to read should be contextual rather than cotextual and should emanate particularly from the Custody Sergeant. As well as locating his document in a textual world, through this tripartite structure, then, the officer was also concerned that his text should be located in interactions between detainees and officers.

7.3 Was the officer revision successful?

7.3.1 Superficial matters

Detainees who read the officer text positively evaluated its appearance, unprompted, praising the font (*a good bold type easy to read*, Occasional 49), use of bullets and space (*it's better ...*

not on one piece of paper all squashed up, Regular 29) and layout (*it's pretty well set out*, Regular 13). They also made positive general comments on comprehensibility (*it's more easier to read*, Regular 28). However, they also criticised superficial aspects, like signposting. The value of textual signposts has been recognised “in all but the most elementary writing” (Garner, 2001:75, see also Rogers, Shulman, Sless and Beach (1995) for a supportive case study) yet neither the original *Notice*, nor the officer's revision, provided explicit logical or textual orientation (Halliday, 1994). In contrast, EIDU authors sought to orient readers throughout their documents, indicating relationships between:

- parts of the text (in this case parts arising from paper's physical properties):
Please turn the sheet over
- sections (in this case suggesting how the document should be read):
Please read this panel before the rest of the sheet
- documents (flagging intertextuality):
Now please read the sheet called 'About how you will be treated ...' [All examples from EIDU3]

Such metalanguage is potentially a sticking plaster. Labov notes that it was used in the text at the centre of his US Steel Case, without positive effect (1988:162, 1994:279). However, detainees negatively evaluated the officer revision's lack of it, because it caused them to ignore some sections:

- | | | |
|---|--|-------------|
| F | was it clear there was information on the back of that page? | |
| D | oh no I didn't look at that | |
| F | ah [both laugh] | |
| D | no you should have a "please turn over" there because I mean when everything's going on I probably would have done when I got home | [Novice 26] |

In response to such comments, the Home Office revision adds *Please turn over* to each front-facing sheet.

7.3.2 Testing understanding?

Looking to more substantive matters, some detainees demonstrated that the officer's *Notice* enabled them to locate information easily should they wish to check details¹:

I think you could try three times and hope you got somebody out of the three times if I remember right
[clears throat whilst reading] somewhere [reads aloud] "at least 2 more times" [Novice 10]

Others had read in detail and noticed such features as a lack of parallelism between sections:

F is there any time of day that you couldn't make a 'phone call?
→ D um I never read that in there that there wasn't at any time of day
→ I did read that a solicitor was there for day and night
I don't know about the 'phone call it didn't mention 'phone calls day and night [Occasional 45]

Detailed reading had led this detainee to draw inferences concluding "from the absence of information that certain possibilities do not exist" (Labov and Harris, 1994:275). Certainly then, some detainees read and considered the officer's revision, but was it successful? Did detainees who received these texts in custody show signs of rights comprehension? Did detainees understand more than they might have if confronted with the original *Notice*? Detainees answered questions in a way which suggested so. Considering their comments on each right in turn, almost all were able to explain how they would get a solicitor if they wished to, with few exceptions (Novice 21; Occasional 40). Similarly, most knew that they could speak to a solicitor at any time during detention and day or night. Four were unsure of this (Occasionals, 40; 41; Novices 15; 24). Occasional 41, for example, thought detainees only became eligible to receive legal advice after six hours of detention. Additionally, only one detainee thought that he needed to know a solicitor in order to call one; all others seemed comfortable with the concept of a duty solicitor.

All apparently knew about their right to pass a telephone message (explained within the *Notice*) and entitlement to make a telephone call (explained within the *Notice of entitlements*) despite a tendency to conflate these two forms of contact, which was noted also by Brown *et al* (1992, in Brown 1997:80). Several detainees were able to present practicalities outlined in the *Notice* in detail. One was sufficiently familiar with the entitlement procedure to subvert it, having used his telephone entitlement on what he saw as a null call:

¹ Clare and Gudjonsson classify respondents who recite from the text as not having understood (1992:16). I rejected the extrapolation that reading indicates incomprehension, instead examining detainees' navigation and use of the text.

I have to lie to the police and tell them that - (.) my mom and dad said they didn't want to speak to me (.) so I lied and said I was ringing someone else

[Regular 33]

Information about the *Codes* seemed more troublesome, which Brown would attribute to lack of understanding of what the *Codes* are or why they might be useful (1997:80). Indeed, 42% of detainees initially claimed uncertainty about what they were. However, further talk revealed that many knew that they had something to do with police procedure. Many ultimately commented on the *Codes*:

- **Format:**
 - a booklet [Occasional 03]
 - a little tiny booklet thing [Regular 36]
- **Content:**
 - where you stand [Occasional 32]
 - the rules that they've [the police] got to abide by [Regular 07]
 - what you're allowed and what you're not allowed [Regular 50]
- **Or both format and content:**
 - a flimsy book it's only got them in it like what you can and can't do [Occasional 32]
 - a booklet of the law what the police have to abide by and what your rights are [Occasional 08]

Clare and Gudjonsson attribute some apparent incomprehension in interviews about their simplified *Notice* to their interviewees' feeling that some items were so simple that a paraphrase would be redundant. They point particularly to the section of their text which asserts *The Codes of practice is a book* (1992:23). Unwillingness to state the obvious seemed to be a factor in detainees' comments on the officer's text too, illustrating just one reason not to rely only on interview data to quantify understanding.

The right to a copy of the *Custody record* was less clear to detainees (see Section 5.3.1). Many were confused about what the *Custody record* might be, what right they had in connection with it and when and why they might invoke that right. 93% of novices, 71% of occasionals and 36% of regulars appeared to have no idea what the *record* was, or misunderstood the term's meaning. Many did not even remember having heard or read the term *Custody record*. The major finding of questions about the *Custody record* was, then, that very few detainees read this far into the officer text, a matter which deserves further investigation – if detainees are not reading rights texts, what are they doing with them, and where are they getting rights information from?

7.4 What happened to the officer version in practice?

Brown reports that many studies have shown that “90% or more” of detainees receive and sign for written rights notices, yet that even their signatures do not guarantee that the texts were really administered (1997:76). Clare and Gudjonsson too report anecdotally that the *Notice* is read by “only a minority” of detainees (1992:21). It is meaningless to assess any rights text without being sure whether ostensible readers have, in fact, read it. This study revealed a chasm between having been offered a written rights notice and accepting it, and between accepting and reading it. Many officers were sceptical about detainees’ take-up of the *Notices*, observing, *they never seem to read them or take them to the cells to read them* (officer A1) and *it’s all some kind of bravado thing not to accept it* (officer A18). Some detainees shared their doubts:

[detainees] want to get out there’s enough stress and
that really (.) normally [the *Notices*] just get chucked around [Regular 36]

everybody thinks they know their rights ... I suppose it’s a
shame for those people that have just come in ... but do they read them? [Regular 16]

Detainee interviews answer this detainee’s question, confirming that detainees often discarded the officer text before even leaving the custody desk. In these data:

61%	took the papers from the desk ($n = 32$)
35%	did not take them ($n = 18$) ²

Those who kept a copy did not necessarily read it. Across all detainees:

23%	read both of the officer’s <i>Notices</i> ($n = 12$)
21%	read some parts of the papers ($n = 11$)
56%	did not read the papers at all ($n = 29$)

Thus, in these data³, over half of detainees did not read the officer’s text and a third did not even keep a copy⁴. We might expect this from detainees who are regularly detained, yet Figure 7.3 shows the percentage of regular, occasional and novice arrestees who read the *Notices*:

² 4% ($n = 2$) did not say whether they had taken the papers.

³ This sample is small and the figures inevitably rely on detainees’ self-reports of reading practices (Meyer, Marsiske and Willis, 1993:235). It is quite possible that detainees who have:

- ignored the papers might claim to have read them, hoping to appear conscientious but hard-done-by or
- read them might claim to have ignored them, hoping to disguise a perceived lack of comprehension or to present ambivalence towards the text.

To attempt to uncover misreporting I asked not only whether detainees had read the papers but also which parts they read, where they read and so on.

⁴ Many detainees across all three groups may be unable to read – this will be discussed in due course.

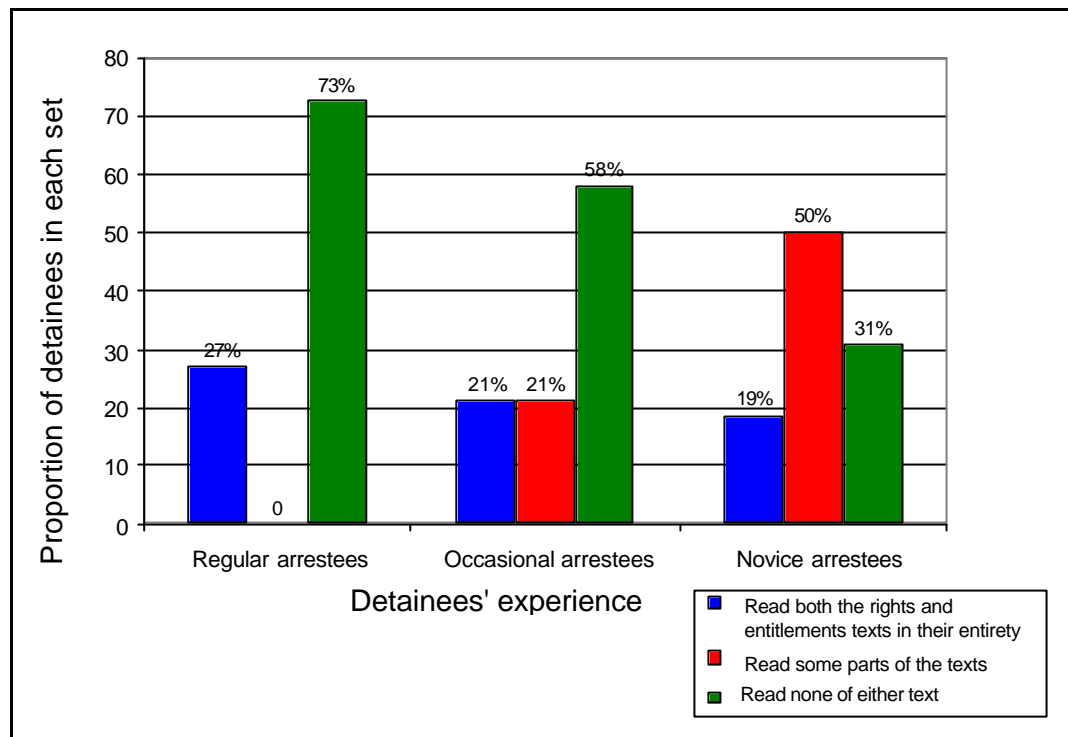


Figure 7.3 – Detainees' reading practices

The blue columns reveal that less than a third of regular arrestees read the rights texts entirely whilst only around a fifth of occasionals and novices did. These figures, although only indicative due to sample size, suggest that novices – those who may most need to read the whole text – do not all do so, and indeed do so less than those perhaps most familiar with their content – regulars. This low take-up of the whole text by novices is illuminated by the final red column, which shows that half of novices read the text in part, more than read it entirely or not at all. Interestingly, no regulars admitted reading only part of the text, they either claimed to have read it all or ignored it. More detainees disregarded the officers' text than did anything else with it, especially regulars and occasionals. This indifference could be a defensive response to information overload (cf. Postman, 1995). Some detainees admitted that they simply *couldn't be bothered* to read despite claiming no idea what the text contained (Regulars 02; 33). Those who did read the text presented diverse, often unpredictable reasons for doing so, such as boredom (Novice 21; Occasional 27) or a desire to pass the time (Regular 50).

What are we to make of this? If detainees are able to describe their rights, sometimes in great detail, yet have not read the texts which outline those rights, an examination only of the texts is clearly missing something. Observations in police stations and interviews with officers suggested two themes to account for incuriosity in the *Notices*: one relates to novices, proposing that their emotional response to detention prevents them from reading; the other to regular arrestees, proposing that they would be reluctant to read because they would see themselves as already aware of necessary information and would wish others to see them that way. Detainees' own comments support these themes and add a third – the importance of expectations in decisions about whether to read.



Figure 7.4 – Reading the officer's text in a cell

7.5 Reasons for ignoring rights notices

7.5.1 Novice detainees

Quite possibly some detainees will read more attentively than normal in detention as “a certain degree of pressure or stress can improve powers of concentration” (Owen, 1996:287) and “high levels of affect induce deeper processing of information” (Martins, 1982:141). For example, readers using “military job-related material” at work “can understand and use written material that is up to two grade levels above their supposed reading ability” apparently due to pressure (Sacher and Duffy (1979) in Diehl and Mikulecky, 1981:5). However the stress of detention also has obvious potential to unnerve novice detainees (Russell, 2000:36), and this was how many novices explained their indifference to the officer's rights texts,

presenting their capacity in relation to their detention experience. Even a novice who eventually read both the *Notices* and the *Codes* closely described initially relying on talk in preference to those written texts, because of his discomfort (Novice 34). Several detainees similarly noted that reading was difficult:

I just wanted to get out of here my dear and forget about it ... I read it and I was just concerned what was going to happen you know I mean your mind is at the time on other things

[Novice 18]

This detainee went on to explain that, despite distractions, reading was worthwhile as the *Notice* conveyed information which became important to him. For other novice detainees, detention was simply too much. For example, one, who wanted to *get home*, explained that although he had intended to read the papers he *forgot* because he was *just too overawed by what was going on* (Novice 48). Detainees who did not engage with the officer's text because of their response to detention were aware that the texts were 'for' them. One, for example, noted the irony of his inability to focus on them:

I was all of a panic and didn't know what was happening ... whereas I suppose somebody who's been in 2 or 3 times they know it anyway

[Novice 10]

These detainees were not necessarily uninterested in the *Notice's* content but found its written format unhelpful, particularly in view of their discomfort with the detainee role (Dahrendorf, 1973; Goffman, 1959).

7.5.2 Experienced detainees

For detainees who represented themselves as very familiar with detention, not reading rights texts was a very different activity. Within social contexts "the very act of reading or writing takes on a social meaning: it can be an act of defiance or an act of solidarity, an act of conforming or a symbol of change. We assert our identity through literacy" (Barton, 1994:48). Some experienced detainees positioned themselves as too 'expert' for rights notices and performed this expert status through indifference to those texts. They explained, implied or demonstrated that, for them, there was little point even taking the papers from the custody desk, commenting, for example: *I know what it's all about* (Regular 30) (cf. Goldman and Rakestraw, 2000:319). Detainees who took the papers from the desk but did not read them

expressed similar indifference. Again regulars were predictably vocal here, claiming certain familiarity with the papers' content: *I know the procedure* (14); *I know my rights anyway* (16). Indifference was not confined to regular arrestees. Some relatively experienced occasionals too proposed that they would find the *Notices*' content familiar: *I pretty well know the law through being in trouble in the past* (05). Even a novice detainee went so far as to claim expertise, observing that he *had a rough idea what [the text] was going to be about* (Novice 19).

Those who presented themselves as 'expert' non-readers did not all unambiguously reject the officer's texts, however. One Regular (52) claimed that he saw the forms as *rubbish* but qualified that they would be useful to detention newcomers. Others shared this position:

to someone who hasn't been arrested before "yeah" but ... I've been in institutions like 26 years so I know the ins and outs

[Regular 07]

The possibility that the *Notices* were redundant for 'expert' detainees was noted by novices too:

these are very good for me I think you're wasting a lot of time and effort on people who do it all the time because I bet you anything they just bin these

[Novice 26]

Detainees who see themselves as having sufficient rights expertise that any information presented in custody is redundant, present quite a challenge to a legal system which genuinely wants to communicate with all detainees. This might become particularly important if detention procedure changes. Several detainees suggested that they had read the officer's texts simply because they looked different from the usual rights notices and might therefore contain something novel, indicating the power of difference over seasoned detainees. Other detainees were quite clear that they read rights texts specifically to update themselves, to *check out what's going on* (Regular 35). One occasional arrestee intended to read the *Notices* retrospectively as an update saying he would keep them *just to have a browse through later to see what um new things they'd done* (Occasional 38). Such comments suggest that should any content of rights notices change, confident detainees, who are likely to routinely ignore rights information, should be alerted to the changes specifically.

7.5.3 Expectant readers

Detainees' expectations about the *Notices* were the final major influence on their reading decisions. These expectations were organised around factors which have been found elsewhere to influence reading: genre familiarity (Goldman, 1997; Armbruster, 1984; Goldman and Rakestraw, 2000:313; Drew and Sorjonen, 1997:103-104; Gibbons, 2003); text structure schemata (Wilson and Anderson, 1986:40) and an understanding of purpose (Brown, Armbruster and Baker, 1986:58). Successfully identifying aspects of texts which are familiar to readers, requires "some framework or checklist of the different types of text organisation features the reader may be able to hook predictions onto", assuming that readers will predict "on the basis of what is already familiar" (Baynham, 1995:189). Taken to its conclusion, this implies that readers only work with the familiar, having no potential to learn. In this setting, however, detainees were certainly discouraged if they lacked generic expectations about the texts and did not find cues in the texts or their administration suggesting how they should be read or used. One novice commented, for example, *I didn't know what I was meant to be reading* (26), whilst five detainees claimed no knowledge of the *Notices'* purpose or likely content, and several others suggested that they only found out about these things when they began reading. Expectations about genre, content and function also influenced those who did decide to read the officer's notices. The text's potential to help motivated them particularly:

anything like that that could constructively help in what you're about to face then it's applicable for anybody to read them really if they're going through the same [Novice 34]

the police officer said "a lot of people just throw them away and that but they've been written for a reason" so I don't know anything about police stations and arrests and everything so just [read them] to help me [Novice 26]

There is consensus that learning from text results from a combination of "skill, will and thrill" (Garner and Alexander, 1991 in Alexander and Jetton, 2000:296), from *engagement* through expectations about texts and goals, from values and beliefs about texts (Guthrie and Wigfield, 2000:404). Detainees' correct or erroneous expectations about the *Notices* might influence them to read or ignore them.

7.6 Summary

This Chapter has shifted the terms of debate, illustrating that rights texts cannot be viewed as unproblematically communicating rights, and that offering them demonstrates only that they have been offered. Detainees' comments confirm that those preoccupied by the novelty of their situation, those who see themselves as veteran, and those who are simply mystified by some aspect of rights texts might ignore them or read them incompletely. This recommends investigating reading practices in more detail, particularly asking why detainees read, do not read or read in part, and what we can learn from their reading practices as scholars interested in institutional literacy practices, lay-legal communication or police talk, as potential rewriters and as parties interested in fair detention procedure. This sketch of detainees' reading practices invites examination of how detainees might be encouraged to read more, but also whether they should be encouraged to read or whether, in fact, written rights notices have limited utility.

CHAPTER 8: DETAINEES' READING PRACTICES

8.1 Partial readers

All sorts of texts are often read incompletely, including forms (Frohlick, 1986), technical texts which are mostly “used in a consultative fashion” (Diehl and Mikulecky, 1981:5), and functional texts like rights notices, whose readers “jump from section to section, sampling content as their question changes” (Wright, 1999:89). Even for people who claim to have read a text, ‘reading’ may mean very different things. Readers might “visually examine” parts of the text, might skim read or might focus closely on individual words (Morris, Lechter, Weintraub, and Bowen, 1998:88). Partial readers of the officer’s revision fell into one of two categories, those who claimed to have:

- dipped into several sections;
- read only isolated sections, particularly the first page.

Scrutiny of the activities involved in both kinds of partial reading illuminates readers’ motivations. Scrutiny of partially read texts illustrates possible and actual authorial responses to such partial reading.

8.1.1 Dipping in

Looking first to readers who dipped into several sections, it is immediately apparent that some detainees chose this reading pattern. Occasional 03, for example, read the officer’s texts in part, getting a gist of the whole but focusing on particular sections according to what he called *need*. Some had read to inform specific decisions, like one detainee who found her own solicitor was unavailable. She described being *quite interested* in the officer’s texts, using them to decide whether she *was going to bother with the duty solicitor* (Occasional47). This phenomenon of purpose is potent, influencing “willingness and ability” to read and influencing reading strategies (Diehl and Mikulecky, 1981:5; Hoey, 1988:52). The multiplicity of readers’ conflicting motives may, however, make one definitive rewrite

impossible (Duffy, Curran and Sass, 1983:157). Asking questions, as Occasional 47 did, is also common in reading functional texts, such that readers who have no question might not read unless the text alerts them to “information that they did not realise they needed to know” (Wright, 1999:89). Taking ‘questioning readers’ like Occasional 47 as a model, legal-lay texts might be “drafted from the perspective of the actions to be carried out by citizens”; not explaining law, but helping readers to respond to it (Jansen and Steehouder, 2001:21-22). Alternatively such texts might use familiar question-based structures, following “problem-solution” and “goal-solution” patterns for example. Through these, writers anticipate readers’ problems (e.g. “my family will be wondering where I am”) or goals (“I want to speak to my daughter”) (cf. Hoey, 1988:65-69). Some revisions of the *Notice* incorporate questions explicitly. For example the Plain English Campaign’s version, commissioned by Greater Manchester Police¹, used a question-and-answer format which introduced each section with an interrogative which might echo detainees’ questions:

Can the police delay my rights?
 What must the police allow me to do?
 How can I get legal advice?

Questions like this potentially engage readers, yet risk alienating those for whom the questions provided do not resonate. Interrogative sub-headings may be more helpful than those delivered as declaratives (Hartley, 1981:18) and may benefit detainees whose questions emerge during detention (cf. Wright, 1999:90). The officer formulated his document around possible questions; asking himself what detainees might want and constructing his opening section around the repeated string *tell the police if you want ...* (see 5.3.2).

Some partial readers flicked through the whole document without specific questions but skimming selectively in case they might find anything they needed to know. Occasional 06, for example, worked through the officer’s *Notices* without reading all of the text, instead navigating using sub-titles, particularly in the *Notice of entitlements*. Headings and sub-headings supposedly help readers to scan, select, retrieve and comprehend (Hartley, 1981:18), with their structure providing “a potential retrieval plan” (Goldman and Rakestraw, 2000:315). This aspect of the officer’s text apparently worked well. One exception was the heading *Having the Custody record*, which was ineffective, perhaps because it included the

¹ The source text for this revision was an earlier version of the *Notice* than the one investigated here.

label *Custody record*, which a number of readers misassigned (see 5.3.1). Given that readers described deciding whether to read particular sections using sub-headings, the inclusion of this poorly understood technical term in one of them is likely to limit readers' orientation to the sub-section concerned and the document as a whole. This was therefore replaced in the Home Office revision with *Getting details of your time at the police station*. The technical term *Custody record* was then only introduced later, following a gloss² (see 5.3.1).

8.1.2 Reading opening sections

The other kind of partial readers, such as Novice 10 and Occasional 27, *just sort of glanced through* only the initial overview. Sometimes detainees have no choice but to read incompletely. Novice 26, for example, described only having *a few minutes to myself* in a corridor. Appropriate adults emerged as particularly likely to call on rights information without having had time to read that information fully.

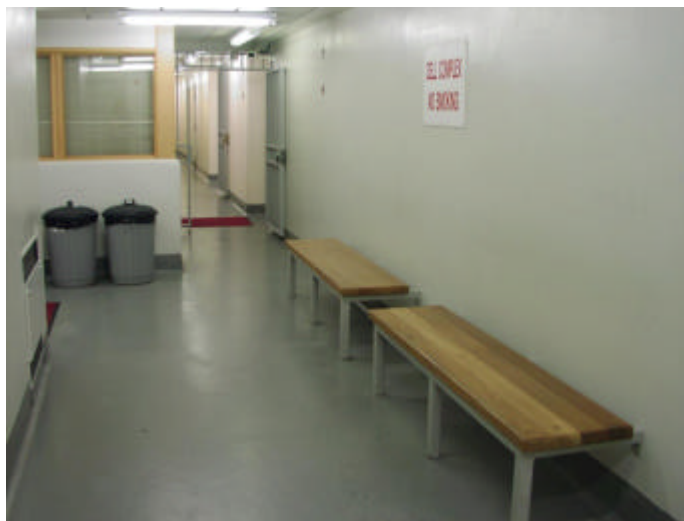


Figure 8.1 – Reading in the corridor

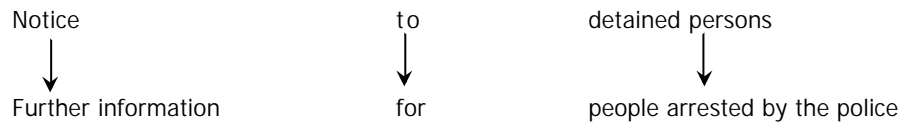
² EIDU4's sub-heading similarly replaced the label *Custody record* with the gloss *a copy of the Police record of your time in Custody*.

Ideally, detainees and their aides would be “allowed ample time to study” rights notices (Gudjonsson, 1990:27). However, in reality, time is often tight, so rights notices must provide those who only read opening sections with something useful.

The prevalence of partial readers who only engaged with opening sections of the officer's text suggests that those sections are crucial to rights communication, yet opening sections of the original *Notice* potentially discourage would-be readers. The original title, introduction and rights overview therefore deserve further scrutiny.

Titles are “serious stuff” for academic writers because their readers “use article titles as an early decision point in deciding to read no further” (Bazerman, 1985 in Swales, 1990:222-224). This holds too for the original *Notice* yet its nebulous title *Notice to detained persons* offers orientation without abstract in Labov and Waletzky's terms (1967, Labov, 1972:363-70). It does not prospect content, form (Felker *et al*, 1981:17) or pragmatic intent. In a text which warns, advises and informs, this is risky (Dumas, 1990). Possibly *Notice* intends to convey that the text pragmatically ‘notifies’. However, the nominal form may be ineffective, having perhaps undergone semantic bleaching. On the other hand the title is meaningful to those in the organisational hierarchy, such as legislative drafters and to day-to-day users, particularly police officers. EIDU3 identified a dilemma between maintaining the existing institutionally salient title and abandoning it because of its inadequacy to detainees. She resolved this by maintaining the original title, reducing its size and preceding it with what she felt was a more useful title *About your arrest and your rights*. The phrase *detained persons* is also problematic. It features the regular but formal pluralisation *persons* and speaks to represented rather than interactive participants (Kress and van Leeuwen, 1996:119), institutionally classifying potential readers within an in-detention mass. As the Plain English Campaign observes, use of *persons* in public documents is “a sure sign of the distance the writer feels between himself and the audience” (1993:34). EIDU revisers criticised this, and their texts accordingly prospect content or pragmatic intent, incorporate irregular plural *people* and avoid collectivising detainees, through second person reference.

The officer was so unimpressed with the original title that he apparently removed it from his first page. However on the second page of his text, visible from the front of the document (Figure 7.2), is a sub-heading which adapts it:



Like the EIDU writers he shifted register, incorporating the irregular plural. He criticised the original's institutional orientation, saying *no one is going to see themselves as a "detained person"* and accordingly unpacked the detention process by removing grammatical metaphor (*detained*) and inserting the relevant agent (*police*). Through *information*, the officer foregrounds one of the text's functions and through *further* offers cohesion between the rights summary on his first page and this subsequent page. As this title is visible when the folded document is administered *further information* also introduces the document, linking exophorically to the Custody Sergeant's verbal rights explanation at the custody desk. The officer was extremely reluctant to consider reinstating the original title, despite pressure from Home Office revisers.

Once the original *Notice* gets underway it immediately suggests that it is not directed at those *detained persons* of its title after all, as it states (Figure 8.2):

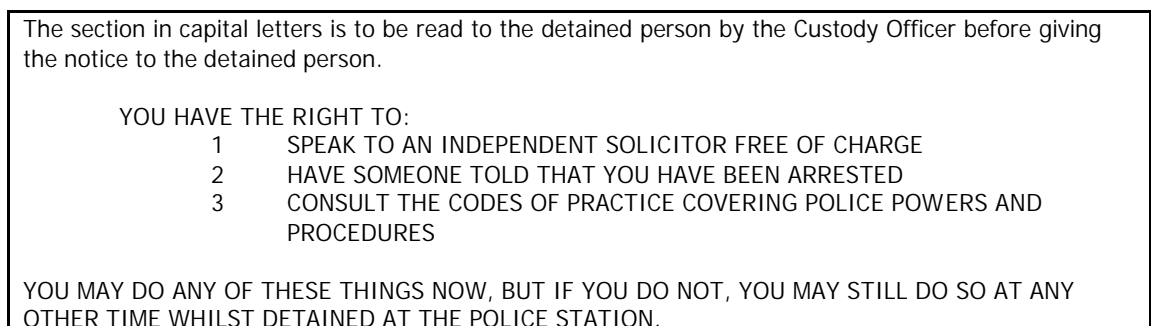


Figure 8.2 – The *Notice*'s opening

Looking firstly to the initial instruction³, third-person reference ensures that detainees are not directly addressed. Propositional content too concerns Custody Officers' responsibilities, not detainees' rights. For detainees who have heard capitalised sections, the sentence is redundant. For those who have not heard those sections, reading about a procedural oversight offers no advantage. Locally the sentence transforms the subsequent capitalised text into a script through which the organisation acts on the detainee, rather than a pedagogic text which

³ The *Notice* used by most forces only present the text included here in capitals, however the Hampshire Police *Notice* suggests that the Custody Officer should read out the caution too.

informs the detainee about interacting with the organisation. The sentence might be directed at Custody Officers, yet they will be well aware of their responsibilities, meaning that, for them too, the words lack evocative ideational and interpersonal functions (Halliday, 1994). The rewriters responded here too. Two removed the sentence. The others used second person forms; placing an active Custody Sergeant in the subject position *your Custody Officer must read these rights to you...* (EIDU3) and using modal verbs to suggest, more obviously than the original, that the sentence offered an opportunity to check police adherence to procedure. The West Midlands police force revision removes the instructions to Custody Sergeants, whereas the officer's text replaces them with the formulation *remember your rights*. Whilst this implicitly recalls the Custody Sergeant's obligation to read rights, it presents given-ness of the upcoming rights overview from the detainee's perspective. Where readers of the original *Notice* might have been dissuaded from reading by the prospect of repetition, the officer hoped that his readers might be encouraged by the prospect of a reminder. As he explained:

the Custody Sergeant has already said (.) "you've got these rights" ... and that's why I'm saying here- it is "remember your rights" (.) so it's reinforcing what the Custody Sergeant is saying

Turning now to the rights overview itself, the original *Notice*'s overview addresses detainees directly in the second person using the capitalised sections of Figure 8.2. Summaries like this potentially prospect content, orient readers and help memory and comprehension (Hartley, 1981:17). However, in order to understand each numbered point as a rights-stating declarative, in this particular summary readers must realise that each takes the form of a non-finite or infinitival clause following from and sharing *to*; each effectively begins *You have the right to*. Any who do not understand this will read the points as imperatives, and may therefore take them for instructions or givens, not rights to be invoked. EIDU2 and EIDU4 both removed this structure, instead introducing each right uniformly. The officer too eradicated the 'dependent verb structure' by repeating the construction [imperative] + *if* + [present simple conditional], so each point stands alone:

Remember your rights:

1. Tell the police if you want a solicitor to help you while you are at the police station. It is free.
2. Tell the police if you want someone to be told that you are at the police station. It is free.
3. Tell the police if you want to look at the book called the Codes of Practice...

The officer intensified echoic uniformity between each point by repeating the prepositional phrase *at the police station*, and highlighted important semantic content by incorporating self-

contained *It is free* after each right to which he felt cost was relevant. He selected the imperative because, he proposed, this was an appropriate mood to convey proactively offering rights. It certainly avoids appearing to list givens.

Formulation of the right to external contact (right 2) is particularly relevant to partial readers. The original *Notice*'s summary included the dislocated *have someone told*, arising from the dependent verb structure. This is open to 'garden path' misinterpretations suggesting that the right presents something one can *have* rather than something one can *have* happen. Even though the officer removed the dependent verb structure throughout his overview, he maintained passivisation in the equivalent subordinate clause. Plain language prescriptions would condemn this, favouring inserting the underlined words and removing those crossed through:

Tell the police if you want them to tell someone ~~to be told~~ that you are at the police station.

This active formulation brings its own ambiguities, however, requiring readers to trace the anaphoric personal pronoun *them* back to *the police* when, in cotext, they might quite conceivably, instead, anaphorically tie *them* to *a solicitor* of the previous bullet:

Tell the police if you want **a solicitor** to help you while you are at the police station. It is free.
Tell the police if you want **them** to tell someone that you are at the police station...

The alternative, maintaining the active construction but replacing the pronoun, *tell the police if you want **the police**...* would be circuitous. More importantly, the active construction disadvantages partial readers as the original did. To illuminate, reconsider the officer's first bullet:

Tell the police if you want a solicitor to help you ...

Readers who only glance at the text would read *solicitor* as the direct object of *want* and be in no doubt about what was being offered. The officer's final bullet too, follows *if you want* with a direct object realised as the prepositional phrase *to look at the book* or at a cursory glance *to look*. *Someone* of the second bullet is not intended to be read alone, but if the sentence was read hastily, the passive construction would communicate the basic gist of the right: *if you want someone* while the active formulation *if you want the police* would not. The officer

replicated this when explaining this right fully later in his document. The original *Notice*'s explanation used a prosodic sentence:

You may on request have one person known to you, or who is likely to take an interest in your welfare, informed at public expense as soon as is practicable of your whereabouts. [Original]

Readers who strip away qualification and subordination would find:

You may [...] have one person [...] informed [...] of your whereabouts.

accompanied by the following six propositions (words from the original are italicised):

- 1 Someone can be *informed of your whereabouts*
- 2 Only *one person* can be informed
- 3 That person will be informed *on [your] request*
- 4 That person should be either *known or interested*
- 5 That person will be informed *at public expense*
- 6 That person will be informed *as soon as practicable*

EIDU rewriters reduced syntactic complexity by reducing propositional content, for example:

You can let one person know where you are. This will not cost you anything. [EIDU3]

Each EIDU author removed some propositions completely or reduced their explicitness:

Proposition removed:	As a result the text does not:	Who did this?
2 <i>one person</i>	state how many people can be contacted	EIDU1, EIDU2, EIDU4
3 <i>on request</i>	state that detainees must ask to invoke this right	EIDU1, EIDU3, EIDU4, EIDU5
4 <i>known to you</i>	specify who the contact must be	EIDU1, EIDU3
5 <i>at public expense</i>	state that this right can be exercised for free	EIDU1, EIDU5
6 <i>as soon as practicable</i>	prospect potential delay in providing this right	EIDU3, EIDU4, EIDU5

In contrast, the officer maintained all of the original elements but restructured around a *to*+infinitive declarative stating the main right. He incorporated the original rank-shifted elements and prepositional phrases into either a single noun phrase, beginning *someone*, or one of two subsequent sentences:

to contact ^V **someone** ^O who needs to know that you are at the police station.

They will contact someone for you as soon as they can.

As good writing depends on discovering “what readers seek from texts” (Hoey, 1988:51), good writers might investigate readers’ purposes, by considering “three distinct types of reading task” (Diehl and Mikulecky, 1981:6). These were apparent in my data. The first *reading-to-assess*, skim reading to evaluate relevance, was perhaps the most common way of reading the officer’s text; *reading-to-do*, using texts for reference often whilst doing, was apparent even during police interviews; finally, *reading-to-learn*, often away from a task, describes some detainees who read this way within their cells or even before detention (adapted from Diehl and Mikulecky, 1981:7-8). Although researchers recognise such richly diverse purposes and recommend investigating them, they do not explain how writers should respond to different purposes simultaneously. This sub-section has accordingly related reading practices directly to aspects of the text.

Quite possibly, some detainees who did not read the *Notices*, even some who claimed that they did, were unable to read. Few detainees mentioned reading difficulties, claiming that normally they could read as much as their daily lives required⁴. Nonetheless the possibility that detainees may be unable to read rights notices, or unable to read them alone in the custody environment, is very real. Surveys suggest that 56% of young offenders are dyslexic (as opposed to 10% of the general population) (BDA and BYOT, 2004:5) and that 57% of adult prison offenders have reading and writing skill levels below those of a competent 11-

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year-old (Davis, Lewis, Byatt, Purvis and Cole, 2004:2). Young people in prisons themselves identify a need for learning and education in their lives (Lyon, Dennison and Wilson, 2000:102). Detainees in my data highlighted the need to consider and somehow assess reading ability at the custody desk. Occasional 47, for example, proposed asking detainees to read a little of the *Notice* aloud, a test which some Custody Officers regularly use to informally check reading ability, although one which almost certainly inadequately measures likely comprehension. Identifying detainees who may need help is certainly a challenge for officers (Fenner, Gudjonsson and Clare, 2002:87), as one described:

when you bring people into custody ... you will go through the rights at the time and they'll say "yes no yes no" and you'll say "right just sign there for your rights" ... and they'll just put a squiggle there then you'll go into the interview room and you'll discover they can't read or write and they've done it because of the embarrassment and they've done it because they don't want to be discovered that they can't read or write and if they've never been in custody before we're obviously not aware of this [AO10]

Officers sometimes err on the side of caution, allocating appropriate adults to detainees who claim not to need them if in doubt, or on the basis of past allocations. Whilst this may be wise, it potentially distresses detainees who are attempting to establish autonomy.

In considering detainees who might have difficulty reading rights texts in custody, it is useful to see "readers and written texts ... as parts of larger systems, often composed of other people and other sorts of language, symbols and tools, across which "cognition" is distributed" (Gee, 2000:198). The importance of networks in using and understanding texts has been widely noted and discussed (Ziegan, 1991; Barton and Padmore, 1991; Mace, 1992:51-2; Barton, 1994, 200-203; Barton and Hamilton, 1998; Wilson, 1999; Wilson, 2000:65) and posited as important to even rudimentary studies of literacy (Barton, 2000:179). In such networks, people with reading and writing 'problems' were neither isolated from all domains where reading and writing were important nor dependent on others but were interdependent, offering their own skills in return for help (Fingeret, 1983, see also Barton, 1994:201-2). In custody, detainees are sliced away from any 'reading for information' support networks. Their usual networks "may not provide the expertise in the ways that are needed at a particular time" (Barton and Hamilton, 1998:254). This is particularly unfortunate as "personal networks have a particular importance when people confront ... official worlds" (Barton and Hamilton, 1998:254, see Knapper and McAlley, 1982, for an illustration). Network contacts are also

particularly important in helping readers to move from simply “finding and understanding” information to making “decisions or plans for action” (Wright, 1999:92).

A sophisticated notion of networks distinguishes “private and informal everyday networks” from the “more public, formal official and structured” (Barton and Hamilton, 1998:16). Current detention procedure simulates a rather formal network by providing detainees who ask for help, or are identified as needing it, with an appropriate adult, who they may or may not know. Whether the provision of appropriate adults is adequate, and what other steps might be taken to enable detainees to invoke their usual reading practices are beyond the scope of this thesis, but are a challenge to rights provision. Those who have reading and writing needs might themselves be best able to articulate a way through the particular challenges of isolation in detention through consultation. Ultimately, perhaps, strategies might evolve to “bypass the need for reading and writing skills” (Jamieson, 2001:134). Today’s world increasingly demands the ability to make sense of vast amounts of written text (Crowther and Tett, 2001:108). This is certainly true of detention. Crowther and Tett ask how people struggling to read or write might make sense of such arrays in order to regain some control. Yet, observing learning environments, they caution against assuming that “because some adult students lack techniques of reading and writing they are incapable of critical inquiry” (2001:109). Here, detainees articulated a position on rights information despite having apparently rejected that information in both its written and spoken forms, an active stance.

Assuming that institutional rules keep support networks out of reach, this section asks what else might help detainees who are unwilling or unable to read rights notices, by considering the insights of non-reader detainees. Brown *et al* found that “well over 90%” of detainees understood that they had rights and understood some specifics of those rights, yet Brown’s team do not attribute understanding to rights notices as only around a third of their interviewees apparently referred to the texts (1992, in Brown 1997:79). Even Clare and Gudjonsson acknowledge that “in real life, factors other than the complexity of the language in which the [rights notice] is written might influence comprehension” (1992:4). Whilst these authors leave this unexplored, from where do detainees get rights information, if not from the texts which purport to give that information?

8.2.1 Alternatives to rights notices outside custody

“Any discourse or text is embedded in a matrix of contexts made up from an array of different contextual resources” including assumptions, prior discourse and background knowledge (Linell, 1998:144). Detainees draw on such resources extensively in custody. When asked about the meaning of *Custody record*, for example, one detainee commented:

I never read that bit really I must admit (.) but I presume it's ... so that they know who's here and who isn't

[Novice 10]

This novice made an ‘educated guess’ about rights, having neglected parts of the officer’s text. Labov and Harris report interviewees using guesswork too, when discussing comparable information documents (1994:271). Guessing was not the only alternative to written rights texts. Seemingly, detainees also call on talk, previous experience and reason:

The detainee(s) seem(s) to be relying on:	This source is suggested by:	Excerpts (Suggestive features highlighted in bold)
Talk, rather than written information	Reported speech marking	they said I could use the ‘phone if I needed to [Novice 18]
Experience of detention	Perfective aspect and time adverb	I’ve never had a limit on that I’ve never been told that I couldn’t ‘phone somebody else [Regular 31]
Reason or ‘common sense’	Speech and thought representations	<p>D you can use the ‘phone ... depends who it is I suppose isn't it</p> <p>F ... are there only certain people you can get in touch with?</p> <p>D um I’d say other people that are involved [Occasional 50]</p> <p>-----</p> <p>F was it clear how many people you could speak to?</p> <p>D well I assumed it was just the one [Occasional 47]</p>

Detainees used the outside world in other ways too, drawing analogies to make sense of rights. One, for example, explained lawyer-client confidentiality by likening it to more familiar encounters with professionals, describing it as *like your doctor ... something you don't tell nobody* (Novice 18). Another presented the audit function of the *Codes* through analogy with his work in a restaurant which was similarly audited by health and safety guidelines (Occasional 49). Even novices potentially enter police stations with considerable rights information from television. For example, one described preconceptions about his rights’ limitations:

it's through **watching TV** and saftness like that ... you know pretty much it is one ‘phone call so it's pointless sort of taking the Mickey

[Novice 34]

Whilst another described gaps in her knowledge due to partial television coverage:

- F did you know anything about the things that the police have to give
to people when they're arrested?
- D no because you don't really see that **on telly** do you

[Novice 26]

Widely cited was the popular British police drama-soap *The Bill*, which is currently broadcast year-round, having been a regular fixture on British screens for over 20 years. Programmes like this, though ostensibly concerned only with entertainment, apparently also have a public information role in educating viewers about police procedure. Detainees' multiple references to television programmes suggest that the accuracy of these programmes is important, as does evidence that detainees in the USA were distracted from understanding Miranda by their exposure to only part of the warning in films and television programmes (Dumas, 1990:329). Taking *The Bill* as a case study, systematic observation of the programme suggests that the caution is recited in full if it has dramatic importance (for example, in a scene where a sobbing mother hears her son arrested beyond a closed door, having contributed to the arrest). In other cases, however, it is often recited as background whilst other action takes precedence (fights, people getting into police cars and so on) or in part before a cut to a different scene. Very occasionally it is tokenised through replacement with, for example, "you're nicked" (based on observations between 1998 and 2002). A *Bill* story researcher confirmed "if the caution is sometimes not shown in full, it would be for dramatic reasons where it is more interesting to cut to a different part of the action or another scene". These decisions are "entirely left to the writer and their script editor⁵" (Carter, 2003). One of the show's writers independently added "if anything procedural in the show is not realistic, it has at least been thought about" (Lindsey, 2003). Both sources stressed the programme's quest for realism. Carter reported that the programme is "extremely proud of its adherence to police procedure" and aims to be "topical and truthful in everything we portray including police procedures". To that end, the programme employs two full time ex-police officer advisers⁶, issues writers' guidelines which include caution wordings (Carter, 2003) and sends all new writers on "a day out in a real police car" (Lynsey, 2003). Conversely, a *Bill* designer commented "we tend to leave out the procedural stuff because it's too slow ... it doesn't bring anything to the drama"

⁵ Carter specifies "that drama series in general wouldn't dictate the portrayal of such procedures to the creative teams".

⁶ Carter reported that these officers are "ex-Metropolitan police officers and have good contacts with all departments of the service, whom we consult and liaise with constantly".

(2003). Viewers are apparently sensitive to the programme's portrayal of procedure. One wrote to the programme's producers asking "we often see an officer ... enter the custody office and check an aspect of the law in a book ... Can you tell me what this book is called?" (The Bill, 2004b). This question, which addresses the *Codes*, illustrates that realism is a responsibility. The pedagogic function of programmes like this, cannot be overestimated.

There may be many reasons for detainees' focus on television; it might replace written material for those who have difficulties with reading, for example (Barton, 1994:202). Furthermore a void in communicating rights to lay people outside detention is currently filled only by television. Detainees did not mention encountering information through institutions such as schools, even though "the texts we place in schools ... reflect the current sociocultural climate" (Alexander and Jetton, 2000:288) and despite the perfect forum offered by educational settings for introducing such practices as form-filling (Fawns and Ivanic, 2001:80) and reading expository texts (Goldman and Rakestraw, 2000:323-324). The introduction of rights information into public discourses may influence comprehension as "familiar items require less processing time" (Merritt, 1994:33) and indeed "the knowledge a reader brings to a text is a principal determiner of how that text will be comprehended" (Wilson and Anderson, 1986:32). In the case of rights notices, such knowledge determines whether readers engage with it at all.

Jackson is immensely enthusiastic about the possibilities for improved lay-legal communication through television. Indeed, he suggests that if legal specialists do not strive to make information about the law more accessible, "perhaps others will assume that role" (1995:139). As the internet develops and users become increasingly able to interact with it, they become able, in principle, to "shop" for information which could cost "substantially less" than a consultation with a lawyer (Jackson, 1995:139). The criminal justice system has taken steps to inform the public about procedures surrounding, for example, jury service (Court Service, 2004; CJS Online, 2004) and probation (Probation Service, 2004). However, both of these activities allow time to prepare by consulting such sources or one of the many books or pamphlets, also available (for example, Jones, 1983). Detainees may be less likely to prepare for their encounter with detention. Nonetheless, the textual landscape around rights documentation encompasses internet-based guides. A *Google* web search for the terms "if you are arrested" yields 10,800 sites (as at 30th July 2004) (for example, Urban75, 2004). Such

information can be part of a “striking counterpoint” to official documentation (Barton and Hamilton, 1998:232), although not one mentioned by detainees in these data.

8.2.2 Alternatives to rights notices inside custody: Custody desk talk

Custody Officers are required to tell detainees *clearly* of key aspects of their three main rights as soon as they reach custody (*Code C*, paragraph 3.1) (see Figure 8.3). Clare and Gudjonsson have recommended that more of the *Notice* be administered verbally and that the written *Notice* be drastically reduced or abandoned (1992:21; 26; 29). Despite his enthusiasm for written rights texts, even the officer tellingly observed:

I think the more important thing is how the Sergeant approaches it (.) how he does his pitch

Other officers too flagged the importance of the Custody Sergeant's words:

the feeling I get is that [detainees] tend to rely on the Sergeant
telling them rather than them actually reading it

[AO01]

Even detainees who had read the officer's text took up this theme, prioritising custody desk talk above the text time and again. This regular arrestee, for example, avoided discussing the officer's text despite having read it:

F if you wanted to speak to a solicitor is it clear from that [page 2] how you'd arrange it?
D yeah well they ask you straight away on the desk it's one of the first questions they ask
you "do you want a solicitor? do you want anyone notifying that you're here?" [Regular 07]



Figure 8.3 – Delivering rights at the custody desk

Debate about the preferred mode of administration of rights information is mirrored in other institutional settings. Biber notes a respect for writing above speech in education, business and politics (1988:6-7) yet Diehl and Mikulecky find that in workplaces, written material is just one of many resources (1981:6). Moving towards preference for speech, Sticht reports that army personnel would rather ask colleagues for information than use a written manual (1972) and Fawns and Ivanic find texts emanating from institutions are stigmatised due to their potential to inherently unnerve (2001:80). The low take-up of the officer's *Notice* illustrates the importance of explaining rights in custody. However, the written text has symbolic currency for detainees like Novice 23, who observed that he read the *Notices* simply because *they'd give them to me so I thought they were something useful*. For readers and non-readers, textualisation marks content as important even if the text or content are ultimately disregarded (Tiersma, 2001).

There are two risks of delivering extensive rights information through talk at the custody desk. First, officers may fail to administer that information, for one reason or another. Sanders *et al* (1989) found that as few as 85% of suspects received verbal information at the desk, a theme developed by McConville *et al* (1991). However, Brown (1997) disputes both studies, finding with Brown *et al* (1992) and Morgan *et al* (1991) that suspects were rarely denied the written or spoken administration of rights, and usually only in accordance with PACE (1984). Brown further proposes that spoken rights administration at the custody desk may have become more established over time. Even if rights are delivered, the second risk around verbal delivery is that it may be ineffective. Brown cites extensive evidence that, whilst rights are mostly explained "clearly", a minority of cases feature less convincing explanations, perhaps due to the volume of information to convey and time pressures on Custody Sergeants (1992, see also Brown, 1997:76).

Spoken rights administration offers some advantages over its written counterpart. Talk might allow miscommunication to be identified and resolved because "the structure of interaction comprises repair as an inbuilt design feature that enables understanding when it is temporarily threatened" (House, Kasper and Ross, 2003:2). However, in communicating information through speech, feedback mechanisms need to facilitate "effective transmission ... so that speakers might assess their ongoing attempts at communication ... [and hearers might] evaluate their comprehension immediately" (Goffman, 1981:12). This may be unlikely in

custody due to interpersonal power asymmetry, which may make detainees feel unable to “negotiate their comprehension problems” (Gibbons, 2003).

The officer not only revised written rights information but also sought to bolster spoken rights administration at the custody desk, by devising a script, which he called ‘PR1’, to be used by Custody Officers to explain rights and to obtain information from detainees about their health and welfare. Custody Officers should already speak about all of the issues raised by the form, but PR1 formalises this, providing a standard wording to accompany delivery of the *Notices* (PR1 is included in Appendix 16). The long-term adaptation of PR1 by Custody Officers would need to be monitored, particularly in view of the need to accommodate to different detainees’ needs (see Sections 13.4; 13.5) and the tendency for officers to innovate on standard wordings (see Sections 9.8.2; 10.5). Detainees’ perceptions of rights administration through speech would also need to be monitored. A growing literature notes the potential for particular instantiations of intergenerational talk to be viewed as either patronising (Caporeal, Lukazewski and Culbertson, 1983) or caring (Kemper, Candeputte, Rice, Cheung and Gubarchuk, 1995; Harwood and Giles, 1996) by different hearers. Police officers’ talk to detainees will almost certainly communicate individual officers’ attitudes or institutional stance. Further research on experiential meaning might inform officers about how they might communicate rights whilst communicating minimal attitudes to those rights.

8.2.3 Other alternatives to rights notices inside custody

Rights talk at other times in custody might also help detainees. Readers whose “comprehension fails” may choose to seek correction later (Alessi, Anderson and Goetz, 1979, in Brown, Armbruster and Baker, 1986:61). Such ‘fix-up’ strategies could be proceduralised within detention. Effectively they already happen informally. Some detainees described informative interactions with custody staff other than their first encounter at the custody desk:

I had somebody come in the next morning ... just after breakfast and again he went through “remember your rights” and said to me “are you sure you don’t want a solicitor?” [Novice 34]

Such additional explanations of rights were apparently valuable to detainees. They were common during journeys to police stations, when they might be particularly influential. Such informal encounters also constitute this text in use, illustrating “what kind of information people would receive who were trying to understand” the written text (Labov and Harris, 1994:267).

In addition to rights notices and custody desk talk, rights are currently administered in other ways too. Posters are required in each custody unit “advertising the right to legal advice” (*Code C*, paragraph 6.3 2003:64), in English and other languages (Home Office Circular 15, 1991:4). Detainees also write as part of rights administration. They must sign the Custody Record in order to authorise their decisions about whether to take up two of their rights (Home Office, 1991:C1), using the powerful “assertion of truth or consent” offered by a signature (Goody, 1986:152). Whilst signature paperwork uses a thoughtful layout (Home Office Circular, 15, 1991:3-4) its formulation is at odds with the original *Notice* in many forces. This might usefully be reviewed.

The officer recommended increasing the diversity of modes of rights administration further. For detainees who cannot read, he devised versions of his text on compact disk which run on a PC and read the text aloud⁷ (included in Appendix 17). These replaced the linear form of the original with non-linear text which “guides or prompts readers to re-access or extend the main text” (Alexander and Jetton, 2000:290). Jackson presents hypertext like this as a possible solution to the difficulty of legal texts, through its ability to add depth to the printed page and to allow audiences to access different versions and see their interrelationships (1995:134). The officer also suggested providing rights information on a video-loop to be played in custody waiting areas. Video or audio-recordings could incorporate findings such as those reported by Fox Tree, that over-hearers typically remember more of dialogues than monologues, perhaps due to their increased discourse markers or their multiperspectivity (1999). As Fox Tree notes, some aspects of dialogue might inhibit communicative effectiveness (1999:50-50) but these could be controlled by a script. ‘Thinking outside the box’ about how to convey rights information may be essential to reaching non-reading, uninterested detainees.

⁷ These detainees would only have access to his first and second tiers as he had not made a similar version of the *Codes*.

8.2.4 Repetition and rights

Administering information repeatedly via any mode creates opportunities to arrive at “clearer”, “altered or “deeper” understandings (Spolsky, 1994:141-2). It may facilitate speedier reading (Raney, Therriault and Minkoff, 2000:76-9) and increase (Merritt, 1994:33) or focus (Johnstone *et al*, 1994:3) attention. Providing multimodal sources devolves decisions about when and where to transfer rights information away from officers and towards detainees. It also increases detainees' choice about how to obtain rights information. Yet “too much repetition can have negative effects” (Merritt, 1994:32). Cotterill reports Brown's finding that many suspects ignore the notices through apathy or illiteracy (Brown, 1997:76, in Cotterill, 2000:8), yet Brown's full comment is that detainees may not read the *Notices* because their content has already been related orally, even if oral delivery was poor (Brown, 1997:76). Charrow and Charrow also illustrate that information stated twice, even if stated in different forms, left many readers “totally confused by the unnecessary redundancy” (1979:1327). Nonetheless detainees' comments suggest that reduction of either mode of administration might disadvantage some of them.

The combination of information sources about rights has further potential for detainees who spot their interrelationships. Some detainees linked custody desk talk and the *Notice* (highlighted in bold):

he said I could have a book to read if I wanted and it's the Code of- it just breaks the law down and everything **which is what it says there**

[Novice 26]

Written rights information enabled detainees who recognised written-spoken intertextuality to revisit custody desk talk in a less hectic environment:

everything he told me up the front ... it was all sort of like in there what he'd already told me but it's sort of like it gives you time to read it because there's so much going on and so many people around

[Novice 26]

Custody Officers might usefully exploit the potential for rights talk to orient readers to rights texts. Numerous studies suggest that instruction on the structure of unfamiliar texts can benefit readers (Goldman and Rakestraw, 2000:323).

8.2.5 The influence of rights talk on reading decisions

The data gathered here have shown that spoken interactions have a communicative function, replacing rights notices for the many detainees who are unwilling or unable to read. Such spoken interactions also have an affective function, influencing detainees' decisions about whether to read. Occasional 40, for example, did not realise from custody desk talk that he could keep the *Notices*, although admitted that he had not wished to. Custody desk talk did however convince others to keep the officer text:

I haven't really read them I just kept them- them because they ((asked me to)) keep it [Regular 44]

and even persuaded others to read it:

the Sergeant told me to read it so I thought I might as well read it [Occasional 06]
it was put in front of me and the guy said "have a read" so I did [Novice 25]

This last detainee added that he eventually felt too distracted by circumstances to continue reading, underlining the importance of the Custody Sergeant in potentially fulfilling both the communicative and affective functions. This deference to officers recalls Gumperz's work on contextualisation cues, which points out that in institutional settings "[w]hile downgrading their own status, lay persons ... depict the official as being all-powerful and in control, thus able to assist in finding a solution" (1992:245). The officer reviser had been concerned about how rights notices are delivered, so included a formulation for text delivery on PR1. He hoped that it would prevent officers from delivering the texts using a police-centred utterance such as *the police have to give out this Notice* which might discourage engagement. Deixis was apparently crucial:

they should be handing not making it available (.) not saying "over there (.) somewhere if you want to help yourself" (.) "here" (.) and actually get the person to take hold of it [Officer]

The formulation he devised was intended to introduce the text's tiers (Section 7.2), explicitly:

Here is a sheet that tells you the main things I have said. [Tier 1, the fold-over cover]
There is some more information attached to it. [Tier 2, pages 2-5]

He hoped that explicitly connecting custody desk talk and the written texts would reduce perceptions that the texts were repetitive and redundant. Comments from the detainees above suggested some success here.

Generally detainees shared the officer's concern about the influence of the mode of administration of rights notices, particularly their handing (Scollon, 2001). One occasional detainee, who recognised being offered the text during custody desk talk, did not recall a similar speech event when he was last arrested *a couple of years ago*:

there was nothing printed up anywhere or if there was it was little leaflets in a corner like "there" or something there was nothing like that that was just nice and basic [Occasional 49]

One novice described his response to an uninterested administration of the *Notices*:

the way I saw it when I was given it it was like "OK everybody gets these bits of paper read it and then just sit tight and wait for the bullet" like you know so no I didn't think of getting a solicitor when I read this [Novice 25]

His comments suggest PR1 was ineffective, failing to present the rights notices as relevant to detention. Quite possibly these two very different responses to handing of the texts were the result of Custody Officers' idiosyncratic ways of taking on PR1, or indeed their rejection of it. The officer himself pointed out that one Custody Sergeant who continued to deliver rights information *the old fashioned way* had a *significantly lower take-up* of rights texts than other officers. This simultaneously suggests the success of the script in encouraging detainees to take the *Notice* from the custody desk, but also the difficulty of imposing a script. Regular 46 problematised handing at the custody desk because the texts were easily left there as they were *the last thing on your mind*. He suggested putting rights notices into cells instead, although the officer had already discounted this. The practice of handing the notices at all can be contrasted favourably with that in other jurisdictions, like the Netherlands, where leaflets contain rights information but there is "no policy for distributing this information" (Komter, 2002:pc).

Although custody desk talk and orientation might encourage reading, it would be naïve to hope that they would guarantee reading any more than administering the written texts themselves does.

8.3 Reading

Even if detainees have read the rights text, it is not the end of the matter. Readers do not passively absorb “whatever the writer sees fit to communicate” (Hoey, 1988:51), indeed “much communication fails because writers ignore the beliefs of their readers”, their origins and strength (Gunning, 1968:136). For Baynham, a critical reading asks:

- where is this text coming from?
- what is it trying to do to me?
- am I going to accept this and work with it?
- am I going to reject it?
- am I going to try to work with it on a modified basis?

Baynham (1995:206)

Detainees are, by this definition, critical readers. By seeing detainees as such, this Section recognises depth in their comments about rights information. Some detainees reflected on what reading had meant for them, positing a marked difference between reading and understanding:

after the shock of being in here I read it you know I had a quick think about solicitors here you are comes and asks you can use the 'phone and different things and I which they told me anyway like but I did read them but ur I'd want to read them again to understand them again [Novice 18]

This detainee confirms that he has heard about his rights through custody desk talk, interactions in his cell and by reading the *Notices*, but suggests that he remains unconvinced that he understands. Nonetheless, he has mentioned the right to legal advice and the entitlement to make a telephone call unprompted, suggesting that his display of uncertainty might reveal a perceived rather than actual lack of comprehension and a concomitant desire to mitigate his contributions in interview.

8.3.1 Trust the text?

Many detainees were not troubled by answering questions about rights, apparently exhibiting good understanding (see Section 7.3). However, scrutiny of the data suggests subtle difficulties. For example some, who ‘understood’ their right to a solicitor, had not apparently

appreciated how it would materialise in practice, a problem identified by Shuy (1997:186-7) in the USA setting. My data connect this problem to a lack of an 'in-detention' content schema (Schank and Abelson, 1977; Anderson, Spiro and Anderson, 1978) or limited prior experience (White and Gunstone, 1992:12). Novice 11 described, at length, frustration at apparently being denied this right. In fact it emerged that it was never denied, rather his solicitor had taken some time to arrive and he had not expected or integrated this delay, which is not explicitly specified in the officer's text. Here then, a detainee without access to the appropriate schema to complete inferential gaps in the text and context either activated or constructed an inappropriate alternative. In Enkvist's terms the *Notice* was not "interpretable" to him because he could not "under the prevailing circumstances, build around [it] a scenario in which it [made] sense" (1990:169). In other settings too, written texts lead people to "draw elaborate (and often incorrect) inferences" (Schrivver, 1989:251). In contrast, another detainee who also initially assumed that a solicitor might be available on-site modified his assumptions when custody staff explained:

they said they would just 'phone [a solicitor] up and deal with the arrangements that was pretty clear I thought they might have one dangling about the building somewhere [Novice 25]

Enkvist proposes "a complex interplay of bottom-up processing, from elements to pattern recognition, and top-down processing, from expected patterns to their verification through emerging chains of elements" (1990:170). Novice 25 seems to have combined these resources. Another detainee showed reluctance to work with what he had read in the *Notices*, when asked when a solicitor can be consulted:

- | | | | |
|---|---|---|---|
| 1 | → | D | it says "day or night" there I don't know |
| 2 | | F | so it should be any time? |
| 3 | | D | yeah |
| 4 | | F | great and do you know if there's any time that you wouldn't be allowed to speak to one? |
| 5 | → | D | (.) I would say night time would be a bit of a problem (.) mm I would say night time |
- [Novice 11]

This detainee successfully identified the relevant part of the *Notice*, even locating the significant string *at any time, day or night* (turn 1). This could have been taken to indicate comprehension. However, despite my leading question (turn 2), by turn 5 he appears unconvinced either that the text was correct, that he has understood, or perhaps that he has identified the appropriate words. He therefore supplements his original answer from the text with a 'common sense' answer. It is not unusual for readers to "correctly interpret what they

read but nevertheless decide that they can behave in a way that does not fully accord with this understanding” (Wright, 1999:91). Alternatively, this reader could have been working with some sort of idiomatic reading of *day or night*. Similar problems have been reported in reading texts about medicines which are to be taken at *mealtimes* generating confusion about whether this means ‘at the times of day when people typically eat meals’ or ‘when you are eating’ (Wright, 1999:91).

Detainees also looked outside the officer’s text to determine the boundaries of rights. For example, some suggested that rights have caveats which were not mentioned in the texts. They proposed that the right to external contact only allowed calls to family-members. Occasional 31, a 20 year-old, believed that he could only telephone his parents. This forms part of a further challenge for rights texts. Not only do detainees draw rights information from sources other than those texts, but they do not necessarily ‘believe’ the texts themselves. Comprehension in context is about how readers:

- relate the text to the situation which confronts them;
- perceive the reliability of the text’s content;
- perceive the likelihood that they will understand.

This possibility that detainees might read and ‘understand’ the *Notices*, but might remain doubtful about their ‘meaning’ recurred extensively⁸. In other settings too, background expectations hijack readers’ learning from texts by leading them to erroneous readings (Alexander and Kulikowich, 1994). This is so pervasive in relation to medical texts that, in evaluating patient information, researchers consider not just whether readers seem to understand, but whether they will choose to *comply*. This may be influenced by readers’ emotional response to the message – whether they get a feeling that they know better, for example (Wright, 1999:88-89; Jackson and Huffman, 1990). Compliance or credibility comes from readers’ perceptions and is not necessarily driven by “any actual characteristics of the senders or sources” (Pettersson, 2002:106). In detention, doubting responses to rights texts might say a great deal about attitudes to the legal institution. Anyone who proposes that the language of rights information is “too complicated” must “demonstrate what sort of language

⁸ This illustrates the limitations of terms like ‘understand’ and the shortcomings of seeing interview responses as unproblematic indicators of how readers are getting on.

would be better understood" (Owen, 1994:287). Comments from detainees who demonstrably read, navigate and cite rights information yet do not seem to take on what they see, indeed make it difficult to know how linguistic changes would help.

8.3.2 Beyond rights communication

"As much effort needs to be put into getting people to exercise their rights as to know them" (Owen, 1994:294). Accordingly I now ask why detainees reject rights texts and waive rights. It has been suggested that rights delivery and explanation influences their take-up (Cotterill 2000:7-8 summarises). However Brown exhibits reservations about this (1997:79) which the detainees in these data suggest are well founded. Not only were their decisions about whether to engage with rights information complex, but their responses to the texts were not simply about arrest and detention but also detainees' views of themselves as detainees and the presentation of a particular relationship with the text.

Writers are encouraged to prefer second person pronouns to other forms, because they engage readers (Jackson, 1995:124) and improve comprehension (Tiersma, 1999:205). However, there is an "inseparable constitutive relationship between the linguistic devices for person reference and managing institutional activities" (Drew and Sorjonen, 1997:99). The resulting informal tenor has been taken to indicate how "the private sphere increasingly colonizes the public", reducing social distance without allowing informality to "infringe the claimed authority" of institutional actors (Candlin and Maley, 1997:206-207). *You* creates a vacant subject space (Foucault, 1979; 1991) and lay people who use government paperwork might show acceptance of or discomfort with this (Fawns and Ivanic, 2001:88). Most detainees' recontextualisations of rights used first person pronouns. Only four deviated, using second person forms. Detainees who do not see rights texts as applying to them or to 'real' situations nonetheless test the subject position offered by *you*, by resisting and confronting the categorisations offered by the *Notice* and detention situation. Chapter 7 illustrated that detainees ignore rights notices through distress, perceived expertise or expectations. Others rejected the text through discomfort with the subject positions it offers and a view of rights texts as doing more than simply delivering rights information. Novice 09, for example, was aware of the *Notice*'s likely content and that it might help him, yet claimed to have ignored

the text because he had *nothing to hide*. For this detainee, any engagement with the rights texts signified a call for help and, implicitly, an admission of guilt (cf. Barton 1994:61).

Looking first to rights invocation, a suspect's schema of asking for a solicitor may interfere with their request (Shuy, 1997:185) as may their use of powerless language (Ainsworth, 1993:286f). Detainees attached considerable significance to invoking rights and were apparently discouraged from doing so by matters other than comprehension of, or even perception of, rights. Some declined legal advice because, they claimed, they were innocent:

I didn't get a solicitor because I haven't done anything wrong

[Novice 51]

This explanation erroneously presupposes that only the guilty need legal advice. Others agreed:

- D if you think you've done something you've got to speak to a solicitor haven't you
- F if you think you haven't you won't necessarily need to
- F but there are cases when you might?
- D well yes there is yeah ... he just give me my rights and said "get a solicitor because the charges I've brought you under are quite serious charges" but I still declined the solicitor because I knew I ain't done nothing wrong

[Novice 09]

My question (turn 2) addressed the detainee's assertion that innocent people would not *necessarily* need a solicitor. I expected he would respond by asserting that even the innocent might need a solicitor. However, for him, even when confronted by contrary advice, innocence mitigated the need for a solicitor. This connection between rights waivers and innocence claims is rather startling and is not confined to research interviews but also appears in detainees' responses during police interviews. The examples below are from the preamble to police interviews, during which officers must ask detainees whether they require legal advice and request an explanation of any rights waiver 'on record'⁹:

- P you've continued to decline legal advice er I'm therefore obliged to ask you what your reasons are for declining it?
- D because I ain't done anything

[B102]

⁹ These interview data are from a different police force to that which piloted the officer revision text. They illustrate that this phenomenon is not anomalous to one force. The reference numbers after each excerpt point to the source interviews (see Section 9.6.1).

Protestations of innocence were a frequent response to requests to explain rights waivers across different interviews:

I don't see why I need a solicitor when I haven't done nothing	[B103]
I don't need one I'm innocent	[B105]
because I believe I am in the clear and I have nothing to worry about	[B108]

Other detainees introduced honesty, rather than innocence:

P	do you want to have a solicitor present in this interview?	
	...	
P	OK any particular reason for that?	
D	I've got nothing to hide	[B101]

These explanations could be seen to suggest that naïve detainees, unsure of a solicitor's role, might deny themselves this valuable right because they believe its exercise sends out the wrong signals. Indeed, the two Force E detainees who cited innocence as their reason for declining legal advice were both novices. In response, the Home Office revision explains that requesting a solicitor does not indicate guilt. This addresses detainees who read the *Notice* and are genuinely unsure of the implications of invoking rights. However a social constructionist reading (Gergen, 1985; Harré, 1984; Shotter, 1984; Barr, 1995) of claims of innocence or honesty at the opening of investigative interviews represents them as ways in which detainees prospect their upcoming talk, framing it as that of an innocent or honest person. The institutional agenda at this point of the interview preamble focuses on eliciting confirmation that nobody has coerced detainees into waiving rights. Whilst, in the excerpts above, detainees did not subvert this agenda, they used the floor it offered to construct themselves as sufficiently convinced of their innocence or honesty to reject the help of a person who they represent as only appropriate for those less convinced. Here then we see pre-interview rights talk, an interview component which detainees can be sure to encounter in interview, being appropriated to accomplish innocent self-presentation. This occurs before the officially sanctioned verbal investigation of guilt or innocence has even begun.

Presentation of an innocent self was not the only theme here. Some detainees presented apparently oddly benevolent explanations for rights waivers:

[I] don't want to get someone out of bed for nothing	[B93]
I ain't done anything wrong so I don't see why I should waste anyone else's time	[B107]

These detainees thus present themselves as reasonable and considerate, as well as innocent. Rights talk provides a space where detainees can begin to establish the position which they anticipate developing throughout interview. This position is not necessarily fixed, as one Force B detainee suggests when declining advice prior to his interview:

well at the moment ... I don't think I've done anything well I know
I haven't done anything so (.) I'll wait until I hear anything

[B109]

His comments hint that although he declines advice and, simultaneously, professes innocence, he is also prepared to reconsider that self-presentation if his position as an innocent person should be shifted by external (re)categorisations of his actions which differ from those he has arrived at or wishes to lay claim to. As Gergen puts it, "whether an act is defined as envy, flirtation or anger floats on a sea of social interchange. Interpretations may be suggested, fastened upon and abandoned as social relationships unfold across time" (1985:6).

Other detainees presented not innocence but guilt as a reason for declining legal advice:

I just- I'm just- I know what I done wrong
just owning up for what I've done

[B71]

[B82]

This seems distinctly odd. We have just seen how these speakers could have used this turn-at-talk to make their first on-record claim of innocence yet they voluntarily confess before their interviews proper have even begun. However these responses too can be seen as powerful self-presentations which, although positioning the speakers differently from the earlier responses, nonetheless "serve important social functions" (Potter and Wetherell, 1987:108) facilitating detainees' "situational accomplishment of social identity" (Drew and Sorjonen, 1997:95) in orienting to the subsequent interview. Through these responses detainees acknowledge guilt and implicitly delimit their crime, denying others. They also self-present as accountable, facing the consequences of their actions willingly. Finally, they appear, like those with *nothing to hide*, as honest, in this case honest enough to confess.

Detainees who had read the officer revision also adopted this 'guilty but honest' position. The novice below, for example, is ostensibly explaining his declining legal advice (points of interest are numbered):

- I decided not to speak to a solicitor because
 (1) what I'd done I know I'd done wrong um and
 (2) I was caught for it
 (3) I mean it's not a terrible offence or anything like that
 (4) but it is bad enough
 (5) so I couldn't see the point in wasting tax-payers money on a solicitor who's just going to sit there
 (6) and basically say the same as I am that I'm very sorry I shouldn't have done it and all this kind of thing
- [Novice 34]

In (1), he demonstrates awareness of his guilt and, through *wrong*, morally evaluates that guilt. He then moves to the outcome of his wrong-doing, stating that he was caught, without evaluation or commentary, drawing on what we might call an 'it's a fair cop' discourse, which surfaced frequently. The emerging picture is of a reasonable, repentant individual who recognises cause and effect. He then turns to his crime in (3). Here he does offer evaluation, but not of the crime itself, instead minimising and legitimising through comparison with other crimes. His shift to the legal register, presenting an *offence* not a *wrong* adds gravitas to his evaluation. Having established that his offence was minor, he appears to contradict that in (4) but he does not go as far as to say his offence is *bad*, but simply *bad enough*. Thus, he reinserts a moral self to whom all crimes are *bad*. In (5) he commodifies solicitors as an expensive luxury funded by public money which might be better spent elsewhere. Thus he introduces a responsible self with altruistic ideals despite this fall from grace. Finally, in (6) he orients to his crime, taking a regretful, apologetic stance, authorising that stance by presenting it as one which would have been validated by the imagined solicitor. In explaining his rights waiver, this detainee offers a positive, interactionally produced self (Drew and Sorjonen, 1997:95).

Barton presents the example of a form for 'job-seekers' which asked: *If you are offered a job can you start right away?* and provided the possible responses *yes* or *no*. He points out that the form has been "plain Englished" such that the question and possible answers are composed of "common and well known" words and the syntax is "straightforward". He notes, however, that the question still presents problems for claimants who need to know the intentions behind the question, which revolve around a requirement that the claimant answer *yes* if they are to claim benefit (1994:61). Thus a difference emerges not between those who can recognise and read the words on the page but between the experienced and novice claimant. In this case, Barton claims that "what is more salient is familiarity and acceptance of the institutional framework in which the questions are located" (1994:61). Amongst detainees

we see something more. They may recognise the questions' institutional framework and superimpose their own framework over it, appropriating the institutionally provided turn-at-talk to achieve their own ends.

8.4 Close

Three themes emerge from the officer's talk about his revision. They relate to his concerns about what his text should do and how:

- 'improving' the text by attending to:
 - occasional local features (such as the potentially uninformative title);
 - recurrent local features (such as the inconsistent use of modal verbs);
 - global features (such as information sequence);
- making the text 'for' the detainee, by:
 - considering their lifeworld (Schutz and Luckman, 1973);
 - considering their ways of reading this text;
 - encouraging them to read;
- locating the text within:
 - an intertextual chain of written texts, from legislation through the *Codes* to the *Notice*;
 - an extratextual world of speech, where its content is not novel.

His text was successful in that many detainees appeared able to reproduce its content, but what that really means in context, is difficult to ascertain. Detainees are apparently influenced by the text, their own questions and the comments of those around them (Alexander and Jetton, 2000:291), but ultimately the text might not meet their needs, no matter how it is formulated and delivered. Hertfordshire Constabulary attempted to address detainees' real concerns very directly, at the behest of one of their officers, introducing a "cell welcome pack". This answered routine practical questions about detention, like where and when detainees can smoke, and provided other information which had fallen onto other forces' rights documentation (see Section 4.3), for example, on drugs and alcohol referral schemes (BBC News Online, 2003). Yet even the Hertfordshire document is driven by what the

institution and its actors want to convey. Detainees' own concerns are likely to be unpredictable, at odds with what they might seem to need, disparate from detainee to detainee and, ultimately, impossible to address. As one officer explained:

sometimes we are asked questions that we do not have the answer for um rightly or wrongly varying degrees of people coming in with obviously varying degrees of intelligence and you'll find that the more of- an intelligent person ... can be very inquisitive and will scrutinise what we are saying to them and then will ask us questions based on what we've told them ... and sometimes we cannot give them an answer because procedure doesn't dictate us to give them the answer they've been looking for ... a lot of them are "when am I going to be interviewed" "when will the solicitor be here" "how long am I going to be here" and we can't answer those questions when they're brought in because we don't know all we can say is well we can keep you here for 24 hours if need be but hopefully you won't be here that long
[AO10]

Whilst endeavours to represent rights fairly, honestly and fully are laudable, rights communication is different every time it takes place.

PART B: SPEAKING RIGHTS

CHAPTER 9: SPOKEN RIGHTS COMMUNICATION

9.1 Introduction

Each individual who is detained by the police in England or Wales is verbally cautioned at three stages of their detention: at arrest, interview and, if applicable, charge. Detainees may also read the caution in the *Notice to detained persons*. The caution intends to inform detainees about their right to silence and the implications of invoking that right. It states:

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 will be given in evidence.¹

“To be of any use, the language of the law ... must not only express but convey thought” (Mellinkoff, 1963:vii). The question of whether the caution does so is vexed. Relevant research has had, until recently, two main foci. First, comprehensibility of syntactic, discursual and pragmatic aspects of the official wording (Kurzon, 1995; 1996; Cotterill, 2001; Gibbons 2001a), and secondly, comprehension of that wording, usually in experimental settings, occasionally by detainees (Gudjonsson and Clare, 1994; Clare, Gudjonsson, and Harari, 1998; Fenner, Gudjonsson and Clare, 2002). Whilst the formulation and reception of the official wording is important, the appropriation of that wording and its transformation through practice ultimately determine its influence on detainees, as officers are permitted both to deviate from the official wording and, moreover, to explain in their own words (Home Office, 2003:77-8). Even psychologists advocate studying the caution “as it would be in real life” (Fenner, Gudjonsson and Clare, 2002:89). A new focus has accordingly emerged recently: examining cautions in use (Russell, 2001; Greenwood, 2002:pc; Hall, 2004:pc). Part B of the thesis contributes to this emergent area.

Some police officers present the caution as *immaterial* to detainees (AO44), an apparent *waste of time* (AO17) and *part and parcel of the detention procedure* (AO39). One officer described it as:

¹ At charge the words *when questioned* are replaced with *now*, to reflect the fact that there is no further planned questioning and the detainee’s final routine opportunity to speak has arrived.

the least useful thing that [detainees] get ... it can't possibly be digested and acted on by them ... I don't think it has any use at all for the suspect [AO44]

Nonetheless, detainees use notions contained in the caution in making decisions from the moment of arrest:



when I was picked up on camera they did say I mean he arrested me there and said "do I want to say anything" and I thought oh "oops" so I didn't say anything then I thought "no I'll wait and see you know how much trouble I'm in" and then sort of say "help" you know and that was it [Novice 25]

Figure 9.1 A place for making decisions

9.2 The Caution's legal background

The right to silence, as a protection against self-incrimination, is long established in Anglo-Welsh law, originating in the 17th century (Morgan and Stephenson, 1994:2) from *ius commune* law applied throughout Europe (Alschuler, 1996:156), long before any formal police force (Clare, 2003:27). It follows from the principle that those accused of crimes need do nothing to prove their innocence, the onus being on the prosecution to prove guilt. In the late 1980s, following the right's preservation by the Police and Criminal Evidence Act (PACE) (1984)², the Government noted concerns that this right was being abused by defendants who presented evidence too late for prosecution investigation, the 'ambush defence'. A Home Office Working Group investigated (Home Office, 1989). The eventual response, section 34 (s34) of the Criminal Justice and Public Order Act (CJPOA) (1994), permits courts to draw "such inferences ... as appear proper" from "failure or refusal" to answer questions at interview or charge in relation to evidence which is relied on in court

² The caution was not introduced under the auspices of the Police and Criminal Evidence Act (1984), as asserted by some scholars, although its administration is governed by that act and its wording was revised when PACE came into force (cf. Cotterill, 2000:5).

(CJPOA, 1994: s34). This change did not outlaw the ambush defence but altered its significance and it was communicated through the revised caution (reproduced in Section 9.1). The then Home Secretary, Michael Howard, proclaimed that s34 would beleaguer “professional criminals manipulating the system” (Campbell, 1995:4)³.

Previously, police cautions had advised detainees only of their right to silence (maintained in the first sentence above) and the recording of evidence (the final sentence). This new formulation added a long medial sentence, which presented the possibility of adverse inferences. Prior to and during their introduction s34 and its caution faced extensive criticism from academics (Leng, 1994; Morgan and Stephenson, 1994; Dennis, 1995; Kurzon 1996; Gudjonsson and Clare, 1994:111), media commentators (Bennetto, 1994), civil rights groups (Carol, 1994:1) and legal practitioners (Cunneen, 2000) amidst fears that they would erode, even effectively remove, the right to silence⁴ whilst allowing their target “professional criminals” to evolve ways around them. Two Royal Commissions even condemned inference-drawing (Criminal Procedure, 1981, para. 4.53; Criminal Justice 1993 para. 22-25). Recently the Human Rights Act (1998) has influenced discourses around s34, although without halting inference-drawing as some had suspected it might. A body of case law and appellate opinion in Britain and Europe has restricted Section 34, the most significant of which is summarised in Figure 9.2.

³ Adjacent sections of the CJPOA permit inference-drawing about responses to specific questions in some circumstances, for example, concerning “objects, substances or marks” on or near to accused persons at the time of their arrest (CJPOA, 1994: s36). Thus, the CJPOA intended to change the nature of evidence gathered in police interviews substantially.

⁴ In some instances, for example within fraud investigations under s.434(5) of the Companies Act (1985), it was already an offence to refuse to answer questions from fraud investigators, so in this respect, the right to silence could already be seen to be not absolute at the time that the CJPOA was being debated.

- **R v Cowan, R v Gayle, R v Ricciardi [1996]** in which the defendants claimed that s34 only applies in exceptional circumstances. Whilst the appeal court did not accept that, they allowed the appeal on the basis that the judge's instructions to the jury did not convey that guilt is not the only reason for refusing to testify.
- **Murray v. UK [1996]** here, the defendant was subject to Northern Irish law, the Prevention of Terrorism (Temporary Provisions) Act (1989), the precursor to the CJPOA (1994). He was questioned for twenty hours without legal advice and ultimately appealed to the European Commission for Human Rights proposing that this, in combination with inference-drawing, contravened Article 6(1) of the European Convention on Human Rights (ECHR). The court did not uphold his appeal, but the Diplock Judge who heard the case hinted that had a jury been involved, things might have been different.
- **Saunders v. UK [1997]** the defendant here was tried under the Companies Act (1985) which made it an offence to refuse to answer questions and then allowed answers to be read out in court. This was found to breach Article 6 of the ECHR. Although not directly under s34, this ruling has proved germane.
- **Condron v. UK [2000]** in which a couple accused of supplying heroin were under the influence of heroin when questioned. Their solicitor advised silence because of their intoxication and the trial judge advised jurors that they could draw negative inferences from this silence. The appeal court held that domestic courts should give weight to legal advice. As in *Cowan et al*, the judge's directions were criticised.
- **R v Betts and Hall [2001]** the court noted the importance of the accused's reliance on legal advice in decisions, as opposed to the quality of legal advice about silence. It also sought to define "facts" which might be relied on in defence as not being those which the accused has agreed to as part of a prosecution case.
- **Beckles v United Kingdom [2002]** here, the court held that the right to silence is not absolute, yet is essential to fair procedure as conceived under Article 6 of the ECHR. The court criticised the judge's directions in this case for failing to note the accused's explanation for his silence sufficiently.

Figure 9.2 – Particularly significant judgements concerning aspects of s34

As Figure 9.2 illustrates, human rights-based appeals around s34 have considered circumstances of particular cases, possible inferences and weight attached to inferences. They have clarified that a case cannot rest solely on the accused's silence or failure to answer questions and highlighted the need for judges to elucidate this to juries (Dennis, 2002:28), that a detainee only needs to mention facts if the prosecution's case is strong, unambiguously requiring a response (Crown Court Bench Book, 2001:38) and if questioning has provided an "opportunity to mention ... facts" (Bucke, Street and Brown, 2000:x). Challenges to s34 on human rights grounds have caused consternation amongst police officers. One groaned:

don't tell me they're going to change it and bring a new [caution] in (.) I'll stop locking up (.) I can see it being extended now to include this will be a breach of your rights and all this sort of- this is not a breach of your human rights

[AO22]

Cautioning procedure has indeed now changed in response to the European Court of Human Rights in *Murray v. UK*, enacted through the Youth Justice and Criminal Evidence Act

(YJCEA) (1999). That legislation forbids drawing inferences from silence, in cases where detainees have not been allowed legal advice. This is incorporated into the most recent edition of *Code C* of the PACE *Codes of practice*⁵, through an alternative caution along with a lengthy prescribed wording intended to explain its application (a copy is attached in Appendix 18). This ever-increasing variability in the caution's wording, explanation and application increases demands on both detainees and officers.

The changes to the right to silence arising from legislation and case law are influential only if they alter the behaviour of juries and magistrates in deciding cases, or defendants in selecting a course of action. Juries are assisted by directions from judges, typically compiled using the Crown Court Bench Book, which contains specimen directions both on lies to the police (s1) and on silence in interview (s38). However, jurors may misunderstand those directions (Dumas, 2000; Heffer, 2002). Indeed Birch attributes the limited impact of s34 specifically to its complexity for both judges and jurors (1999:796). Jurors may alternatively ignore the directions, considering or disregarding silence at will. Indeed CPS employees believed that juries drew adverse inferences from silence even before permitted by the new legislation (Bucke, Street and Brown, 2000:xii, 62). Defendants' decisions appear to have been barely affected by the revisions to the right to silence. Most defendants at magistrates' courts used to testify prior to the CJPOA (1994). The changes have not influenced this and Crown Prosecution Service statistics indicate no increase in the conviction rate following the section 34 changes (Bucke, Street and Brown, 2000:65-7).

The message which most police officers take from all this is that the caution is an ineffectual component of the legal system, *legislation rushed through* (AO14), which thus failed to influence:

- verdicts (*I don't know of an instance where they've actually looked grimly on the fact that someone hasn't mentioned something*, AO14);
- or sentences (*I don't think the court takes one bit of notice about whether they've lied or said nothing in an interview they don't get any more or any less at court*, AO06).

⁵ The then Home Secretary, David Blunkett, announced a review of the PACE *Codes* to the Annual Police Federation Conference (2002), although consultation on proposed revised *Codes* had been underway for some time. The *Codes*, revised by the Home Office and the Cabinet Office, came into force in April 2003.

Although officers were largely unconvinced of the caution's effectiveness in court, some described how it nonetheless altered the 'upstream' (Russell, 2000:28) interview room environment almost beyond recognition, recasting the aims of interrogation. As one officer explained, *it used to be you've got to get a cough⁶ it's more what they don't say that's important now* (AO04). This is also manifest in the behaviour of solicitors, who now often encourage detainees to provide a written statement at the beginning of interview, rather than simply advising silence.

Despite the influence of s34 on officers' working environment, changes precipitated by the YJCEA (1999) relocate debate about cautioning practice. They can be seen as part of an "increasing trend to restrict the operation of section 34", reducing it to the status of an "extraordinarily technical rule of corroboration" (Dennis, 2002:37; see also Birch, 1999:769). Given this systematic reduction in the potency of s34, the prioritisation and repetition of the caution at key stages of detention could be said to overstate things somewhat. It seems odd not only that officers have had to defer to it but, more importantly, that the restrictions on the right to silence are so foregrounded (Jakobson, 1960, in Danet, 1984:5) within police procedure. The layers of repetition of the caution at key moments throughout detention have a particular power. This repetition, combined with the quagmire of law and its representation in the media, leads some detainees to suggest that they have no right to silence. After passing through detention, interview and change, this detainee observed:

isn't there a new law out saying that your right to silence is finished?

[Occasional 41]

Cautioning must overcome such misapprehensions early in detention, to avoid penalising those who were not the target of this legislation.

9.3 The Caution's textual background

9.3.1 Producing the official wording

The caution, under Judges' Rules (1918, revised 1964) (Brandon and Davies, 1972:47), stated:

⁶ An 'on-record' confession.

You are not obliged to say anything unless you wish to do so, but what
you say may be put into writing and given in evidence. (Brandon and Davies, 1972:48)

On its reissue in 1964, the police review observed “the man who does not decide to keep his mouth shut after all this is probably more of a fool than a knave” (in Brandon and Davies, 1972:49). This pre-empting of contemporary criticism of the current caution suggests that the “stable and enduring features of our everyday world” are assembled, partly, through “historical processes” (Mehan, 1993:243) (Appendix 19 provides further historical detail). The wording changed slightly in January 1986, under the governance of PACE (1984), removing *obliged* and the notion that evidence would necessarily be recorded in writing, reflecting procedural change:

You do not have to say anything unless you wish to do so,
but what you do say may be given in evidence. (Clare, 2003:63)

Shortly before the provision of the current caution, which introduced inference-drawing, a longer wording was proposed to do the same job⁷:

You do not have to say anything. But if you do not mention now something which you later use in your defence, the court may decide that your failure to mention it now strengthens the case against you. A record will be made of anything you say and it may be given in evidence, if you are brought to trial. (Bennetto, 1994)

This wording is still seen as a superior formulation to the official wording by some, who accordingly use it as explanation (Wolverhampton City Council, 2003). Clare, Gudjonsson and Harari’s experimental work found no advantage to the shorter wording as it simply condensed information (1998:327), nonetheless, it was placed before the House of Lords with the following recommendation:

⁷ This wording was never adopted for general use as the standard caution wording (although cf. Cotterill, 2000:21).

We believe that [these words] strike the right balance between legal accuracy and brevity. We believe that the caution will be easy for the police to remember and easy for suspects to understand. (Baroness Blatch, 1995)

Police officers recognise the demands of caution drafting, identifying similar priorities:

I suspect it was quite a challenge to write that in a manner that was easily learnt easy to deliver not too long (.) but yet conveyed the meaning as clearly as possible [AO45]

Unfortunately, whatever drafters' intentions, controversy has surrounded the wording. Shepherd, Mortimer and Mobasheri propose that it was drafted to "fulfil legal criteria" rather than to ensure comprehension (1995:65). The wording apparently underwent no field-testing prior to its introduction (cf. Dumas, 1999:349). Indeed apocryphal tales, recounted in police stations and elsewhere, suggest that it was barely finalised before being hastily despatched to officers for immediate introduction.

Although miscomprehension of the caution or its explanations has not generated case law (Prince, 2003:pc), linguists and psychologists frequently provide opinion or testimony on the likelihood that particular individuals have misunderstood their rights (Cotterill, 2003:pc; Carlin, 2003:pc). Specific aspects of the caution can be said to cause comprehension difficulties. At a very general level, the caution is a written formulation which is spoken in use. This raises problems of translating between modes, which are not exclusive to the caution. A designer from *The Bill* noted that the only time scripts were modified once filming was underway was when "words look fine on paper but just don't work when you say them" (2003).

9.3.2 Recontextualising the official wording

Section 10 (s10) of *Code C* of the PACE *Codes of practice* specifies how, when and why officers should caution (Home Office, 2003:76-80), and that they should explain the caution "in their own words" "if it appears a person does not understand"⁸ (Home Office, 2003:80, note 10D). Thus, in Cushing's terms, s10 requires officers to give reformulations which are

⁸ Cotterill cites a version of the *Codes* which gives much more detail. She references this as being from the 1995 version of the *Codes* yet that does not appear so thorough (2000:9).

obligatory, “required ... by regulation or convention” yet spontaneous, arising from “judgement of a prevailing situation” (1994:55). Furthermore the section asks them to allow spontaneity to govern obligation. However, s10 does not help them in making their spontaneous judgement, specifying, for example, how officers might recognise or respond to detainees who “appear” not to understand. It also lacks an adverbial clarifying the reason for them to make their judgement, whether, for example, striving to ensure comprehension. This suggests explanations are simply for explanation’s sake.

As cautioning occurs in interaction, its investigation requires connecting “recontextualisation as a discursive resource” and “the configuration of role relationships between participants” (Sarangi, 1998:306). Cautioning is organised around a quite distinctive “production format” of animator, author and principal roles (Goffman, 1981:229; see also Heydon, 2002:76; Cameron, 2000:326). In cautioning, the officer animates the words, producing or uttering the sound sequence. Government drafters take the author role, having prepared the text. Other government actors, particularly in the Home Office, acted as the principal, devising the words’ meaning on the basis of their commitments or beliefs (see, Goffman 1981:144, 167; also Clayman, 1988; Jucker, 1986:61). This role distribution places officers in a tricky position because those who animate a pre-prepared script cannot “take the local environment and the local hearership into consideration” (Goffman, 1981:255). By recontextualising the caution, however, the officer is able to consider local interactional factors by becoming the author of the reformulation and, to some extent, of the procedure around it.

The requirement to explain the caution exemplifies “political changes changing the demands on people” and “the way they communicate” (Barton, 1994:52). When PACE and its *Codes* were introduced, the Home Secretary reportedly recognised that they “created a major task for the police in learning the new procedures” (Home Office Circular 88, 1985:2). The current caution, in turn, compounded these demands, attracting predictions that its semantic and illocutionary complexity would deter officers from reformulating through fear of misconduct allegations and appeals (Shepherd, Mortimer and Mobasheri, 1995:66). Whilst some officers in these data indeed described avoiding reformulation, for others the opportunity to explain was crucial to communicating meaning:

I have to say it that way [the official wording] (.) what I have to get across to people is the fact that I have to get across this caution (.) once I've said the caution I can then get across the fact what it means

[AO39]

Some officers even saw explanation as integral to and inseparable from the caution:

F do you think it's well written...?

P I don't know that it particularly ... [recites sentences 1 and 2] well I don't know because again when I do it ... I just split it into sections you know

[AO40]

For officers like AO40 there was little sense in evaluating a rarely isolated wording on its own.

9.4 The caution's international place

Like the written rights notices discussed already, spoken rights texts raise two questions around multilingualism. First, within the Anglo-Welsh legal system, what provision is made for the many detainees who do not understand the language of administration sufficiently for rights communication to even begin? Secondly, how do the caution and associated procedure measure up to equivalent rights presentation in other countries? Examining multilingualism within England and Wales first, officers in the West Midlands who respond to calls for help are issued with “advice cards written in Punjabi and Urdu, to help them give initial reassurance to victims of crime who have difficulty understanding English” (West Midlands Police Annual Report, 2001-2). Whilst this is an innovative and economical way to respond to an unplanned multilingual situation outside the police station, it would be unnecessarily superficial within detention where more imaginative responses to multilingualism are possible and necessary. There, detainees are provided with an interpreter if they “require” one (Home Office, 2003:55) or if the Custody Officer believes that they “cannot establish effective communication” without (Home Office, 2003:57). The question of how the caution should be explained changes dramatically with the involvement of an interpreter. Berk-Seligson finds that “problems can emerge” around explanations of spoken rights information even if the interpreter is a “highly competent professional”. Her review of appellate court decisions throughout the USA shows that all too frequently interpreters are neither competent nor professional (2000:232; cf. Hale, 1997). Russell too, working in Britain, finds the entire interview preamble characterized by “disfluency, inaccuracy and uncertainty” from

interpreters which is most pronounced when explaining the caution (2000:45). Cautioning raises quite specific difficulties for interpreters in the officer-detainee-interpreter triad (Faust and Drickey, 1986, in Gardener and Janssen, 2001:181). Stone (2002:pc) and Graham (2003:pc), who both work as sign language interpreters in police stations, independently described officers' tendency to call on them to evaluate detainees' comprehension and thus to move right outside their area of responsibility and expertise. Both actively resisted this.

The caution is available in versions of the *Notice to detained persons* in 29 languages (see Section 4.3). However, Russell recommends additionally introducing a standard translation of the caution and its reformulation specifically for interpreters (2000). Such a text should be assessed and tested for appropriate register and readability (Kempson and Moore, 1994:44). Ideally it would not be an afterthought (Hulst and Lentz, 2001:92) but should be considered systematically around themes such as: What target languages are needed? Should the translation be complete? (Hulst and Lentz, 2001:94-97). Whilst translations would no doubt improve the lot of interpreters and detainees, inter-ethnic communication is not simply about this potentially token provision (Gumperz, 1992:245). Roberts, Davies and Jupp (1992) highlight the need for training in the very special situations multilingualism creates, using interviewing to illustrate (1992:384). They specify that such training is particularly important for people who provide services which "may critically affect an individual's opportunities, rights or well-being" or which offer "an opportunity for developing some form of communicative relationship however limited" (1992:386). Both of these circumstances apply to spoken rights administration. Interpreters report that officers often struggle to incorporate them into interviews and to appreciate the detail of their role (Stone, 2002:pc; Graham, 2003:pc; McGarr, 2004), suggesting that training might be valuable.

Cautioning is not exclusive to England and Wales, although the wording and procedure here are fairly unique. Consideration of other systems illustrates, not least, how novel the caution may be to detainees from overseas, complicating the task of translators. Looking first to the form of international cautions, the Police Service of Northern Ireland (formerly the Royal Ulster Constabulary) uses a scripted caution, as do police forces in Australia (Gibbons, 2001a) and the USA (Shuy, 1997:177; Berk-Seligson, 2000)⁹. However, scripted cautions are

⁹ Unlike the Miranda warning, *caution* is not normally used as an umbrella term to cover all rights, only the right to silence (although cf., Cotterill, 2000:12).

relatively rare. In Scotland, for example, there is no fixed caution wording according to Cooke and Philip (1998), although they imply that officers may rely fairly heavily on formulations disseminated in training. Indeed convergence towards cautioning norms is so marked that some Scottish police officers suggest that there is a standard wording (Malone, 2003) (Appendix 20 provides further detail). Cautions are not scripted in Israel (Kurzon, 2000:245), France (Russell, 2000:43) or the Netherlands – where they are nonetheless somewhat normalised (Komter, 2002), as in Scotland. Scripted cautions are reportedly misunderstood across jurisdictions (Gibbons, 2001a; 2003; Shuy; 1997; Berk-Seligson, 2000; Dumas, 1990:329), although the same can be said for their non-scripted counterparts (Cooke and Philip, 1998). Turning now to cautions' content, England and Wales are not the only areas to have seen the right to silence modified. The caution used in Northern Ireland is, essentially, the precursor to the Anglo-Welsh caution, having explained inference-drawing since 1988. In Roman-law countries too, the right to silence takes a distinctive form (Gibbons, 2003:261). Inferences can be drawn from silence during investigative encounters in Scotland (Scottish Human Rights Trust, 1999) and France (Russell, 2000:43), for example. US citizens, conversely, enjoy constitutional privilege against self-incrimination (Constitutional Amendment V, cl 2) which renders Miranda rather more resilient to restriction than the caution has proven, although not beyond the suggestion of change (Johnson, 1986; Kamisar; 1990:267-269; Thomas, 1998; White, 2001). Details of the administration of the right also vary between jurisdictions. Israeli law, for example, explains “a version of the right of silence” only before interrogation not at arrest (Kurzon, 2000:245) and the Anglo-Welsh caution is relatively unusual in being administered both in speech and writing, rather than speech only.

Although common law systems are broadly comparable, there are limits to this. In the USA, for example, Shuy notes a “strange everyday discourse illogicality” in Miranda, which offers the right to silence and only then offers the lawyer who might help in its exercise (2000:178). In the Anglo-Welsh system this potential problem plays out rather differently because the right to silence and the right to a solicitor are initially introduced at different times from one another and typically in different places: at arrest and on entering custody respectively. Thus the challenge for American detainees is seeing how these rights relate, whilst for their British counterparts, connecting the rights at all, at least initially, is tricky. In response, Clare and

Gudjonsson recommend delivering a version of the caution at the custody desk in addition to its administration elsewhere (1992:12).

Comprehension-checking in the Anglo-Welsh system is a different activity from its US counterpart. Miranda explicitly checks comprehension and asks whether the addressee intends to invoke their right (Shuy, 1997:176). Under Miranda, questioning must stop if detainees invoke either their right to silence or to legal advice (Shuy, 1997:177). In England, Wales and Northern Ireland only the latter can halt questioning (although cf. Cotterill, 2000:17) therefore, Anglo-Welsh officers can put questions irrespective of whether detainees have exhibited any inclination to answer. This may seem extremely odd to detainees. They may believe that if they say anything in interview they are committed to full participation, or they may be puzzled by police officers who offer a right to silence but then embark on interrogation anyway.

9.5 Introducing the data

9.5.1 Authentic interview-room data

Examples of cautioning exchanges in these data are drawn from genuine police interviews, which occurred without participants knowing in advance that their cautioning exchanges would be studied. To this extent there is a “complete absence of researcher influence on the data” (Potter and Wetherell, 1987:162). These data, totalling 41849 words, illuminate officer practice in 4 police forces:

Force label	Location	Number of cautions
Force A	Northern England	49
Force B	Southern England	36
Force C	Southern England	6
Force D	Wales	32
'Supplementary data'	Various locations, see below	21
Total		151

Data from Forces A-D provide a snapshot of cautioning practice as it varies across Wales and the north and south of England. Cautions from these forces were administered in 2000, when the current wording had been in use for around five years and could be seen to have ‘bedded

down'. Interviews in the 'supplementary' (S) group took place in various police forces, all over England and Wales, soon after the caution was introduced. They therefore evidence an embryonic stage of the emergent practice of cautioning. Due to its heterogeneity, the supplementary group is not considered in any statistical overviews; similarly Force C is excluded from statistics, being a small sample.

9.5.2 Officer interviews

Interviews with officers who caution regularly offer access to their "native meta-linguistics" (Stross, 1974) or metalinguistic knowledge (Davies, 1997) about cautioning and reformulating (the interview script is included in Appendix 2). These data comprise of 48 interviews totalling 157024 words, or over 17 hours of audio-recorded talk. The officers are diverse along several dimensions, providing a broad spectrum of cautioning experience and exposure. They were based in five police stations across two territorial divisions of Force A: two suburban; one city-centre; one rural and one in a market-town. They have wide-ranging roles and experience, from 'rookies' who were still training or in probationary employment to experienced officers nearing retirement. Appendix 21 details relevant demographic information about the cohort, which is summarised below:

Sex ¹⁰	39 male officers 9 female officers
Length of service	Longest = 29 years, 10 months Shortest = 5 months Average = 15 years (arithmetic mean)
Rank	37 Police Constables (PCs) 2 Detective Constables (DCs) 6 Police Sergeants (PSs) 2 Detective Sergeants (DSs) 1 Inspector

Officers who fulfil nineteen different police roles were interviewed, including intelligence officers, incident-handlers and file-preparation officers. The most prevalent groups in these data administer the caution particularly frequently:

¹⁰Nationally, 16% of police officers are female (Coster, 2002:12). In this sample, 18.8% were female.

- **Uniformed patrol or ‘beat’ officers and uniformed response officers** – patrol on foot or by car and answer routine calls. They frequently make arrests and, in this force, interview on occasions ($n=19$);
- **Uniformed interview or investigating officers** – are dedicated to interviewing, usually after receiving information from beat officers ($n=7$);
- **CID officers** – investigate serious criminal offences, they arrest and interview detainees ($n=4$).

This focus on officers’ comments about cautioning practices necessitates complementary scrutiny of officers’ education and training in cautioning (cf. Barton 1994:34). The Force A officer interviews were therefore augmented with interviews with four police trainers. These officers were from two different Forces, F and G, both in the Midlands, which augmented the diversity of perspectives. Trainers typically have a dedicated but short-term training role (usually around 2 years) and are, amongst other things, responsible for disseminating good practice in cautioning.

Before the interviews, the officers had an idea of the interview topic but were not told specific questions, to minimise ‘contamination’. Audio-recording was also less problematic than in some settings. Police officers are somewhat unusual in that most are audio- or even video-recorded within their work, some routinely. These officers therefore appeared comfortable talking at length on tape. The interviews were conducted in officers’ own police stations, usually away from their immediate working environment.

Not all officers showed insightful introspection in describing their aims and methods in reformulating. Asking speakers to try such a task stretches their metalinguistic capabilities¹¹. However, those who did describe their recontextualisations revealed much about what explaining is in relation to this text and context. Officers who expressed doubt about the usefulness of their contributions, paradoxically, made comments which suggest that they critically reflect on:

¹¹ Some officers, in attempting to describe their recontextualisations, instead demonstrated, attempting to simulate interview preamble. However, the resulting recontextualisations illustrate an extreme case of the observer’s paradox, being unlike those produced in reality and inclined to tail off once officers felt they had said enough to demonstrate (cf. Cotterill, 2000 and Clare, Gudjonsson and Harari, 1998 which both work with officers’ simulations).

- the institutionally prescribed written and spoken texts which they must use at work;
- the quality of their cautioning practices;
- the task of reformulating, its diversity, difficulty and its institutional and interpersonal place and ends;
- their own reformulations and those of colleagues, as artefacts;
- the resources available to them in cautioning.

Whether one condemns or condones paraphrase these interviews suggest that reformulation is not a task about which officers are cavalier or naïve; indeed many showed a desire to find out more through this research:

I would be interested to see the result you'll publish it? ... some of those questions that you ask suddenly make you step out of yourself and think from their point of view and I think that's interesting

[AO38]

Data excerpts from authentic police interviews are labelled with the force initial and an identification number. For example A12 is from Force A and arbitrarily assigned the identifier '12'. Data excerpts from interviews between officers and me are labelled similarly, but with the addition of the letter 'O' to indicate 'officer'. For example AO12 is an officer interview from Force A and arbitrarily assigned the identifier '12'.

The remainder of this Chapter explores the adequacy of the label *caution*, the officer's-eye perspective on the official wording and the structure of content of cautioning exchanges.

9.6 The label *caution*

9.6.1 *Caution* and pragmatic intent

Some misunderstandings of the caution begin with the label *caution* itself (Russell, 2000:41; Rock, 2000), which many officers use within cautioning exchanges:

- | | | | | |
|---|---|---|--|-------|
| | 1 | P | you're under caution [states official wording] that's the caution and quite an important part of this interview can you explain to me in your own words what that caution means? | |
| → | 2 | D | (3.7) | |
| | 3 | P | what does that caution mean name? | |
| → | 4 | D | the caution? | |
| → | 5 | P | yeh the thing I just read out to you | |
| | 6 | D | oh yeh u:::m that you're not (.) obliged to say anything... | [B34] |

This detainee's hesitation (turn 2) and question (turn 4) and the success of the officer's clarification (turn 5) suggest that the detainee did not link *caution* with the wording he had heard. 17% of officers in these data did not use *caution* at all when delivering the wording. This is quite legitimate as the official formulation does not include the word, flouting Dumas' empirical recommendation to use "conventional warning labels" (1993:348). Whilst this explains confusion in other instances, the officer above began with *you're under caution* and later reinforced the link between *caution* and the wording through the cataphoric summary *that's the caution* and deictic *that* towards the end of turn 1. Possibly then, detainees experience difficulty with the word *caution* itself. Most common law countries call cautions by that name, the USA *Miranda Warnings* being a notable exception (Gibbons, 2003:187). For one officer, at least, this is perfect:

the actual word *caution* is quite good because it is saying to them (.) "stop and think (.) I'm cautioning you (.) just be wary now from this point onwards this is official listen to everything that's going on (.) these are your rights this is what you can do if you want to do it (.) these are what may happen if you don't" so I think it's advice and information it is a warning I think its all those things the word *caution* I think in itself sums it up for me [AO42]

Yet authors problematise both *caution* and *warning*, proposing that neither are appropriate as the caution's "intended meaning" concerns, instead, advice-giving (Cotterill, 2000:12), or that lay people do not recognise any of these illocutionary intents, 60% taking the caution instead to be pressurising or threatening (Shepherd, Mortimer and Mobasher, 1995:64-66). Potentially the caution might also be evaluated, in speech act terms, as promising, ordering, advising, informing or reassuring, and its various propositions might be evaluated differently from one another:

Sentence from the official wording	Predominantly concerned with:	Also potentially concerned with:
1. You do not have to say anything.	Informing (<i>I hereby inform you that you do not have to...</i>)	Reassuring, advising
2. But it may harm your defence if you do not mention when questioned something which you later rely on in court.	Warning (<i>If you do a then b</i>)	Threatening, advising, ordering
3. Anything you do say may be given in evidence.	Warning (<i>If you do c then d</i>)	Threatening, advising

Some officers sought to intervene here, specifying the speech act function of individual parts of the caution, typically the medial sentence, as a warning (cf. Cotterill, 2000:14).

The label, when used, should reduce ambiguity, as “one needs to know the speech act – whether for example something is a threat, a promise or an instruction – before one can understand it” (Barton, 1994:65). However, the speech act ambiguity of the wording and its parts is further complicated by the respective roles of detainees, officers and the institution. Officers may not truly be in a position to issue all of the speech acts connected to cautioning, to detainees whom they are about to interview. In cautioning and recontextualising the caution, animating officers (Goffman, 1981:167) shift footing (Goffman, 1981:128), moving from aligning as investigator or gaoler to teacher (Berk-Seligson, 2000) or translator (Cotterill, 2000 after Tiersma, 1999; see Chapter 14). The legal institution too, as author and principal of the caution (Goffman, 1981:167), also shifts from exercising its power, to fulfilling its responsibility. If these shifts are not accomplished successfully or detainees do not recognise them, the caution’s pragmatic intent may be further clouded, the wording becoming “ineffective”, not having the “impact” on the hearer which the speaker (animator, author or principle) intended (Cushing, 1994:55), either in terms of illocution or perlocution. In view of this interpersonal context (Sarangi, 1998:306), the caution can be seen as telling about a warning, rather than straightforwardly warning. Thus “the role played by the deliverer” (Cotterill, 2007) influences what is delivered.

9.6.2 Misaligning the label *caution*

Caution is polysemous or, presumably, more accurately, homonymous (Crystal, 2003:220; 359) with a different term, also from the domain of police detention. The ‘reprimand caution’, or “indefinite article caution”, as Cotterill calls it through its typical collocation (2000:4), is

issued at the end of an individual's detention instead of a full charge, for a minor or first offence. The practice of successfully issuing this kind of caution is also ripe for linguistic research as its receivers "must understand its significance" and "give informed consent to being cautioned" (Home Office 1994b, paragraph 2) and should recognise its reprimand function, something which officers in these data described striving to convey. Certainly, the reprimand caution is different in almost every respect from the warning caution, examined here, yet detainees confuse them. The detainees below, having heard the warning caution introduced with the label *caution* and stated in full, have been asked to demonstrate comprehension, through explanation:

it just means that you're telling me off ... what is it the same caution as last time I've had [A24]

it means (.) you get a caution (.) and you just get it on the criminal record [A40]

Both describe the wrong caution. This illustrates a serious shortcoming of *caution*'s homonymy and suggests that *caution* is a biased homonym (having one dominant meaning). These misunderstandings are not as unpredictable as they might appear. The newspaper sections of the COBUILD Corpus reveal that *police caution* denotes the reprimand caution much more frequently than the warning caution, at a 17:1 ratio; these detainees may simply be evoking background knowledge from beyond detention. Yet it is important that detainees recognise the warning caution, because it substantiates the prospected interview speech event, and imbues the linguistic and extra-linguistic conduct of each party in that speech event with particular significance. Detainees who have misidentified the caution are not participating in the same speech event as other detainees, nor in the kind of speech event that the criminal justice system intends or will subsequently take them as having participated in. Moreover, detainees will be disadvantaged if they believe that they are being reprimanded and that their detention has reached its outcome when, in fact, they are about to be interviewed to determine outcome. Such misappropriation may even elicit confessions because in order to receive a reprimand "the offender must admit the offence" (Home Office 1994b:paragraph 2). Rayner, Pacht and Duffy (1994), noted that biased homographs receive longer gaze durations than unambiguous control words even when preceding text instantiates the subordinate meaning, so officers might usefully be alert to this misidentification in detainees' reformulations. The officers who heard the two reformulations above responded very

differently from one another. Those who heard the first example simply offered a reformulation without flagging the existence of two different *caution* referents:

P2	do you want do you want us to explain	
P	I'll go through it shall I?	
D	alright then	[A24]

In contrast, the officers who heard the second example drew attention to the source of the detainee's confusion, saying:

P	nah that's a different type of caution	
P2	((you're thinking- thinking of))	
P	[laughing] yeah (.) I'll go through it	[A40]

The problems caused by using the same label for two different but significant parts of the criminal justice process, both of which are well known to lay people and both of which occur at the police station are real if these detainees' words are taken to evidence misunderstanding. Police officers' responses to such confusion could be crucial.

9.7 The official wording

9.7.1 Critiquing the formulation

Police officers discussing the caution's official wording in these data more often voiced condemnation than praise. However they also moved beyond the general to discussing subtleties. A content-form distinction was particularly salient to many assessments:

I don't know how they could improve it you know (.) not in a literal (.) wordy sense [= form] whether it should have more safeguards in for the prisoner I don't know [= content]	[AO01]
--	--------

At the content level, then, the dominant view, as AO18 succinctly put it, *it does explain the law but the law itself is unwieldy*. Turning to form, whilst officers applauded a short official wording, they felt that brevity prevented the caution from giving *the full picture* (AO24), observing a conflict, noted more generally in legal language “between a short but semantically dense message and a more detailed but much longer message, which is also difficult to understand” (Kurzon, 2000:246). Therefore they exhibited realism about the caution's function, which they saw as not necessarily about conveying information:

how can you get the amount of information over to somebody in just a line or a few words? because when you give the caution to actually explain it involves a lot more

[AO09]

Many were resigned to a somewhat token caution:

there's no way you can get a full explanation well you could do but we'd end up like America carrying a big card about

[AO05]

Officers proposed that the caution presents particular difficulty for some audiences (AO21, AO05), especially juveniles and novices (AO22). Some admitted finding the text baffling themselves (AO38). Others felt that arrest and interview contributed to – even caused – difficulty by inducing stress (*I'm not so sure it's that understandable considering somebody is under pressure*, AO48) or distraction (*their mind's closed all they're thinking about is going in a cell*, AO22). Accordingly some sought to *improve* the official wording through delivery (AO18). AO03 prioritised pace and gaze, explaining that, when possible¹², officers *talk slowly* whilst *looking at* detainees. AO10 agreed that when cautioning during interview preamble *you can actually pause when you're supposed to pause*. AO48, a Custody Sergeant, attended to wider aspects of intonation, giving short shrift to officers who deliver the caution hastily and do not *say it with meaning* or *put any emphasis on it or any particular words*. He described hearing the official wording delivered so speedily that it became inaudible:

I've actually said "look just say that again but say it like I could hear you as well as him there" and they've sort of laughed and embarrassed about it but they've said it again

[AO48]

Such informal styling (Cameron, 2000:331) is prevalent in these data (see 14.3.1). Indeed, concern about idiosyncratic delivery of the caution was expressed, even from its introduction, by the *Police Review* (1997:25), a widely distributed magazine for police officers (Figure 9.3).

¹² The officer asserted that he would attend to these things particularly in interview, noting that this might not be possible at arrest.

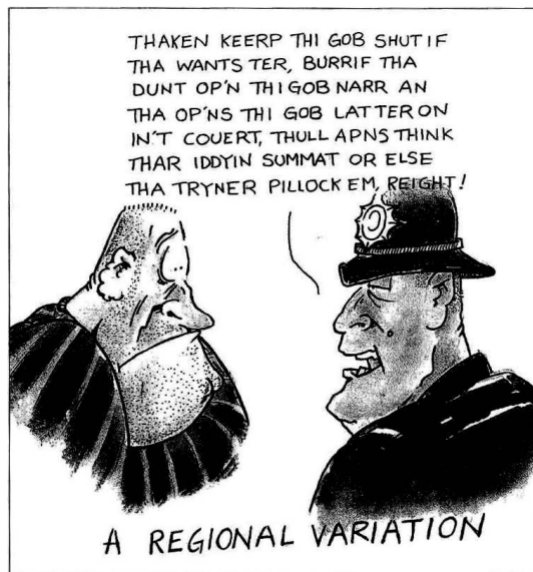


Figure 9.3 – The problems of caution delivery (Reproduced with permission from Jane's Information Group – Jane's Police Review)

9.7.2 Formulaicity

The use of an official wording generates frozen register (Joos, 1967; Danet, 1984a:4). Such formulaicity or pre-patterning can be a “resource for creativity” (Tannen, 1989:37), imbuing recurring items with “meaning or symbolic value” (Merritt, 1994:33) and, in legal settings, affording verbal formulae a “special strength” (Goody, 1986:151). “For centuries lawyers have sold at a great price the myth that legal language has special, quasi-magical powers” through a strong “ritual element” (Plain English Campaign, 1993:46). In cautioning, legal language does have special powers through its ritual element, because having administered a caution is a felicity condition for arrest and detention. “Rituals of authority” also bring “an aura of stability and regularity” (Bazerman, 1997:44). This is another important function of cautioning. Formulaicity can also make warnings conspicuous (Dumas, 1990:348). However, it might, conversely, cause contamination through poetization (Danet, 1984b:143) or over-familiarity, a criticism also levelled at the courtroom oath (Jackson, 1995:122). Formulaicity can introduce “a degree of ritualisation, with statements and situations losing their cognitive impact and participants falling into patterns of simply going through the motions” (Cushing,

1994:63). The caution is so recognisable that it is played on in unsavoury seaside humour (Figure 9.4):



Figure 9.4 – The caution’s familiarity (From a billboard, South Promenade, Blackpool, 2002)¹³

At the root of formulaicity is repetition. The caution is globally (Johnstone *et al*, 1994:4) or diachronically repetitive (Tannen, 1989:2) for officers, echoing other cautioning instantiations that they have read, heard or said, and for detainees through previous arrests or the media (see Section 8.2.1). Slightly more locally, the caution, delivered in interview or at charge, echoes earlier instantiations within the current detention for both speaker and hearer. At the most local level (Johnstone *et al*, 1994:5), synchronic repetition (Tannen, 1989:2) of the caution occurs within a given interview or even within particular turns. Such extensive repetition might be risky because it can undermine “the overall success of a longer linguistic interaction” (Cushing, 1994:57). Ironically, indeed, it might be impotent because so much of detention procedure is repetitive that “repetition eventually becomes the less foregrounded option and suddenly *not* repeating is foregrounded” (Johnstone *et al*, 1994:19).

¹³ Significantly, lay representations of the caution, as here, frequently misquote the caution (see Section 12.1.2). Here, for example, *taken down* echoes the 1970s wording but has never been used in an official formulation.

For officers the caution's scripted familiarity led to "hyperfluent" recitations (Goffman, 1981:189). Many described the way the official wording becomes *almost second nature* (AO03), regurgitated *parrot fashion* (AO39), like a *metronome* (AO48) or *like changing gear on a car* (AO16). The diversity of metaphors through which officers described assimilating the caution was striking, suggesting hyperfluency's pervasiveness (Lakoff and Johnson, 1980). Some officers felt internalisation of the wording negatively affected their delivery and their conception of it, making them oblivious to its:

- Meaning
 - you don't even think about it really [AO15]
- Significance to detainees
 - I don't think the police officers are reminded ... you're doing this there's a reason [AO48]
- Potential difficulty
 - sometimes when you look at it yourself you think "oh God it is a bit unwieldy isn't it?" [AO01]

Officers perceived a high risk of forgetting a wording which had become so automatic, and attached great significance to this (AO45), even giving temporary forgetfulness a name, *keyboard lock* (AO12). Officers narrativised this aspect of their cautioning experience, providing colourful anecdotes about cautioning gaffes, which suggested three factors as particularly likely to hinder recall:

- Residual memory of previous cautions – which caused some officers to need *two or three goes before it was right* (AO26);
- Cautioning in disorienting circumstances – particularly when *suddenly ... thrust into interview* (AO16) or in court (AO22) *when the solicitor tries to put you on your back foot by just straight away saying "well what's the caution?"* (AO06);
- Cautioning only occasionally – which is *worse now that the caution is longer* (AO27).

To complicate matters, some detainees hear the caution more regularly than officers. AO09 described accidentally delivering the 1986 caution long after the introduction of its successor, to be corrected by the detainee. While this might appear to exemplify a careless police officer, AO09, like other officers who made cautioning errors, did not take them lightly. Their accounts evidence the unique test presented by an official formulation.

9.8 Mapping the cautioning exchange

The focus on recontextualisation in this thesis precipitates, to some extent, a focus on the caution at interview as this is when officers most often explain. The cautioning exchange in interview is part of interview preamble which also includes introductions of participants ‘for the tape’ and the reiteration that free legal advice is available¹⁴ (described in Gibbons, 2003:142-3). Cautioning exchanges can be lengthy, and sometimes detainees do not recognise the caution as distinct from its preamble co-text:

- | | | |
|---|---|-------|
| P | so that I'm happy that you understand the caution can you just explain it as you understand it tell me what it means to you | |
| D | that I need if I need a solicitor I can have my solicitor here | [A19] |

Typically, officers delineate cautioning from other preamble fairly clearly, and indeed a relatively predictable exchange structure has emerged around cautioning (Sinclair and Coulthard, 1975:64; Coulthard and Brazil, 1981; Coulthard and Brazil, 1992; Stubbs, 1983) (Figure 9.5):

¹⁴ Free legal advice should already have been offered at the custody desk and via the *Notice*. In interview, the detainee is reminded of the right to legal advice, even if they already have a legal adviser with them. Those who decline legal advice are also asked why, ‘on record’.

Speaker	Activity	Sample realization	Interactional category
Officer	Introduces official wording	first of all I must caution you (.) you do not have to say anything... [A38] the interview will be conducted under caution which is that you... [A2]	/
Officer	= *States official wording	...	/
Officer	= +Checks understanding (yes/no-inviting question)	d'you understand all that? [A4] you understand what I mean by that caution? [A6]	Initiation
Detainee	= Responds (Yes/no/variant)	yes	Response
Officer	Requests a detainee reformulation	can you just explain to me what you believe that means? [A4] could you just tell us in your own words what you think it means? [A8]	Initiation / Feedback?
Detainee	Responds	whatever I say can use it against me in a court of law [A1] (.) means (2.1) erm that I (.) I don't know [A44]	Response / Initiation
Officer	Reformulates	right yep basically it means that but also ... [A37] I'll just explain it to you anyway ... [A7] basically the first bit means (.) don't say anything if you don't want ... [A48]	Response / Feedback?
Officer	+Checks understanding	now do you understand that? [A3] is that OK? [A14]	Initiation
Detainee	Responds (Yes/no/variant)	yes	Response
Officer	checks understanding with a third party (e.g. solicitor)	[to Appropriate adult] are you happy with that too? [A45] [to solicitor] are you quite happy he understands? [A25]	Initiation
Third party	Responds (Yes/no/variant)	yes	Response

Figure 9.5 – The cautioning exchange (Officers' turns are in blue, detainees' in red and others' in green. Items in bold are discussed below.)

Cautioning thus has a canonical form, minimally consisting of one obligatory slot (marked with an asterisk, in Figure 9.5), typically consisting of at least three slots (marked with = signs) and maximally consisting of this much longer series of moves (Goffman, 1981:24)¹⁵. Within this structure officers ostensibly assess detainees' comprehension twice, in the slots marked with + signs. In some cases constituent moves “relate to one another in some predictable ways” (Cody and McLaughlin, 1988:116). For example, the response to *do you understand* is almost invariably *yes* (see Chapter 12). Relationships between other constituents are less predictable. For example, an incomplete reformulation from a detainee does not always precipitate a ‘corrective’ reformulation from an officer (see Chapter 13). Additionally each constituent might be performed very differently by different speakers. For example, looking to the officer reformulation turn, some officers respond to detainees’

¹⁵ Russell describes a rather more constrained version of this structure which occurs in interviews mediated by interpreters (2000:27).

reformulations with explicit evaluation (exemplified by the excerpt from A37, above), others by prospecting their own reformulations (A7, above) and yet others by simply beginning a reformulation of their own (A48, above).

Cautioning exchanges potentially leave detainees in some doubt about what they have experienced and why. For example:

- officers state the caution without advising detainees that they might imminently be asked to explain;
- officers seek reformulation from detainees, sometimes without explaining why. As their interlocutor has just confirmed comprehension there is considerable positive face threat in this request (see 13.3);
- similarly, explaining something, especially something which one's interlocutor claims to understand is inherently face-threatening.

Furthermore, detainees rarely initiate “*negotiated* misunderstandings” cued, for example, by metadiscursive admission of misunderstanding (Blum-Kulka and Weizman, 2003:110). Of the 151 cautioning exchanges examined here, only one sees a detainee request a reformulation and that request is only prompted by cautioning procedure itself:

P can you just tell us what you think [the caution] means
 D er well I don't - you'll have to explain it to me
 P right

[A32]

Whilst detainees may benefit from an explanation of the caution, their apparent lack of interest in receiving one illustrates that the cautioning is concerned with more than addressing detainees' needs. Ultimately, not only detainees are addressed through cautioning exchanges:



Figure 9.6 – The police interview room

Figure 9.6, taken from the detainee's perspective on a police interview room, illustrates that the non-present, overhearing courtroom audience who may later hear or see a recording or transcript of the interview has, to some extent, a presence in the interview room through the cassette recorder or video camera which, in this case, dominate the room (cf. Heritage and Greatbatch, 1991, Heritage, 1985). Gibbons describes the courts as the “first” audience of statutory wordings like the caution (2003:186). Indeed participants in these data orient to the presence of this potential overhearing audience throughout cautioning exchanges, as Chapter 14 will illustrate.

9.9 Assumptions underlying cautioning procedure

If the legal system genuinely intends a standardised caution wording to inform all individuals about their rights in custody, it assumes communication is linear and that that caution is a conduit (Reddy, 1979). However, if it then offers a different, potentially more spontaneous rendering and asks officers and detainees to discuss meaning, it problematises these assumptions. Cautioning procedure rests on assumptions about the nature of communication and comprehension, outlined in Figure 9.7. Ultimately, it asks officers and detainees to buy into a commodification of comprehension as assessable and countable.

Providing an official wording assumes that:

- there is one optimal formulation for delivering any given proposition(s) to all people, across settings and situations;
- AND the transmission model of communication holds (see 2.3);
- OR, if there is not one optimal formulation, there are other motivations for using one official formulation which override that. These motivations for using a standard formulation might include achieving performativity and formulaicity through an official formulation and practical considerations like assisting memory.

Conversely, allowing officers to reformulate assumes that:

- there is not one optimal formulation for delivering any given proposition(s) to all people, across settings and situations;
- speakers have an innate ability to explain propositions effectively in any situation;
- OR speakers can be taught to explain propositions in a maximally effective way;
- speakers can successfully tailor explanations to their interlocutors after minimal interaction.

Repeating an official wording at different stages of arrest and detention assumes that:

- addressees will recognise subsequent identical language instantiations as being 'the same' across different situations, settings and contexts (recognising that the same wording is used at arrest and interview);
- YET, addressees will recognise semantic difference between different instantiation of identical language across different situations, settings and contexts (recognising that although the same wording is used at arrest and interview, it is not intended to mean the same thing on each occasion);
- addressees will understand propositions contained within a formulation more deeply if they are exposed to that formulation repeatedly.

Checking comprehension using a yes/no-inviting question assumes that:

- language users can make sense of a binary 'understanding vs. not understanding' distinction and that such an opposition is useful;
- language users share common notions of 'understanding';
- addressees can assess their own comprehension, irrespective of whether they understand or not;
- addressees will assess their own comprehension honestly, in detention.

Requesting a reformulation to check comprehension assumes that:

- ability to articulate indicates comprehension;
- ability to articulate indicates ability to apply information;
- inability to articulate indicates incomprehension.

Both comprehension-checks assume that:

- officers can make sense of detainees' responses, assessing whether a particular reformulation demonstrates comprehension, for example, and can devise appropriate responses of their own, accordingly;
- the caution is likely to be understood (cf. Heydon, 2002:187).

Cautioning immediately before interviews assumes that:

- addressees can best act on information as soon as they receive it;
- addressees do not benefit from time to reflect on propositions before responding to them.

Figure 9.7 – Assumptions underlying cautioning

9.10 Working with meaning

An important legal and linguistic question is ‘what does the caution mean?’. Officers in these data had clearly thought long and hard about accurately answering. The grid below amalgamates the information which all officers introduced when reformulating the caution, although individual officers did not present all points. Accordingly, the grid offers a thorough picture of the caution’s meaning, as officers see it. It links each facet of meaning to its source in the official wording.

Official wording	Meaning	
You do not have to say anything	You have a right to total silence	
	You have a right to partial silence (silence in response to some questions)	
But it may harm your defence	Some linguistic (in)activity during the investigation may be detrimental to your case as it may cause the court to draw negative inferences	
	Linguistic (in)activity may not be detrimental to your case because, although the court may draw negative inferences on the basis of that (in)activity, it may nonetheless disregard that inference or its outcome	
	Linguistic (in)activity may not be detrimental to your case as the court may not draw negative inferences on the basis of that (in)activity	
	Linguistic (in)activity may not be detrimental to your case as the court may draw positive inferences from it	
	The courts can draw particular inferences. The inferences which officers mention are: <ul style="list-style-type: none"> that the detainee is guilty that the detainee has something to hide that the detainee has “guilty knowledge” 	
if you do not mention ... something which you later rely on in court	The court can draw negative inferences if detainees ‘come up with a story’ when they reach court having been silent during interview	The court can only draw negative inferences if the detainee answers specific questions in court which are identical to those he/she refused to answer in interview [coming up with a story 1]
		The court can draw negative inferences if any evidence is presented as part of the defence (verbally or otherwise) which addresses anything which the detainee might reasonably have been expected to answer or raise themselves during interview, but which they were, in fact, silent about [coming up with a story 2]
	The court can draw negative inferences if detainees ‘change their story’ when they reach court having given a different story during interview	The court can only draw negative inferences if the detainee answers specific questions in court which are identical to questions asked during interview with responses which are different from those they provided to those questions during interview [changing the story 1]
		The court can draw negative inferences if any evidence is presented as part of the defence (verbally or otherwise) which addresses anything which the detainee said during interview, but about which they said something different during interview [changing the story 2]
when questioned	The caution only applies to your answers to my questions	
	The caution only applies to your comments during ‘questioning’ (interview)	
	The caution applies to anything you say whilst at the police station	
	The caution applies to anything you say whilst under arrest	
Anything you do say may be given in evidence	Words exchanged during this interview can be presented as evidence [The method of presentation might be exemplified]	
	All officers’ words can also be given in evidence	

Figure 9.8 – What does the caution mean to police officers?

Chapters 10-14 examine how these diverse semantic possibilities are incorporated into officers' work and detainees' lives.

CHAPTER 10: WORKING WITH SEQUENCE

10.1 Introduction

The caution has a fixed ‘structure’, division into discrete units, and ‘sequence’, the ordering of those units. It has been suggested that its structure consists of three “ideational sections” which correspond to its three sentences (Russell, 2000:33). Police training divides the caution and its explanation this way (National Crime Faculty, 1998:173) as do officers themselves. Officers are not all confident in the structure however. As one explained:

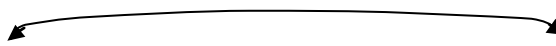
whilst [detainees] are trying to understand the first bit the second bit’s thrown at them and then they’re ((laid)) with the third bit “what was that again?” [AO22]

The caution’s sequence is well established, yet it too has attracted criticism (Cotterill, 2000; Russell, 2000, cf. Shuy, 1997:178). The Chapter therefore begins by considering the adequacy of the current caution sequence (shown in Section 9.1) and two alternative orders.

10.2 Re-sequencing in principle

Perhaps the most obvious reordering moves the caution’s medial sentence, apart from the coordinator *but*, to a final position (below, and throughout, numbers in square brackets indicate original sequential position of the subsequent text):

[1] You do not have to say anything. But [3] anything you do say may be given in evidence. [2] It may harm your defence if you do not mention when questioned something which you later rely on in court.



This ‘1-3-2 sequence’ makes sense. It preserves the right to silence, historically the caution’s main focus, in the initial position and it places the caution’s two relatively certain propositions first and its relatively vague middle sentence last. It also allows the now final sentence to have a shallower syntactic structure than in the original, without its *but* coordination. Finally, it removes the possibility of detainees taking the *it* of sentence 2 as

anaphorically invoking the previous sentence (*You do not have to say anything. But **it** may harm your defence*)¹.

The new position of *but* is also influential. It disambiguates the two adjacent *anythings* to some extent by foregrounding their identity. More importantly it realigns adversative relationships (Halliday and Hasan, 1976; Russell, 2000:35) and interactive implications (Hoey, 1988:62-3) between sentences. Generally *but* indicates unexpectedness or contrast, whereas *and*, for example, indicates expectedness (Winter, 1976, in Hoey, 1988:61).

Replacing the interaction between sentences 1 and 2 with interaction between 1 and 3 alters the caution's meaning dramatically because sentence 2 concerns silence whilst 3 concerns speaking. To illustrate, the initial two sentences of the official formulation connote 'you do not have to speak but if you **do not** you might regret it' whereas the initial two sentences in the 1-3-2 sequence connote 'you do not have to speak but if you **do** we will record you'. Thus, the formulation in use could be said to encourage speech whereas the 1-3-2 sequence encourages silence.

An alternative 2-1-3 sequence moves the right to silence from its initial position. This too changes meaning:

↖ [2] It may harm your defence if you do not mention when questioned something which you later rely on in court. But [1] you do not have to say anything. [3] Anything you do say may be given in evidence.

This sequence rather puzzlingly presents silence's consequences before presenting silence, stating that speech may ultimately be beneficial and, only then, that nonetheless speech is optional. This turns the current formulation on its head. To illustrate, a *so*-prefaced clause, following from the current sequence might suggest '... so you might as well say whatever you can now' whilst one following from the 2-1-3 sequence might disagree '... so you might as well keep quiet because you can'.

Thus, the sentence-sequence of the official wording tends to encourage speech more obviously than either of these other possibilities. In Shuy's terms it is coercive (1997:178). Nonetheless, these alternative sequences contain all three original sentences so, some might

¹ This would involve taking *it* not as a cataphoric dummy *it* but as analogous with unattended demonstrative *this* (Finn, 1995:242).

argue, maintain the original cumulative force, rendering the preceding discussion relevant only to moment-by-moment comprehension. Such pragmatists might further note that, in practice, the official wording's sequence is fixed and officers are likely to maintain a 1-2-3 sequence when reformulating in order to track 'where they are' in the ongoing reformulation and create a copy which is like the original in a way which will be obvious to their interlocutor and to any subsequent overhearing audiences. However, Russell has found that officers do resequence. Examining thirteen authentic caution reformulations administered through interpreters she found that seven explained the caution in its original order but six, apparently inexplicably, re-sequenced, reversing the second and third sentences (Russell, 2000:33). Russell's resequencing officers are not anomalous; indeed the larger data set used here reveals that officers do much more than simple resequencing.

10.3 Re-sequencing in practice?

Figure 10.1 overviews the sequences adopted by each of the 144 officers in my data who reformulated, revealing how few adopt the original 1-2-3 sequence:

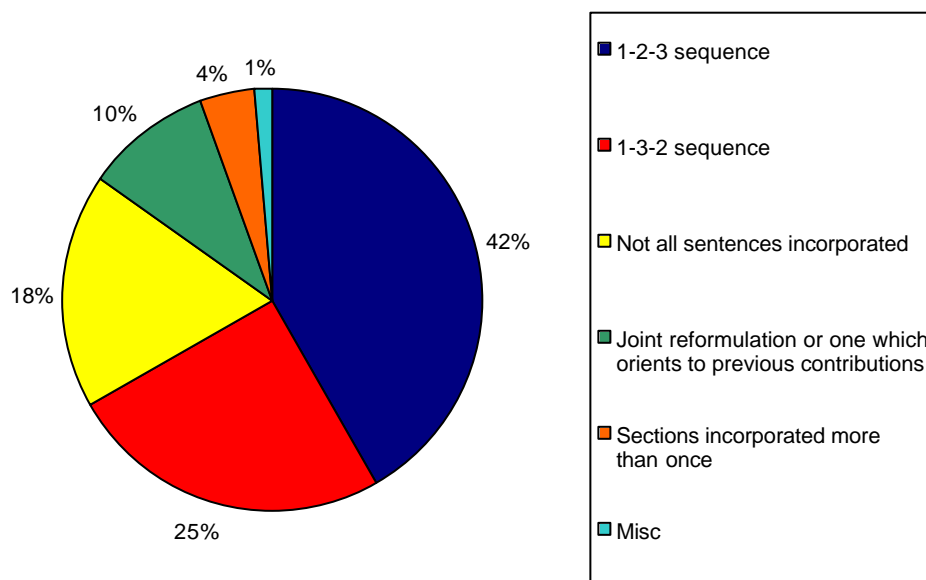


Figure 10.1 – Discourse sequence of officers' reformulations across all forces

Across all forces, well under half of officers used the original discourse sequence (42%, $n=60$), although more adopted this predictable sequence than did anything else. Remarkably,

a quarter of all officers resequenced, predominantly selecting a 1-3-2 sequence (25%, $n=36$). Only one officer who reformulated completely and linearly began with anything other than the right to silence. He adopted a 2-1-3 sequence². The two sequences explored in the opening sub-section of this Chapter are, therefore, the two which officers employ. Yet this only accounts for 67% of officers; what of the others? Figure 10.1 reveals that almost one fifth of officers removed the propositional content of some sentences from their reformulations altogether (18%, $n=26$). On the other hand, 10% represent particular propositional content repeatedly ($n=14$). Thus, at the macro level, officer reformulations in these data are not ‘the same’ as one another because not only are some composed of differently sequenced components but others do not even contain all components.

Cushing’s oppositional delineation of repetition provides a framework illustrating what officer revisions should, presumably, be:

The officer paraphrase should be:	It should not be:
genuine (actual and intended replication)	virtual (resembling a previous utterance significantly but not intended as replication)
conceptual (replicating meaning)	literal (only replicating words)
correct (substantially replicating relevant features)	incorrect (failing to “replicate some key feature”)
full (an entire replication)	partial (replication of only part of a previous utterance)

Adapted from Cushing (1994:55)

These oppositions distinguish instances of cautioning from one another and highlight what makes felicitous cautioning a demanding explanatory task. Officers are presumably expected to generate genuine, conceptual, correct repetitions – a literal repetition which simply regurgitated the whole official wording would not constitute explanation here, for example. However, in Russell’s data, some officers did simply repeat parts of the official wording when ostensibly reformulating (2000:40). Here too, many officers use literal repetition (Cushing 1994:55). This might initially seem indicative of impoverished explanation. However in these data literal repetition was often divided into sections interspersed between the main conceptual repetitions and thus it structured reformulations and potentially provided “catch-up” time for detainees “whose attention may have lapsed” (Merritt, 1994:28). This may be particularly important when there is noise, and for emphasis and highlighting, “especially when people have to communicate through very controlled language” (Johnstone *et al*,

² This officer appears in the chart’s “miscellaneous” category.

1994:9). Such literal repetition focused on the ‘difficult’ medial sentence (Chapter 11). Seemingly, ‘good’ reformulations can come in many forms and ‘bad’ reformulations may not be all that they seem.

The picture becomes more intriguing still. We might expect that if 42% of officers reformulate using the original sentential sequence, these 42% would be spread fairly evenly across each force in the data set. However, this was not the case (Figure 10.2)³:

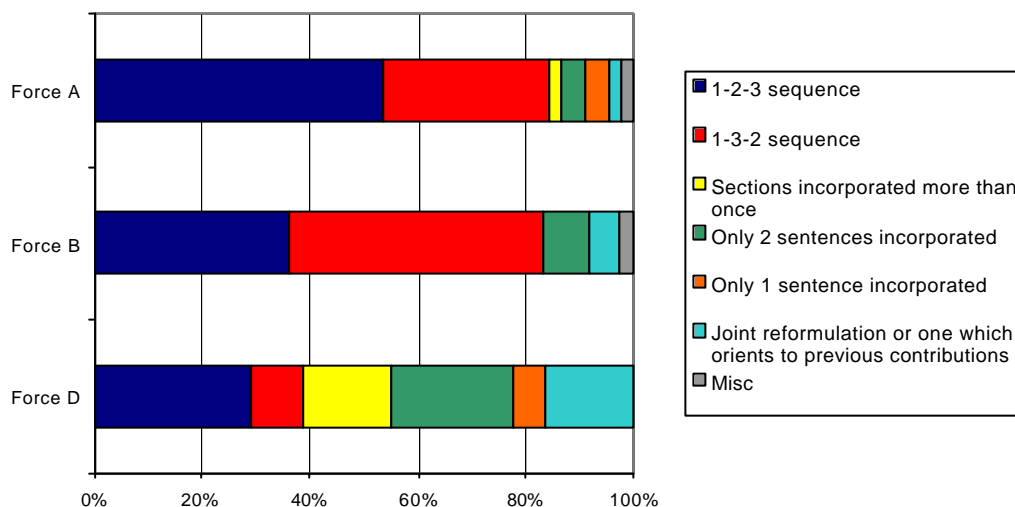


Figure 10.2 – Relative percentages of sequence of officer reformulations within forces

Figure 10.2 reveals that detainees are most likely to hear:

- A predictable 1-2-3 sequence in Force A (53% of officers)
- A slightly less predictable 1-3-2 sequence in Force B (47% of officers)
- An incomplete or repetitive reformulation (the yellow, green and orange sections of Figure 10.2) in Force D (45% of officers)

This state of affairs is a catalyst for qualitative analysis. Accordingly, this chapter uses excerpts from reformulations delivered in all forces to probe characteristics of reformulations and their sequence. It then uses that examination to draw hypotheses about whether officer practice and institutional policy influence the texts officers produce.

³ As in other sections, Forces C and S have not been included in this quantitative overview, as Section 9.5.1 explains.

10.4 Structural metalanguage

The reformulation below could be quite bewildering. In it the cautioning officer leaps from explaining sentence 1 to sentence 3 without marking division between them and without noting that his reformulation is differently sequenced from the original which he had just delivered:

- 1 P [1] I'm going to ask you some questions (.) it's up to you whether you answer some or all of them [3] the ones that you do answer are recorded on this tape machine and may be used in a court of law if required to do so =
- 2 D = that's fine =
- 3 P = [2] if I asked you a question tonight (.) and you declined to give me the answer do you understand that?
- 4 D that's fine yeh [A3]

Such re-sequenced reformulations offer a novel vantage point on the caution's semantico-pragmatic territory, but potentially bewilder detainees who overlook reordering. Indeed, this detainee's latched evaluative acceptance (turn 2) may suggest that he believes the reformulation has concluded, long before it has. Many officers potentially avoid such confusion using metadiscourse (Van de Kopple, 1985; Barton, 1995; Davies, 1997; Hyland, 1999; cf. Mauranten, 1993) or metalanguage (Stross, 1974; Laugharne, 2000; Loewenberg, 1982; Maschler, 1994) to mark their reformulations' structure. As AO33 explained, the caution is *not difficult when you break it down*. This cautioning practice was first observed by Russell who cites an officer prefacing his reformulation with the words *there are three parts to the caution* and identifying particular parts with, for example, *the first part is...* (2000:34). The following three excerpts illustrate this practice and its diversity in more detail. We join the first, as the officer clears the debris of an attempted detainee reformulation, replacing it by identifying and delineating *parts*:

it's split into **three parts the first part** is you're when I'm asking the questions now or in this interview you don't have to say anything **the second part** is (.) if you don't mention something now when I'm asking you questions and if it goes to court and **the third part** is anything you do say here in this interview can be used ... [D12]

His *three parts* correspond to the caution's three sentences, and he introduces each through explicit reference to the sequential position of its source in the original, orienting his interlocutor to the relationship between the original and the reformulation throughout. This may have some positive effects; it increases intertextuality with the source text which may, in turn, illuminate that text. Also, in written texts, such enumeration devices (Goldman and

Rakestraw, 2000:315) help readers to monitor their own ongoing comprehension (Goldman and Saul, 1990, in Goldman and Rakestraw, 2000:315)⁴. This may happen here too. A side-effect of this ‘tripartite metadiscourse’ appears to be that the reformulation follows the original sequence. However, other reformulations did not show this effect, using orienting metadiscourse in a potentially disorienting way:

[it's] **split into three parts** (.) **the first bit** you don't have to say anything ... **the last bit** (.) anything that's said (.) here (.) is on tape ... **the middle part** (.) it may harm your defence ... [A2]

Here, the adjectives *first*, *last* and *middle*, indicate the sequence of the official wording but not of the reformulation. This could rather confuse this officer's interlocutor who might, quite reasonably, expect *the last bit* to signal the reformulation's conclusion. By re-sequencing, and using metadiscourse, this officer introduces and foregrounds a complication which he does not explain (cf. Russell, 2000:34). Other officers similarly abandoned tripartite reference towards the end of their reformulations and some only dipped into it, despite reformulating all three parts. Contrast that lack of orientation to resequencing with the metadiscourse here:

- 1 P I'll break it down into three parts **first part** is **straightforward and simple** you don't have to say anything
- 2 D mmhm
- 3 P the **last part - third part** is **also straightforward and simple** it says whatever you do say may be given in evidence they can take the the tape to court and play it if needed right?
- 4 D mm =
- 5 P = the **middle bit** says but it may harm your defence do you understand that?
- 6 D mmhm [A49]

Like the officer in the previous excerpt, this officer flags tripartite structure throughout. Unlike the previous speaker, he additionally uses evaluative metalanguage which links *the first part* and *the last part* by echoing the phrase *straightforward and simple*. Whilst this lexical and evaluative echoing does not explain his re-ordering explicitly, it indicates its motivation, uniting parts which he sees as similar. This provides for his interlocutor to orient to each part on the basis of different difficulty presented.

Whilst officer reformulations are inescapably spoken, they would inhabit the writing-like end of any speech-writing continuum (Stubbs, 1980; Clark and Ivanic, 1997:94). As Section

⁴ This is not to assume that this metadiscourse does successfully illuminate the source text. That would require that detainees themselves recognize the caution's three parts.

14.3.1 will show, these texts are pre-prepared, at least to some extent. Gibbons proposes that additional planning time characterises writing, and brings “increased explicitness in the logical structure” of the resulting texts. For Gibbons this explicitness is manifest in careful signposting of structure through numbers, headings and text-internal links, which render the “logical structure or argument” more explicit and produce “less of ‘and’ but more of ‘therefore’, less of ‘next’ but more for ‘first, second, third’” (2003:162-199). These features are highly reminiscent of these officers’ revisions. Indeed each officer above shows considerable sophistication in using metadiscourse to limit his reformulation in two ways:

- First, by introducing the reformulation as consisting of *three parts*. This avoids keeping addressees guessing about just how many components might be on the way;
- Secondly, by not simply using ordinal numbers which describe sequence in isolation from one another (*first, second, third* as in Gibbons’ description, above), instead limiting and structuring even more fully using *first, last* and *middle* which position each part in relation to the others. Other officers used *beginning, middle*, and *end* similarly.

Most officers who referred explicitly to tripartite structure employed one or both of these delimiting strategies, marking the bounds of the three-part structure either at its outset, or within⁵. This impressive practice uncannily echoes Charrow and Charrow’s advice to organise and highlight text structure by “numbering each of the ideas, and informing the listener beforehand on the number of ideas that will be covered” (1979:1327). It also addresses Shepherd, Mortimer and Mobasher’s empirical observation that delivering the caution whole is “inherently meaningless” and should be replaced with delivery sentence-by-sentence (1995:66; see also Clare, Gudjonsson and Harari, 1998:327).

10.4.1 The extent of tripartite metalanguage

52% of officers used tripartite metalanguage during reformulation moves. Officers also used reference to three parts elsewhere within cautioning exchanges. In some cases this was when

⁵ Only a few officers who noted tripartite structure used the alternative of simply stating that the caution will be ‘broken down’ without specifying the number of emergent parts or using ordinal numbers.

checking comprehension, either within their reformulations, asking, for example, *do you understand that?* or *right?* after delivering each part (A49) or the end of their reformulations (*do you understand all those three bits*, A46). Others use the tripartite structure in responding to detainees' reformulations. The detainee below, asked to demonstrate comprehension by explaining the caution, presents only the medial sentence:

- D (.) um that I have to- that I should (.) if I rely on something in court (.) that I haven't mentioned when questioned here it throws the the the issue into doubt
P basically **that's the middle** of the caution **but of course it starts off at the beginning** and says that you don't have to say anything
D right yes
P so you could if you wanted just stare out the window and **also ends there** anything you do say may be given in evidence [D30]

The officer's assessment of the detainee's contribution introduces the notion of three parts. He augments the reformulation by integrating the detainee's previous contribution into his emergent three-part presentation. The notion of three parts may help the officer to process the detainee's reformulation quickly by permitting a swift assessment of inclusions and omissions. It may also focus the detainee's attention on the propositions he had omitted more closely than simply adding the missing information without any frame of reference.

Officers additionally used reference to tripartite structure in order to incorporate lower-level structures into their reformulations without causing them to unravel. Reference to tripartite structure, in combination with prosodic cues, allowed officer A2 to reformulate thoroughly, whilst recognisably recalling the source text. In reformulating *the first bit*, he delivers the first sentence's propositional content three times (indicated using letters below):

the first bit [A] you don't have to say anything (.) [B] you don't have to answer any question I put to you alright? [C] you can remain silent throughout

By marking all of this repetition as *the first bit*, the officer notes that he is iteratively encoding this sentence, not offering three unrelated propositions. A11 does this rather less elegantly, embedding *three options* within *three parts*:

I'll break it down into three parts the first part means exactly what it says (.) you don't have to say anything you can sit there and sort of say not a word if you like but it basically gives you **three options** and those options are to answer **some** of the questions but not others (.) to answer **none** of the questions or **all** of the questions it's entirely up to you [A11]

Thus, officers use tripartite metalanguage inventively in organising, delimiting and signposting their reformulations. Whether this helps detainees by highlighting comprehension-building structure or distracts them with unnecessary detail, the data cannot show. Detainees themselves oriented to the tripartite structure too:

- | | | | | |
|---|----|---|---|------|
| | 1 | P | do you completely understand that? | |
| | 2 | D | yeah sort of | |
| | 3 | P | sort of? OK I need to be sure that you've got it there in your head exactly what it means are you able to explain it to me in your own words? | |
| → | 4 | D | yeah which bit do you want me to explain to you? | |
| → | 5 | P | the caution bit | |
| → | 6 | D | um hh the don't have to say anything bit is I can- don't have to say anything if I don't I can go "no comment" or just not say anything at all | |
| | 7 | P | yep | |
| → | 8 | D | what was the next bit the next bit's = | |
| | 9 | P | = that it may harm your defence if you fail to mention when questioned something which you later rely on in court | |
| | 10 | D | in other words | |
| → | 11 | P | yeah great? then the last bit anything you say may be used in evidence | [C4] |

This detainee's response to the reformulation elicitation is not to simply begin a ragged attempt at reformulating the whole caution, as most detainees did, but to seek clarification about exactly which part of the caution the officer expects (turn 4). The officer, presumably accustomed to something less sophisticated at this point, not surprisingly misinterprets the detainee as seeking clarification about which part of the whole interview preamble she should explain, specifying only *the caution bit*. The detainee, undeterred by this lack of clarification, simply begins to reformulate *the don't have to say anything bit*. Although she uses no numerical or delimiting labels to mark *bits*, she is clearly using the tripartite division. The officer accepts her reformulation of the first sentence and, in turn 8, the detainee begins to grope for the second. The officer has now apparently tuned-in to the detainee's tripartite structuring and offers the wording of the second sentence (turn 9), finally completing the reformulation herself (turn 11). It is the detainee who initiates this structure, either appropriating an officer style following previous arrests or identifying the structure for herself.

Metadiscourse about tripartite structure assumed particular significance in Force A, being used there by a staggering 93% of officers. To contextualise this figure, in all other forces, the tripartite structure was used by 32% of officers +/- 4. This offers the basis for two hypotheses about how officers' reformulation practices can affect their reformulations' content. Figure

10.2 revealed that 86% of Force A reformulations were quantitatively complete in comparison with only 55% in Force D. The first hypothesis is therefore that a reformulation structured around metadiscourse which identifies three parts, encourages complete reformulations more than one which is not. This has implications for officer training, particularly in forces prone to incompleteness. A second, related hypothesis is that officers who use this metadiscourse are also more likely to present the caution's parts in their original order, as Figure 10.2 also revealed that Force A officers used the 1-2-3 sequence more frequently than officers in any other force⁶. As one Force A officer explained:

[the official wording] tells them in that order so it sounds logical to explain it in that order [AO01]

10.5 The official paraphrase question

The 1-3-2 sequence was particularly prevalent in Force B, adopted there by almost half of officers (47%). Force D again offers some context: only 9% of officers there adopted this sequence. Why have so many Force B officers re-sequenced in a way used so sparingly elsewhere? A likely cause demonstrates the impact of force policies on officer practices. Force B provides an official paraphrase in every interview room which adopts a 1-3-2 sequence (see Appendix 22):

You have a right not to say anything if you do not want to.
 Anything you do say can be given in evidence. This means if you go to court, the court can be told what you have said.
 If there is something you do not tell us now, when we ask you questions and later you decide to tell the court, then the court may be less willing to believe you.

As well as its resequencing, some other aspects of the paraphrase are noteworthy. It repeats the source text of sentence 3, before paraphrasing, which contrasts with officer practice. Officers most commonly repeat sentence 2 within reformulations. It also glosses inference-drawing as *the court may be less willing to believe you*, leaving detainees to conjecture 'less than what?'.

⁶ This sequence was most common in Force A, despite the existence of an infrequently used sample explanation which adopted a 1-3-2 sequence.

The provision of an official paraphrase evidences standardisation, “the practice of making and enforcing rules for language-use with the intention of reducing optional variation in performance” (Milroy and Milroy, 1998, in Cameron, 2000). It places “new linguistic demands on workers [which] may in practice entail new (or at least, newly intensified) forms of *control* over their linguistic behaviour, and thus a diminution of their agency as language-users” (Cameron, 2000:323; see also Cameron 1995:76). The widespread introduction of a standard paraphrase of the caution has been strongly recommended (Cotterill, 2000:21, Russell, 2000:45). Its formulation could be based on current guidance, for example, that issued by the National Crime Faculty (Clare, Gudjonsson and Harari, 1998:328). However, these data suggest that provision of a standard paraphrase is not straightforward.

Force B officers responded to official paraphrase in one of five ways. A first set of officers simply read it aloud, the response one might expect. These officers have not been included in this Chapter’s statistics which are concerned with officers’ own reformulations. However, they were fairly numerous and show the tendency identified by Heydon (2002:83-5; 185; 187) for some officers to resort to institutional formulations whenever possible. A second set of officers almost used the paraphrase, but augmented it minimally, as in the example below, where additions are highlighted in bold:

I’ll just explain to you what the caution means (.) you have a right told what you said **here today** if there is something less willing to believe you **do you understand that?** [B11]

The officer adds initial orientation, positioning the explanation as such, and appends a final comprehension-check. He also inserts *here today*, addressing an omission from the official reformulation, by clarifying which words can become evidence (see Section 12.4). Other officers too identify this gap, inserting the prepositional phrase *in interview*, for example (B26). Thirdly, at the other extreme of responses to the paraphrase were officers who apparently disregarded it entirely – providing an official paraphrase was no guarantee of its uptake.

Between these extremes of total adoption and total rejection of the paraphrase, a fourth group of officers used its leitmotiv but improvised elements. Improvisations typically incorporated evaluation (Thompson and Hunston, 2000), rewording (Fairclough, 2001:94) or repetition particularly altering pronouns (cf. Cameron, 2000:324). The fifth response incorporated only

a small element of the official paraphrase into officers' own reformulations. Some borrowed a short string here and there, whilst others appropriated clause-structure. Most notably, officers borrowed one particular predicate, *may be less willing to believe you*. Seven of the ten officers who borrowed only part of the official paraphrase borrowed this part. Many officers interviewed reported finding reformulating the caution's medial sentence particularly tricky, the concept of inference-drawing presenting a particular challenge. The tendency to borrow only this predicate indicates how gladly officers accepted help here (see Section 11.5.1).

This uptake of the official paraphrase in Force B suggests three hypotheses. First, that official paraphrases will be filtered through practice. Accordingly any paraphrase must be assembled with its likely appropriation in mind, and will only be as 'good' as the reformulations it spawns. Secondly, placing an official paraphrase in interview rooms and institutionally advocating its use may dictate whether officers acknowledge it at all. Force A officers were also offered a 1-3-2 official paraphrase but much more informally – it was distributed to officers, yet few had encountered it (AO29) and its influence was not discernible⁷ (Appendix 23). Finally, officers will not necessarily use a paraphrase even if colleagues do; responses to such texts may be diverse.

10.5.1 Attitudes to official paraphrases

Force A officers were unanimous that the current caution requires explanation. Despite having autonomy to reformulate on a case-by-case basis, many reformulate identically every time, using their *pat* (AO01) or *spiel* (AO25) to consistently adopt *the same role* during interviews (AO12) and, they believe, avoid repetitive or circuitous reformulations (AO30). This speaks for a standard paraphrase. If officers simply regurgitate their own 'standard', they might as well regurgitate an institutionally assessed and accredited one. Some officers indeed advocated a standard paraphrase, identifying particular problems with autonomy, as AO18 summarised (numbering and format mine):

⁷ Nonetheless it is possible that in Force A too, the official paraphrase influenced discourse sequence less obviously, because Force A shares with Force B a higher incidence of 1-3-2 sequence than Force D (36% in Force A). The dissemination of practice in Force A will be considered in Chapter 14.

some police officers either

- (1) **haven't got the nous** to be able to explain it properly or
- (2) **don't understand it themselves** and I don't know what it is but I've sat in on some interviews where some people have tried to explain it ... and
- (3) they've spent **five minutes rambling** with him so a short explanation and
- (4) it would also get over that problem I've said where I **might put a slant on it** wrong [AO18]

Other officers who also championed an official paraphrase proposed that it *would be less confusing* to regular detainees, who currently encounter different reformulations on successive arrests (AO25)⁸ (cf. Cameron, 2000:331); would *make things easier* (AO26) for officers (on the Home Office agenda (Blunkett, 2002)) and *would be an accepted text which would rule out any argument* from solicitors (AO26). Officers who took this position represented the extended cautioning exchange as a site where text is created to fulfil institutional needs (demonstrating comprehensibility and unassailability) rather than linguistic or psycholinguistic needs (genuinely creating comprehension) or personal needs (contributing to an emergent officer-detainee dynamic). Others agreed that much of the caution's function is affective for the projected overhearing audience, but felt that a standard reformulation would perform ensuring comprehension less persuasively than a spontaneous one. AO22 explains:

if there was [a standard paraphrase] it would purely be down to us trying to prove to the courts and those lovely people in the jury that we've bent over backwards trying to make sure that everything is understood

Overall many more officers, like this one, favoured continued use of own-word reformulations over standardisation. Some raised practical objections, claiming that it might be impossible to devise a standard formulation which would be beyond criticism, would not interfere with officers' internalisation of the official wording (AO42) and would be easier to remember than an extemporised explanation (AO16). Others could not envisage what a standard explanation of the caution would 'be' – how it would fit into the model of the cautioning exchange, suggesting *if it becomes rigid then somebody will ... say ... that might as well be the new caution* (AO38). They saw this too as having practical implications:

you can't have ... another set of words as a standard set of words to explain the first set of words otherwise you'd have another set of words to explain the standard set of words you'd be going on *ad infinitum* wouldn't you? [AO41]

⁸ This position assumes that regulars do not benefit from such diversity and also ignores the diversity which may confront any detainee during a single detention, from officers and solicitors (AO15).

Thus officers feared having to *explain the explanation* (AO19, AO07) through a blurring of cautioning components. At the extreme, an effective standard paraphrase was completely implausible to some, like AO19 who proposed that it would rely on *some microchip in our head that tells us automatically*.

Most pervasively, however, officers who opposed a standard paraphrase were simply concerned about the potential for their explanations to fail as explanations through loss of *that personal touch* (AO10). AO41 summarised, distinguishing the caution, *the form of words* from its explanation, *your own personal relationship with the person you're talking to* (AO41). For him reformulation is not essentially something one does to words, but something one does to, and as a result of, detainees. Three themes emerged from officers' comments on the value of free reformulation:

- Detainees have different *levels* of comprehension (AO05);
 - there's such a variety of people and their understanding is different for each one (AO11)
 - some are university graduates and some can't read (AO48)
- Officers must evaluate detainees' comprehension in context;
 - I would put it down to each individual to assess the situation [which may be] volatile or stressful [putting suspects] on a high (AO28)
- Cautioning exchanges must accordingly fit particular detainees.
 - officers should explain ... according to the person that they're speaking to (AO05)
 - what is a suitable explanation to one might not be to somebody else (AO35)

Many officers accordingly described tailoring their reformulations to particular detainees, claiming, for example, *I vary it ... to however I think they're going to understand it best* (AO05). Some did this routinely, like AO45 who used a tripartite structure but selected words within that structure *according to the audience* and AO24 who *moderated* his reformulation *so that it's in the other person's language*. AO48 forcefully advocated allowing officers to respond to diversity through tailored reformulations even if, as a result, some detainees only get *the basic understanding*. An official reformulation in Force A, where autonomous reformulations have such currency and potency, would need to be positively evaluated by officers, widely distributed, easy to work with, modifiable, and perhaps compulsory if it were to overcome officers' disposition to free reformulation.

10.5.2 The official paraphrase versus free reformulation

It is quite plausible that the Force A officers cited above do accomplish something like audience design (Bell, 1984; 1997), accommodation (Giles and Powesland, 1975; Coupland, 1984) or crossing (Rampton, 1995), as they suggest. However, it is one thing to accommodate towards one's addressee, but quite another to do so in a way which might promote comprehension, especially within institutional constraints. "Awareness of the reader/listener does not automatically translate itself into an awareness of what linguistic strategies should be adopted" for particular readers' benefit (Solomon, 1996:289). On the other hand, a script which fully specifies "every word uttered" (Cameron, 2000:330) has risks too. Section 9.7.2 illustrated the problems generated by formulaicity and resulting repetition in the official wording, but concluded that, there, standardisation offers substantial advantages. However, as Cushing points out, "the standardisation of terminology and protocol, though necessary up to a point, may well be counterproductive beyond that point" (1994:63). For many Force A officers an official paraphrase is that point. Furthermore, use of a script shapes reformulations. Officers who used the script delivered it using intonation which made their aloud reading (Goffman, 1981:171) very obvious. Less predictably, they made direct reference to the script, telling detainees that they had a 'crib sheet', bringing their animator role explicitly into the interaction. The script also had knock-on effects on those who didn't use it: most reformulations from throughout Force B were much shorter and much less dialogic than those in forces which do not offer a 'script'.

So, there appear to be points against an official formulation, yet also against officer autonomy. Several officers accordingly presented a compromise solution, the introduction of *guidelines* (AO25) or of a specimen wording issued *for guidance* (AO38, AO31) which, they suggested, might offer authorisation with flexibility. Cameron too illustrates several alternatives to scripting. First, a "prompt sheet", which specifies interactional moves and their sequence without prescribing "a standard form of words". Secondly, and involving less prescription, guidance on the "staging of a transaction" which leaves the accomplishment of each stage to speakers' discretion (2000:330). Such mitigated measures might be a more appropriate basis for monolingual caution explanations than either free reformulation or total scripting, because they acknowledge that officers themselves will dictate how any procedural change is taken up. Furthermore, "practices of scripting, styling and surveillance cannot entirely override the necessity for interaction to be locally managed, but they can and do place

constraints on the freedom of participants to ‘design their talk’ or to choose how they will make their institutional identities ‘relevant’” (2000:342). Accordingly, officers in these data seemed resistant to such practices both in use (Force B) and in principle (Force A).

10.6 Disparate practices within one force

Turning now to the third most common reformulation characteristic revealed by Figure 10.1, incompleteness afflicted 18% of reformulations examined here. Examining the causes of omissions uncovers very different ways of reformulating from those discussed above.

The caution’s third sentence is perhaps the most likely candidate for omission because, if one explains the second sentence (courts can consider evidence from interviews) the third sentence (interviews become evidence) follows. Accordingly, of the 18% of incomplete reformulations, 11% included only two of the caution’s sentences, invariably the first and second, and 7% included only one sentence, most commonly the middle sentence, occasionally the final one. No officer explained only the right to silence. The officer below demonstrates:

- | | | | |
|-----|---|---|-------|
| 1 | P | [official wording] do you understand that? | |
| 2 | D | yep | |
| → 3 | P | so basically now (.) we’re going to be asking you some questions: (.) OK? | |
| 4 | D | yeh | |
| → 5 | P | and if when asked you- yous don’t say anything but you later say something in court
(.) do you understand that? you do? you’re nodding | |
| 6 | D | yeh | |
| 7 | P | and (.) your solicitor’s here to give you any (.) specific legal advice | |
| 8 | D | OK | [S18] |

This reformulation, which began in turn 3, appears to be focusing on the caution’s middle sentence by turn 5. It does not introduce the semantic content of any other sentence and, due to the unresolved *if*-clause of turn 5, even the middle sentence remains unexplained resulting in a reformulation which is fairly indisputably nonsensical. It concludes with *and* which introduces explanation of the right to legal advice, suggesting that that too is part of the caution reformulation.

This seems desperately insufficient as an explanation of the caution. The officer appears preoccupied with the middle sentence at the expense of completeness. This reformulation was

from the supplementary set, issued in various police forces during 1996 and early 1997 when the current caution was a relative novelty (see Section 9.5.1). This novelty perhaps explains their tendency to directly address the change from its predecessor, which contained nothing of the current medial sentence. Another officer, for example, who also presented only the medial sentence preceded it by saying *the difference between that caution and the old caution is...* (S23). However, incompleteness occurred in the more recent data too and, as in the following examples, often co-occurs with other ‘problems’:

- 1 P do you understand what the caution is?
 2 D yes
 3 P what's your understanding of the caution Fred
 4 D urm (5.8)
 5 P do you have any idea (.) what it means?
 6 D what the caution?
 7 P yeh when I cautioned you then wha- ur what's your understanding of what those words mean?
 8 D I've c- I've been cautioned
 → 9 P yeah alright and what it means is [3] whatever is said here in interview room can be used (.) if it goes to trial //if it goes to court yeh?//
 10 D // oh yes yeh right //
 → 11 P so what I'm saying is it's important that we say the truth at this stage
 12 D //yes//
 → 13 P //you// know because [3] it could be brought up in court if it goes to court do you understand what I'm saying //that's// what that's what it //means//
 14 D // OK // // right //
 15 P alright
- [D3]

The officer ostensibly reformulates in turns 9 – 13. He presents those turns as a complete reformulation by introducing them with the words *what it means is* and following them with *that's what it means* where *it* in both cases appears to unambiguously anaphorically tie to *the caution* or being *cautioned*, referenced five times in the preceding dialogue. However, the reformulation only presents the propositional content of the third sentence. Moreover, it is strictly not a reformulation. The officer's *so* (turn 11) hints at a causal relationship between turns 9 and 11 which does not necessarily pertain. If this explanation was from a solicitor or appropriate adult it could be seen as rather successful, but its value as a neutral re-presentation of the caution's propositional and pragmatic content is debatable. Part of the caution's pragmatic message is that detainees make decisions without police input yet in turn 11 the officer aligns himself with the detainee through the pronoun *we* (presumably inclusive *we*) and suggests action. A supplication to truth is certainly not part of the caution's surface meaning, although may be seen as part of its underlying force. Turn 11 foregrounds this second-order aspect of the official wording. Thus we might legitimately assert that this

reformulation is rather loaded, while the officer does not claim that he and the detainee are compelled to be truthful, he does identify truth-telling as *important*.

Examples like this are problematic. Are they reformulations, or even intended as such? If not, what are they and why do they occur where reformulations are analytically, logically, discursively and institutionally predictable? The requirement to explain gives officers a particular power, but their exercise of this power may result in detainees being calmed, confused, distanced, even misinformed. The incidence of incomplete reformulations in Force D was higher than in any other Force, indeed 23% of reformulations in this Force only explicitly included the caution's first and second sentences, compared with 8% in Force B and only 4% in Force A.

The preceding discussion presents a picture of Force D which is improperly dark because, as Figure 10.2 also shows, 16% of officers there reformulate so fully that they cover some parts of the caution several times. Typically this occurred when officers interspersed reformulations of the caution's second and third sentences. Each example below is divided into units which reveal how this materialised. Numbers in square brackets indicate the caution's three parts⁹:

⁹ Detainees' turns, which consisted of minimal feedback, have not been included.

	D29	D9	D26
1	I'm going to be asking questions ur with regard to the offence which you've been arrested for i.e. which is ...	I'm going to basically I'm going to be asking you questions (.) in relation to the offences that you've been arrested for	I'm going to be asking you questions now yeh? with regards to what happened on Tuesday night
2	now	OK now	OK?
3	[1] if you want to you don't have to answer me any of those questions	[1] you- (.) you can choose not to answer any of my questions if you don't want to that's up to you (.)	[1] if you don't want to yeh? you don't have to answer my questions (.) if you don't want to
4	OK however	however (.)	OK? but
5	[2] if you <u>don't</u> and if the matter then goes to court the court may decide then well or may decide for themselves why you haven't given that explanation	[2] if the matter goes to court (.) yeh? um they may make up their own minds as to why you haven't answered the questions when you've been given this opportunity	[2] if the matter goes to court yeah? ... (.) and you tell the court a story there to them they may not want to believe it because (.) today's the day that you tell tells us what happened on the tape
6	OK? and likewise	OK because obviously	you understand that? OK hhh also
7	[3] if you provide me with an explanation today it is being tape recorded and that tape can be used in evidence	[3] what you're telling me (.) is being tape recorded here (.)	[3] if you tell me something today (.) yeh it's being tape recorded on here well it's being recorded on these tapes (.) hhh
8	so	and likewise	and again
9	[2] if you give me an explanation today for example and the matter goes to court ... and you provide them with a different explanation ... then they may choose not to believe that explanation in court because [3] obviously you have what you've said has been tape recorded	[2] if you do answer any of my questions (.) erm and the matter goes to court and if you change your story or whatever by the time it gets to court then again we can use these tapes because (.) [3] as I say at the end of the day they are evidence	[2] if the matter goes to court (.) yeh and you tell them a different story then they again (.) may not want to believe it because [3] obviously this is being recorded (.) and we can play those tapes to the court

These three reformulations are remarkably similar between and within delineated portions. Odd-numbered portions convey propositional content. In the first, each officer prospects questions and their topic. In the third, each outlines the right to silence. Each fifth portion, introduces inferencing. Having dealt in this way with a situated account of silence and its possible consequences each officer moves, in portions 7 and 9, to discuss speech. This macrostructure which presents all details of silence followed by all of talk is innovative in Anglo-Welsh cautioning although the Northern Irish caution uses a similar presentation “if you do not mention... if you do say anything... ” (Appendix 20). The even-numbered portions, containing discourse markers and conjunctions, also exhibit great similarity across officers; each presents interactions between propositional portions informatively. It seems that Force D is characterised by extremes, showing both some very ‘poor’ reformulations which are incomplete and loaded, and others which are systematic, complete and innovative.

Officers’ reformulations are not all ‘the same’ as one another, or even their source, in relation to structure and sequence (cf. Merritt, 1994:25). These case studies and statistics have illustrated the three most common recontextualisation sequences in these data as they are

distributed across different police forces, suggesting a correlation between officer practices and the realisation of their reformulations.

CHAPTER 11: THE CAUTION'S MEDIAL SENTENCE

11.1 Why focus on the medial sentence?

Not only is the caution conveyed through language, it also has a metalinguistic dimension, giving information about talk and silence. Silence, and the ability to silence others, are powerful (Goody, 1986:151; Jaworski, 1993; Tiersma, 1995). They are so potent that some researchers view talk as a boundary marker of silence rather than *vice versa* (Saville-Troike, 1985:3-4). For interactants too, silence is not “reassuring” but “on the contrary, something alarming and dangerous” (Malinowski, 1923:314). Yet whilst silence can potentially “counter” one’s addressee it can also ensnare, offering the non-speaker inarticulateness and disenfranchisement (McDermott, 1988:46, see also Basso, 1979; Bauman, 1983). Silence is best examined as a situated phenomenon, a response in a discursive context (Gal, 1995:172; Mendoza-Denton, 1995:60; Ostermann, 2003:483). In the detention context detainees’ silence is disempowering because it can be ascribed special negative significance (Graffam-Walker, 1985:55f) which skews the immediate interactional function which silence might otherwise have. The caution must communicate this unusual context and signification. However, some detainees whom I interviewed in Force E had apparently missed this aspect of the caution. They instead drew on their own assumptions about what silence means in planning their linguistic behaviour. One explained:

- D I've been in that situation myself where I've pleaded "not guilty" and then when it's come to the trial I've put my hands up and pleaded "guilty" so it's just saves on the jury's time ... I mean it would be queried it wouldn't look good on you for changing your statement ... but I wouldn't have thought they'd do anything about it ... it would just look bad on you
- F and does the caution say anything about that (.) is that something that =
- D = nah it just says you have the right to remain silent and that's what it means [Regular 52]

The caution's first sentence introduces silence, but the medial sentence explains its institutional place, its potential to generate negative inferences. This proposition confirms the lay assumption that someone who is silent may be “hiding something” (Kurzon, 1998:58). In confirming this assumption, it states the obvious, making the possibility of negative inferences marked. Yet the proposition disconfirms a different lay assumption that “it is easier to undo silence than it is to undo words” (Jaworski, 1993:25). The caution must surmount any expectation that silence will be inherently safer than talk without implying that talk is

obligatory. Through this work on possible assumptions the detainee, like the courtroom juror, “is “asked” to modify the decision-making rules that he uses in the conduct of his daily affairs” (Garfinkel, 1967:108). Officers had strong opinions about the caution’s influence on detainees’ linguistic behaviour. A few believed that the caution encouraged silence (*it probably gets people to keep their mouth shut more often than not*, AO06); or conversely encouraged talk, arguably its aim (*people are talking more because they have to*, AO40). Others felt that it influenced decisions no differently from its predecessor despite intending *to make a difference* (AO06). Bucke, Street and Brown, too, found officers sceptical about the caution’s effects on detainees (2000:x). Research evidence, in contrast, is unequivocal, showing detainees “less likely to exercise the right of silence” when confronted with the current caution than its predecessor (Bucke and Brown, 1997:35) and less likely to refuse to answer some or all police questions (23% falling to 16%) or to give ‘no comment’ interviews (10% falling to 6%) (Bucke, Street and Brown, 2000:ix).

Assuming then that the caution’s medial sentence does influence detainees, apparently encouraging talk, the sentence’s comprehensibility is important. Yet officers themselves isolate the medial sentence, *the tricky bit* (AO26), for particularly negative comment describing it as *a mouthful* (AO01) and beyond the caution’s *basic* meaning (AO16). Experimental studies agree that the caution’s second sentence is hardest to understand whether it is presented with its cotext or alone (Fenner, Gudjonsson and Clare, 2002:90; Clare, Gudjonsson and Harari, 1998:327). Some officers were convinced that detainees, particularly novices, were too overwhelmed by the sentence to even attempt to unravel it (AO44):

the bits that they remember are the first sentence and the last sentence ... I think those two points will stick in their mind I think the bit in the middle will just blur

[AO05]

As evidence of low comprehension or engagement, many cited detainees’ responses to the sentence throughout cautioning exchanges. Officers, for example, proposed that detainees’ recontextualisations typically presented only the first and last sentences, attributing avoidance of the medial sentence to its difficulty (AO31) or to residual focus on the previous caution (AO30). Some looked beyond cautioning itself to detainees’ apparent appropriation of the caution during interview when *quite often* it would emerge that they had not attended to the medial sentence:

when you get down to the nitty gritty they just say "well you told me not to say anything ... so I'm not saying anything else" so it's- obviously that bit is registered [AO03]

Officers identified specific linguistic problems with the sentence, finding it *the hardest part to translate* (AO10). They criticised:

- its length (AO38);
- lexis and register which rendered the sentence *clouded in posh language* (AO22), *highfalutin* (AO44) and containing *the wrong words* (AO38);
- insufficient *punctuation* in the written text which influences officers' delivery (AO38), in turn, disadvantaging listeners (AO45).

Research also suggests local problems with the sentence, including: whiz deletion through the omission of *you are* from *when [you are] questioned* (Felker, Pickering, Charrow, Holland and Redish, 1981; Charrow and Charrow, 1979:1323, although cf. Huckin, Curtin, and Graham, 1986:179) and self- or centre-embedding (Charrow and Charrow, 1979:1328). By Bloomfield's definition the second sentence is not even a sentence, being grammatically incorporated into a larger form (1964:170, although cf. Goffman, 1981:22). It has indeed attracted direct criticism for being "grammatically incorrect" as the second sentence qualifies the first and should, therefore, be within it¹ (Shepherd, Mortimer and Mobasheri, 1995:65). Cotterill speculated that specific lexical items would present "comprehension difficulties" to detainees. She identified problem items on the basis of previous research and asked officers to consider them (2000:15). In these data, however, officers identified lexical problems unprompted. AO05, for example, criticised *harm your defence* as unlikely to *mean a great deal to a lot of people*. At the time of the wording's introduction, the *Police Review* (1997:24), the UK's best selling magazine aimed at officers, lampooned the demand to explain, specifically identifying *defence* as likely to cause problems for officers attempting explanation (Figure 11.1):

¹ Shepherd, Mortimer and Mobasheri go on to cite evidence that sentences are processed as separate syntactic units (Slobin 1979) and place additional processing demands on readers (Clark and Clark, 1977; Singer 1990). However, they do not explore how these written phenomena relate to the text as spoken.



Figure 11.1 – The challenge of explaining *it may harm your defence* (Reproduced with permission from Jane's Information Group – Jane's Police Review)

More generally officer AO05 proposed register-shift:

they're not going to say to us "well if I do not mention when questioned" people don't talk like that ... so they don't understand it when somebody else is talking to them in that sort of line [AO05]

AO47, in contrast, approved of individual lexical items but criticised their combination:

there's no long words there there's nothing complicated but ... it's just the way that it's written down I think it tends to complicate things [AO47]

Other officers proposed that irrespective of register, lexis or syntax, the sentence's underlying meaning is complex (AO27). AO23 indeed found the sentence *troublesome* because of *just exactly what it entails* identifying inadmissibility and inferencing as particularly difficult concepts. Others suggested that complexity stemmed from the need for background knowledge. AO34, for example, described invariably explaining *the court process and evidential process* when reformulating this sentence. Others considered pragmatic aspects, voicing concern about whether the wording successfully communicates perlocution:

I suspect that the way it's worded at the moment it doesn't actually fulfil its expectations of ... applying a warning to people about failing to answer questions [AO34]

Despite all of this anxiety, however, AO01 spoke for many when asking *I wonder how else you could say all of that lot in one sentence?* Detainees themselves give mixed messages about this sentence. Interviews with them reveal a more shaky understanding of the caution than any part of the *Notice to detained persons* and particularly sparse accurate comment on the medial sentence. Nonetheless, when asked to recontextualise during police interviews, they were more likely to present the medial sentence than any other. Indeed, a quarter of detainees who recontextualised in police interviews, having affirmed comprehension, focused exclusively on this sentence, although, as we will see, their explanations did not all suggest full comprehension.

Finally, the medial sentence is more challenging than its cotext because it introduces ideas which are still relatively new. Even in 2000, over four years after its introduction, officers still addressed this novelty during cautioning exchanges:

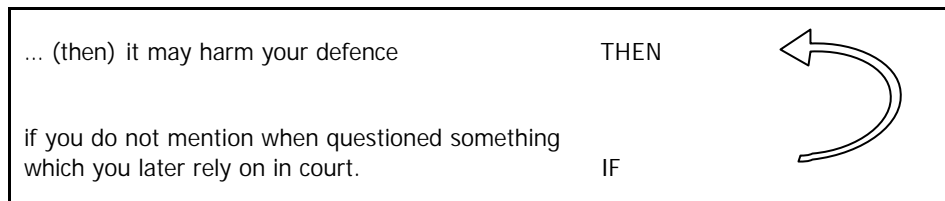
- P [states official wording] (.) now do you understand (.) are you happy with that (.)
 what that means I mean do you want me to run through it
 D nah I understand
 P well what you what you understand it to mean (.) just roughly quickly
 D that if I s- whatever I say can use it against me in a court of law
 P right yeh (.) but it's er recently changed isn't it
 D yeh yeh yep yep
 P well it's been changed for quite a while
 D yeah it has yeh
 P yeh so basically it say you you can sit there and say nothing but if you mention if you
 don't mention something now but go into court and say well this is the story
 D yes good ((news)) for you innit
 P they'll just turn round and say well "why didn't you say during the interview?" [A1]

This Chapter compares officers' explanations of the medial sentence. If officers have a predominantly didactic orientation to explaining, similarities and differences between different officers' recontextualisations may reveal what they see as difficult or important. However, the data suggest that sometimes officers' do not orient to didactic concerns.

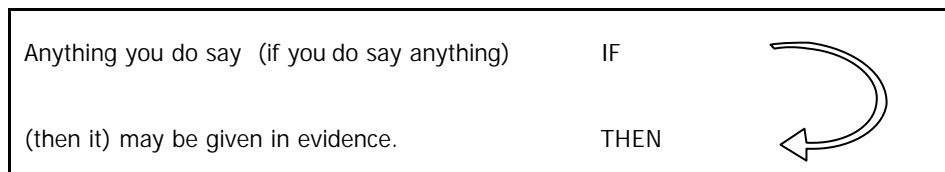
11.2 The macro-structure of the medial sentence

Searle distinguishes hypothetical warnings (which have an "explicitly predictive" *if-then* structure) from categorical warnings ("statements about future events or states which are not in the hearer's best interest") (1967:67, in Dumas, 1990:315). Dumas develops Searle's

(1967) categorical-hypothetical distinction, devising the label 'hidden hypothetical' to describe Miranda (Dumas, 1990:348-9). This label fits the caution equally well, as the caution conveys two sets of hypothetical cause-and-effect circumstances, concerned with "if you do not speak...", and "if you do speak...". The first hypothetical, which occurs in the first and medial sentences, is hidden through reversal of the IF and THEN components and the lack of explicit *then*:



The second, in the caution's final sentence, and not therefore examined in detail here, is hidden through syntactic structure. In Austin's (1962) terms, it is a constative, making an assertion about the world, more than a performative, changing the world by warning:



Dumas' empirical work on readers' responses to warnings recommends hypothetical over categorical warnings. It also suggests that hidden hypothetical warnings will fail if readers do not recognise them as such, illustrating that this happens in Miranda (1990:329). The PEC too advocate *if-then* constructions, recommending "putting the conditional or *if* clause first, [so that] the sentence takes the reader from the conditional to the result instead of the other way round" (1993:32).

This *then-if* structure is also odd when viewed from a different perspective. Enkvist observes that speakers present static three-dimensional states, "as a guided tour" in order to represent them as a temporal sequence (1990:177, see also Tiersma, 1999:208-9). Temporality, he suggests, is highly valued. Hartley agrees that "it is easier to follow a sequence of events in a sentence when the events match the temporal sequence in which they occur" (1981:189). We might, therefore, expect that phenomena which have some inherent temporal sequence might

be presented in that sequence, unless there is some extremely good reason for an alternative. Indeed, “when the actual temporal order of events matches their description in a text, performance is better on comprehension questions” (Ohtsuka and Brewer, 1992, in Goldman and Rakestraw, 2000:318). The middle sentence of the caution can be summarised:

It may harm your defence if you do not mention when questioned something which you later rely on in court.
 It may *x* if you *y* which you later *z*.

Here *y* relates to detainee-police interaction in interview, *z* to subsequent action in court and *x* to a court's response to all that action and interaction. Immediately, the sentence's strange temporal sequence, resulting from use of dummy *it*, is clear:

It may in court [future]
harm your defence if you now [present]
do not mention when questioned something which you later in court [future]
rely on in court.

The sentence can be summarised using an if-then structure and a more predictable temporal sequence:

If you (now) *y* and then at court *z*, *x* might happen.

This makes it clearer that *y* and *z* describe preconditions for inference-drawing whilst *x* describes inferences.

The Northern Irish caution uses this sequence (Appendix 20) as does Clare and Gudjonsson's proposed revision to the caution (1992:38). Officers themselves often adopt this sequence too, across different police forces and times:

↓	Preconditions	if <i>y</i>	<i>if</i> - clause	Talk in interview	if you answer a question now or fail to answer a question now
		and <i>z</i>	conjunction coordination	Talk at court	and should this matter goes to court you either change your answer (.) or come up with an answer
	Inferences	then <i>x</i>	<i>then</i> -prefacing subordination	Court's response	then the court can look at it "well you've had a bit of time to think about what you were going to say"
					[A16]

Officers' formulations, of course, show variety within this *if-then* structure. For example, in the following example, *y* and *z* are both realised as pairs of coordinated clauses, and *then* is elided:

	Preconditions	if y	<i>if</i> - clause	Talk in interview	if I ask you a question now + and you refuse to answer it
		and z	conjunction coordination	Talk at court	and it goes to court + and you answer the question
	Inferences	then x	<i>then</i> -prefacing subordination	Court's response	Ø the court are going to say "well why didn't you tell that the first part of the time" [A23]

However, officers' tendency towards this structure was striking and was, remarkably, shared by detainees too, throughout the data set:

	Preconditions	if y and z	<i>if</i> - clause conjunction coordination	Talk in interview Talk at court	if (.) I don't erm give the information (1.6) now and I were- (.) later rely on something in court
	Inferences	then x	<i>then</i> -prefacing subordination	Court's response	Ø maybe it (.) could be held against me [A42]

Most detainees elide *then*, yet use the *if-then* structure homogeneously:

	if y	Talk in interview	if I don't say something now (.)	if I don't say something now	if I sit here and don't say a word (.)
	and z	Talk at court	and I tell you something later	and later I want to say it in court	that when it comes to the court if I say something
	then x	Court's response	Ø it might not count or it might not be taken into consideration [C1]	Ø it won't er (.) won't mean very much [S3]	then they can look at that and say "well why didn't you say that at the police station?" basically [S15]

The overwhelming adoption of this structure, suggests some norms of reformulating amongst speakers. It also recommends this structure, which has major implications for attempts to rewrite the caution and for cautioning training.

11.3 Detailing the medial sentence

Moving from macro-structure to detail, Adelswärd and Sachs illustrate that during medical consultations which present risk, patients "have trouble handling the statistical probabilities".

Moreover “the doctors hardly ever specify what they are talking about in sufficient detail”. They attribute this to the predominance of complex information about factors which are difficult to distinguish and conceptualise (1998:204-205). This is reminiscent of cautioning, which asks police officers to represent multi-layered possibilities and uncertainties. Officers who explain the caution fully must offer silence, but must also qualify that offer. Many officers were concerned about this, explaining:

I think a little bit of confusion to start with “well can I say something or can't I say something (.) if I do say- what's going to happen if I do say it” ... that's what I think's so complicated about it if they do say something it could damage their chances and if they don't it can damage- I think its very one-sided [AO47]

they've been told they don't have to say anything but then you're telling them that if they don't say something now that they later rely on then you know it could go against them ... I think it leads to a little bit of confusion [AO19]

AO34 saw the final sentence adding a further level of complication:

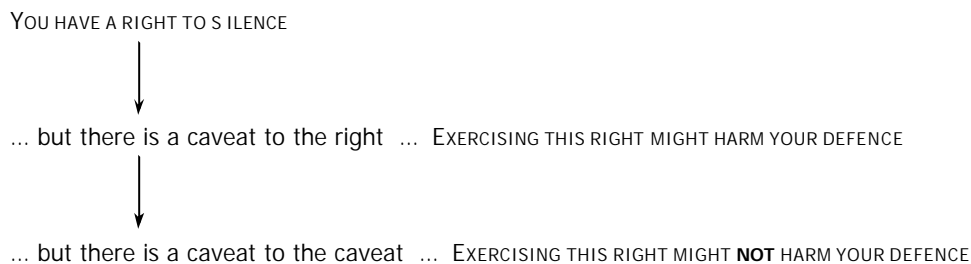
[we] start by saying that they don't have to say anything then we're telling them that if they fail to answer questions it may harm their defence which implies that they've got to say something and then we're telling them that whatever they say will be given in evidence and so its very confusing for them [AO34]

The first two sentences of the caution can be summarised:

Sentence 1:
You have a right to silence

Sentence 2:
but exercising that right might **or might not** harm your defence

The second sentence is therefore intended to convey two opposing possibilities although *but* makes one prominent (see Section 10.1). These are usefully viewed as two caveats:



The rest of this Chapter examines how officers and detainees explain these caveats by filling the slots of the if-then structure:

x the consequences of silence [inferences]
 y what detainees might do to warrant inferences { during interview } [preconditions]
 z { in court }

11.4 Preconditions for inference-drawing

Beginning with the first caveat, y and z above, what do officers say detainees must do in interview and in court to precipitate negative inferences? The data reveal two ways of presenting this:

- First, the ‘**silence route**’ to inferences:

if you **don’t say anything now** and this goes to court and you **later mention something** which wasn’t previously mentioned **at all** [then x , the court can draw inferences] [B7]

Here: y = whole or partial silence during interview
 ...followed by...
 z = providing any verbal evidence in court

- Secondly, the ‘**stories route**’:

if you give us **an explanation now** and you then give **another explanation at court** i.e. **change your mind about your story** [then x] [B14]

Here: y = providing one account in interview
 ...followed by...
 z = providing a different version in court

Both of these ‘routes to inferences’ are expressed by the official wording, but the silence route is perhaps more obvious because it follows from the first sentence’s concern with silence. The Law Society points out that the silence route may be more obvious to officers and has accordingly recommended that their *Codes of practice* be amended to “explain that silence is not restricted to actual silence but extends to failure to mention facts subsequently relied on at trial” (2002:7).

Both reformulations above offer extreme formulations. The first, suggesting that the caution is only concerned with detainees who say nothing *at all* during interview and the second, suggesting concern only with those who talk. Whilst each reformulation may only have been intended to exemplify the caution's meaning, each was presented as a full explanation, yet each is incomplete. Other officers presented these routes to inferences more 'completely' in one of three ways.

First, by formulating more vaguely, thereby implying both routes, but explicitly stating neither:

[if] you suddenly (.) talk about something (.) in court which I've (.) y- you didn't talk to me about in interview [then x] [A44]

Secondly, by introducing both routes transparently:

if you **don't say anything** today and then this matter goes to court and then you **do say something** (.) or if you **say something today** and then you go to court and **say something different** [then x] [S22]

Thirdly, by presenting the recontextualisation as illustrative not exhaustive, relatively unusual in these data:

so **for example** if you shut up now and say nothing (.) but later on if it went to court you suddenly started saying all sorts of things [D14]

One officer exemplified using a detailed scenario about a fictitious burglar-protagonist:

P it's like the- it's the old burgl- y'know like a burglar sort of thing a burglar is found outside a house (.)
 D ((right))
 P and "why are you here?" "I'm not telling you not telling you not telling you not telling you" then he gets to court and he says "I was waiting for a taxi" (.) the judge might say "well why didn't you tell the police that at the time?" [S24]

This officer specifies possible questions both in interview and in court but is clear that both are only examples.

Of the 134 officers who recontextualised this part of the caution, fewer than a third (28%) explicitly presented both routes to inferences. Indeed, 65% presented only the more obvious silence route. Furthermore, patterns were apparent within forces. Force A officers were more

likely than those in any other force to present both routes to inferences. Half of all recontextualisations there followed this pattern. In contrast, 91% of Force B officers only explained the silence route. This may evidence the influence of the Force B official recontextualisation which itself only presents the silence route (see Section 10.5).

Recontextualisations which present only one route to inferences risk incompleteness. However, those which present both routes risk convolution:

1	if I aks [<i>sic</i>] you some questions and you refuse to answer them (.) you stay quiet	
2	or	
3	you give me a s:- a story now	
4	if you go to court (.) and you suddenly (.)	
5	come up with a story (.)	
6	or	
7	you change the story which you (.) gave me here today	
8	then the court can infer from that that at some point (.) you're lying	[A40]

This officer introduces the silence route (line 1) and the stories route (line 3), but only concludes presenting each in lines 5 and 7 respectively and finally resolves both only in line 8. This requires detainees to follow two separate hypothetical scenarios, describing different sets of activities occurring across different time frames, which develop simultaneously. Whilst disentangling in-interview behaviours (lines 1-3) from in-court behaviours (lines 5-7), such formulations demand some concentration.

Detainees' reformulations also presented either the silence route or the stories route, suggesting that they may only recognise one aspect. Amongst detainees who recontextualised the medial sentence, those who ignored the right to silence (sentence 1) also ignored the silence route and those who ignored the audio-recording of interviews (sentence 3) also ignored the stories route. Possibly, having explained either the third sentence or the first, it becomes difficult to present inference-drawing in full, or perhaps detainees who focus on the first or the third sentences are unaware of the details of inference-drawing.

11.4.1 Connecting preconditions

The caution does not specify how far detainees' words at interview must differ from those in court, in order for negative inferences to be drawn. This is the connection between *y* and *z*.

The challenge for reformulating officers here comes from vague *something* (part of *y*) which stands for two referents, first possible talk *when questioned* and secondly possible talk *in court*:

it may harm your defence (x) if you do not mention when questioned **something**,
[and that turns out to be **something**] which you later rely on in court.

Some officers suggested that the relationship expressed by *something* is extremely close:

[if I] asked you a question tonight (.) and you declined to give me the answer (.) but the question is asked in court and you provide **an answer to the same question** [then x] [A3]

This implies that courts can only draw inferences if detainees answer an identical question differently in interview and in court. It furthermore places the responsibility for eliciting *mention of something* with officers and courts, not with detainees. Other officers said that courts needed to ask a whole series of identical questions to those in interview, to permit inferences:

when we ask you **questions** if you decline to answer **them** and (.) later (.)
in court you're asked **the same questions** (.) and you do answer **them** [then x] [A33]

11.5 Explaining inferences

11.5.1 Shallow explanations

Warnings which state that a particular behaviour has negative consequences will be most effective when those consequences are listed explicitly (Dumas, 1990:348-9). The string *harm your defence* (x), barely hints at the possible consequences of silence in interview (Kurzon, 1996:7). If it did list consequences, its written form would probably run to several pages. Yet officers report that detainees often ask “*how would it harm it?*” (AO09). Accordingly, they also observed that ideally, the official wording, or officers’ recontextualisations, would *expand* on this (AO02). AO38, who verbalised this concern, nonetheless described the difficulty of responding:

if somebody says to me “why might it harm my defence?” I’d be suddenly sat there thinking “well (.) how do I get that across?” [AO38]

Interview room data suggest that AO38 is not alone in finding this difficult to explain. There, many officers simply re-co-textualised the string:

[If y and z then] people can draw inference and conclusions
from it in court that might **harm your defence** [C6]

Others maintained the non-specificity of *harm your defence* but relexicalised:

that could **go against you** [A9]
then it might **not do you any good** [A37]
the court may **look upon it unfavourably** [B7]
the judge ... may **take a dim view** of that [S21]

A popular relexicalisation choice was *inference*:

the court may **infer** (.) or s- the court may draw (.) their own **inference** [A36]
an **inference** may be drawn [B17]
they mi- may or might not take an **inference** [D25]

Yet some detainees admitted not understanding this item:

1 P they may draw an inference if you un- do you understand the word inference?
2 D nnn not
3 P right they maybe infer by your words that you're giving them then that er- they
may be de- er may be less likely to believe (.) you when you go to court [B28]

Having used *inference*, this officer doubts its comprehensibility and, sure enough, the detainee hesitantly intimates non-comprehension. Unfortunately, having established this problem, the officer simply transforms *inference* from noun to verb (turn 3) before a faltering attempt to specify. Ultimately he resorts to his Force's official recontextualisation *less likely to believe you*, appearing decidedly uncomfortable with explaining *harm your defence*. Home Office Circulars which accompanied the caution's introduction explain that the official wording avoids *inference* because the word was deemed too difficult (in Kurzon, 1996:7). Similarly, the Crown Court Bench Book advises judges "The 1994 Act refers to 'inferences' but it is thought that juries will more readily understand 'conclusions', the word used in this direction" (s38, note 11). According to Goffman, someone who animates a text having not authored it, faces a recurrent problem of scripting, being unable to avoid words "whose meaning is not quite clear to him" (1981:254). This is particularly pronounced when animation involves explanation. One likely reason that *harm your defence* is particularly tricky is that it

condenses meaning, implying the outcome of an inference-drawing process, which consists of four entailments proceeding from one another. Courts can:

- note discrepancies between detainees' words in interview and court;
- then, draw negative inferences from those discrepancies;
- then, use those negative inferences to evaluate credibility;
- then, use that evaluation of credibility within its decisions.

The officers just cited ignored all this, maintaining generality and, like the official wording, focused on the result of inferences – damage to a detainee's case. Others, however, particularised, attending to one or more entailment, hypothesising courts' inferential processes or suggesting their outcomes.

11.5.2 Deep explanations

In Cotterill's simulated recontextualisations, officers tended to particularise, communicating "personally damaging outcomes" of inference-drawing, through second-person pronouns which suggested that inferences would damage detainees rather than defences (2000:16). Officers in these data do this too; indeed this tendency's pervasiveness suggests that it is rather inescapable. There are, for example, few obvious alternatives to second-person reference². This sub-section explores particularisation in more detail.

Some officers used speech-representation (Leech and Short, 1981; Fludernik, 1993; Semino, Short and Culpeper, 1997) and suggested that, as an outcome of inferencing, courts might directly challenge detainees:

they'll just turn round and say "well why didn't you say during the interview?" [A1]

they would say "well just a moment (.) why didn't he say something in interview?" [D14]

Others used thought representation, suggesting that courts might internalise their questions:

² In the data presented here, even 95% of detainees recontextualised in the first person.

people might think (.) "well why didn't he give this explanation at the time?" [A32]

the court may wonder why you've not answered the question [D31]

Speech- and thought-reporting officers typically present invoking one's right to silence as attracting incredulity, as these examples illustrate. This potentially encourages talk in interview. Detainees who took speech-reporting officers literally might, furthermore, anticipate being called to account for silence; those cautioned by thought-reporting officers are not offered that scenario. By focusing on this early part of the inferential process, these officers do not specify possible inference outcomes. Detainees may not even notice this gap, but it can trouble officers:

- | | | | |
|----|---|--|-------|
| 1 | P | the courts can say "well why didn't you give that answer then" (.) do you understand that? | |
| 2 | D | ah- I understand that | |
| 3 | P | right OK | |
| 4 | S | however (.) there is a preambit to that (.) uhm in which I would like to add now seeing as | |
| 5 | | you've mentioned it uhm bearing in mind that er I have explained all of this to the client | |
| 6 | | but following on from (.) what you've just said an inference on failure to give | |
| 7 | | evidence can not on its own prove guilt this is expressed in- in Section 38c of the Act | |
| 8 | P | that's true but I just wanted to make sure that yoh- your client did have a good | |
| 9 | | understanding of (.) the new // caution // | |
| 10 | S | //I've explained// everything to him | [S23] |

The solicitor seizes on the lack of explicitness about inference outcomes (lines 6-7) suggesting that, for him, presenting only the early stage of inference-drawing is insufficient.

Other officers did not dwell on inference-drawing, instead looking towards the end of the inferencing process, hypothesising possible outcomes:

- Some were non-specific:

they can make their own decisions from that [D2]
 they can then decide what they want from that can't they? [D28]

- Others who presented this end of the inferential chain, specified that inferences concern truth claims:

they may think (.) this time you're lying [A24]
 the court can make inferences from that that at some point you were lying [A43]

Some who focused on truth claims lexicalised using transitive *believe*, forcing them to specify a direct object:

- the version given in interview
 the courts may not necessarily believe your explanation that you've given on the day today [A41]
- the version given in court
 the courts may not necessarily believe what you're telling them [A26]
- the detainee
 the court might be less inclined in certain circumstances to believe you [D6]

- A final group presented the court's inferences as relating to a legal category, guilt:

the court may draw an inference that you've got some sort of guilty knowledge [A7]

Whilst these officers do not claim that invoking the right to silence will lead courts to decide on lying, belief or guilt, they imply that invoking that right will attract negative sanction.

Deep explanations have both risks and benefits. By removing the vagueness of the official wording, these officers over-specify because neither officers nor detainees can know during interview whether a court will draw inferences about a particular detainee, what inferences they might draw and what those inferences might initiate. Narrativising inference-drawing in this way could make for affective pressure. Yet by specifying, these recontextualisations inventively illustrate the caution's meaning using familiar ideas and concepts. This highlights the tension between removing vagueness in order to clarify and specify, and incorporating vagueness in order to leave semantic options open.

11.6 Caveats to the caveat

Having examined aspects of the caution which are central to the first caveat I now turn to the second – broadly, to hedging the medial sentence. The ‘two caveats’ representation highlights the centrality of the medial sentence’s *may* to the caution’s meaning (see Section 5.2.4).

Through *may* detainees are told that either none, or all, of the meaning of the medial sentence will, eventually, apply to them. Some officers, apparently aware of this importance, draw attention to *may*, although without saying why, using:

- tonic or contrastive stress (Roach, 2000:193) or accent (Cruttenden, 2001:24) and repetition:

the next part of the caution is (.) it may harm your defence
it may harm your defence if you do not mention

[B7]

- tonic stress (line 1), a metalinguistic aside (line 2) and repetition (lines 2-3):

1 [if] you start giving (.) an explanation the judge may
2 and I must stress the word may
3 may take a dim view of that

[S21]

- tonic stress (lines 1, 2), a metalinguistic aside (line 2), repetition (lines 1 and 2), relexicalisation, *may* becomes *might* (line 3). Other officers used *could*, similarly:

1 they may (.)
2 and that's the important word may (.)
3 might not put the same weight on that

[S6]

Rather than attempting to limit or avoid ambiguity, these officers simply highlight it.

Applicability is governed by four conditions. Lay people “cannot be expected to know specialist interpretations” (Fox, 1993:186), particularly here, where only the first two conditions (Figure 11.2) are explicit in the caution’s wording, the second two appearing in other legal texts:

Your defence may only be harmed if ...	Details	If detainees do not realise the significance of <i>may</i> they will believe ...
... you ever even appear in court in relation to the crime you are being questioned about	Court attendance - This is explicit in the caution: It may harm your defence if you do not mention ... something which you ... rely on in court	... their case is necessarily going to court and they necessarily have a defence
... you present a defence which relies on information which you have not presented in interview	Reliance – This is explicit in the caution: It may harm your defence if you do not mention ... something which you later rely on	... they must mention everything during interview which might come up in court, even if it is irrelevant to their defence and they don't intend to rely on it
... the court believes that you could reasonably have mentioned, in interview, information which you present in court	Reasonableness – This is not explicitly flagged in the official wording, it is introduced in the CJPOA (1994)	... they must mention everything during interview under any circumstances – there is no excuse for failing to mention something in interview which one later relies on in court
...the prosecution can, and do, present relevant evidence from interview	Admissibility – This is not explicitly flagged in the official wording, rules around admissibility are multi-sourced	... the police can present whatever evidence they like in court

Figure 11.2 – Conditions governing the caution's applicability

Officers were very aware of these specific meanings; however, their decisions about presenting them within recontextualisations appeared complex. Given that these conditions restrict the restriction on the right to silence, officers who focus on them, focus on qualifiers which disincentivise talk and which could be seen to contradict the medial sentence's underlying illocution. For example, detainees who believe that a court attendance will necessarily follow from interview might feel more inclined to tell their whole story in interview than those who believe that court is a remote possibility, itself predicated on interview. Thus omitting or including these caveats, even downplaying instead of foregrounding them, changes meaning and perlocution. Indeed some officers removed *may*'s uncertainty, asserting that courts *will* or *are going to* draw inferences if silent detainees speak in court. These officers thereby over-state the likelihood of inference-drawing, perhaps attempting persuasion. However, presenting this uncertainty is difficult. In some settings, "highly formalised" routines have evolved to present such subtlety (Skelton, 1997:135; Latour and Woolgar, 1986). I now consider officers' responses regarding the conditions listed above³.

³ Admissibility will not be examined here as its rules are quite independent of the caution and it was not discussed by officers.

11.6.1 Condition 1: Only in court

Officers described detainees frequently failing to recognise that *may* governs *defence* or *court*. This failure created a *very confusing* implicature (AO06) that addressees will inevitably attend court (AO06, AO13), get charged (AO47) or even go to gaol (AO48). This was felt to generate unnecessary *worry* (AO27), particularly as court is so rarely *the only outcome* (AO45). This implicature “*well it’s going to court*”, became particularly bothersome when interviewing those who had only agreed to interview on the understanding that this would not happen (AO13) or when cautioning for minor offences⁴. AO11 described frequently explaining:

“no you’re not going to go to court now you know but it may happen in the future or depending on what you do with this fixed penalty ticket”

He thus used explanation to reposition *court* in relation to particular offences. Officers reported that *defence* also appeared *quite striking* (AO29) to detainees, its combination with the possessive pronoun *your* suggests to them that *defence* is something they should or will already have when hearing the caution. As AO48 explained:

from the suspects’ point of view I think its difficult to grasp ... “what do you mean it may harm my defence? what? what do I want a defence for I haven’t done anything?” ... “what you talking about?”

AO48 describes detainees who ‘understand’ *harm my defence*, but through questions which might formally indicate incomprehension, challenge the inevitability of presenting a *defence*.

Officers had ideas for dealing with all this. They suggested that the word *court* *should only be used in interview* (AO22) or should, in the official wording, be introduced less baldly (AO27) or hedged with an additional *may* (AO45), and that *defence* should also be removed from the official wording completely or specifically explained by officers (AO48). Officers indeed attended to these concerns when explaining the caution during interviews, emphasising the potency or contingency of *court* by adding one or more *if*- clauses (bold) after first mention:

when they later hear you in the court room **if you went to court**
by the time it did go to court **if it goes to court**

[D13]
[D11]

⁴ His example was a caution before issuing a ‘fixed penalty ticket’ (a fine) for failing to wear a seatbelt. This is a legal requirement for most motorists in England and Wales.

Or *if*- clauses in combination with auxiliaries:

but when you go to court (.) **if the matter did go to court**
 when you get to court **if it should get to court**

[D23]
 [S24]

These *if*- clauses have the air of asides or even self-corrections in that after each, the officers continue as if they had not been included. They are somewhat marked through dislocation of voice, temporarily stepping outside the recontextualisation to comment on it. Some officers intensified this by more obviously transgressing the institutionally motivated recontextualisation, inserting themselves as author of the aside (Goffman, 1981):

should this go to court **I'm not saying it will or it won't**

[A31]

As a side-effect, this marks impartiality. Some officers stressed contingency particularly enthusiastically by combining these devices:

and the matter goes to court I must say and **if** the matter goes to court
 court **I'm not saying** it's going to but **if** the matter goes to court

[D29]

This combination of an *if*- clause followed by a self-referential disclaimer and finally another *if*- clause was recurrent. Some officers went into detail about the conditions governing a court visit specifying, for example, procedure:

doesn't mean to say (.) the job will be going to court (.) that decision hasn't been made yet
 later on if it goes to court (.) because a decision's not been made yet but if it goes to court

[A36]
 [A41]

One officer even specified decision-makers:

and you [are] later charged with any of the offences I mean
 that's not my decision that's the Custody Sergeant's decision

[D15]

A by-product of providing such detail is that the officer also explains the chain of events which would lead to court (interview → decision-making → charge → court).

Officers thus underline this caveat to the medial sentence which is not prominent in the caution's surface realisation. Aside from simply pointing out that court is not inevitable, all of these asides have two potential consequences: first, reducing the persuasive power of the

medial sentence; and secondly, downplaying the seriousness of interview. These experiential consequences might influence interviews in various ways, to the same extent as a belief that court was inevitable.

11.6.2 Condition 2: Reasonableness

There are many circumstances in which courts might think it reasonable for a detainee to hold back in interview, for example, if under threat or promise from an external party. The CJPOA (1994) presents no absolute rules on what is 'reasonable'. Reasonableness itself is a tricky concept, yet one with which officers engaged in reformulating:

the court ... might think "well he's had (.) however many months it's taken to get here to think of that ... are we going to believe it or not?" (.) and they may decide not to believe it (.) but it's only a warning (.) they may decide to disregard the fact that you didn't answer [A11]

This officer hypothesises two possible thought processes through which a court might draw inferences, but stops short of identifying reasonableness as a criterion in court's decisions. Other officers approach reasonableness more directly, explaining for example that a court can draw an inference only if detainees answer questions in court that the court believes they *could* or *should* have answered earlier:

if you don't answer the questions (.) and the matter goes to court and you have u:::m (.) a set of answers to the questions: OK that you **could** tell me today [B30]

they may think to themselves "well **you were quite right** not to answer that question" but they may on the other hand think "well you **should** have answered the question" [A25]

The officer below is slightly more specific, identifying the need for a *reason*:

the court may well turn round and say (.) "why didn't you explain to that police the first time?"... if there's a **reason** they may well accept it (.) but they may well ask that question [S8]

The officer below exemplifies reasonableness particularly thoroughly:

it's up to them to work out why you've done that it may be that **you didn't understand any questions you were confused** or whatever [S4]

As part of a conjectural account of inferential processes, this officer presents a benevolent court, empathising with naïve or troubled detainees. Yet his addressee might not wish to appear *confused* or unable to *understand* particularly in front of a courtroom, so these examples themselves could disincentivise silence. One officer used *reasonable* in explaining reasonableness, following it with an extreme case presentation of the court's response:

[if] the court think **it would have been (1.2) reasonable** for you to give a explanation
now they might look at you a bit sideways and might think you're a liar (.) yeh?

[A34]

11.6.3 Condition 3: Reliance

Officers criticised *rely*'s metaphorical use in the caution but proposed that the reliability condition should be stated unequivocally in recontextualisations to avoid detainees asking *how can you rely on something in court?* (AO02). However, when reformulating, they said little about *rely*, perhaps because it is so difficult for detainees to identify (in interview) things that they will *rely* on in court and to distinguish these (in interview) from other things. The closest any officer came to focusing on this when reformulating, is in identifying *important* evidence, a phenomenon identified also by Cotterill (2000:20):

you've got an opportunity to tell us here something that's important

[D21]

Although this officer does not specify what would constitute *important* evidence, presumably she means evidence which is important to the detainee's defence, evidence on which he might *rely*.

This lack of attention to *rely* starkly contrasts with the level of detail in officers' recontextualisations of other parts of the caution.

The CJPOA contains four meanings for *may*; the caution condenses them into this one word. We can only speculate on why this might be. Some might claim that this lack of explicitness is part of a systematic attempt to encourage talk through the caution, others that the caution's writers simply wished to avoid the further 'difficulty' of detailing this additional layer of uncertainty. Despite the official wording formulation, some officers disentangle these

propositions. More might do this if the caution's authors had explained the areas around the edge of the wording, explaining exactly what *may* involves, perhaps through officer training.

11.7 Understanding the medial sentence

House advises that discourse participants should perhaps expect misunderstanding in institutional settings "because meaning is never laid out clean and neat but must be inferred, with inferences tending to be quick, automatic and fixed when they really need to be careful, considered and 'revisable'" (House, 2003:52). The caution's medial sentence apparently led to incorrect inferences about the circumstances of inference-drawing from detainees who believed that:

- inferences would follow from silence in interview irrespective of events in court;
- honesty was required in interview;
- talk was required in interview.

This was manifest in detainees' formulations which superficially suggested understanding but were inaccurate:

I don't have to say anything unless I wish to do so but if I don't you know then then it'll look bad if I don't say anything now [B22]

This detainee begins promisingly, presenting his autonomy in choosing speech or silence. However he then implies that he thinks his defence may be harmed (*it'll look bad*) by silence or partial silence in interview, irrespective of speech activity in court. Clare, Gudjonsson and Harari similarly found that subjects erroneously suggested that the medial sentence entailed a complete loss of the right to silence (1998:327). In these data, this was either a common misapprehension or something which detainees had particular trouble explaining.

Moving to honesty, other detainees took the caution as relating to truth and perhaps as an instruction to be truthful:

D if I don't tell you or don't give you the truth basically
P right
D and then (.) you use evidence say in court or something
P OK

[C6]

Finally, turning to the requirement to talk, in some states the Miranda formulation varies, and indeed within the Miranda decision itself modal verbs switch, so that at some points evidence *can and will* be used against a suspect whilst at others it *may* (Shuy, 1997:193). Uncertainty about commitment is appropriate in a legal decision intended for specialist readers, but the tendency to shift modality troubled detainees who, to a greater or lesser extent, overstate the caution's medial sentence:

it's telling me that I need to tell you everything that should ((I think))
should be said and if (.) not then I'm lying aren't I?

[A8]

This detainee introduces the notions of necessity (*need*), obligation and responsibility (*should*) and exhaustiveness (*everything*). This has altered the caution's pragmatic force, presenting not warning or advice but instruction. Shepherd, Mortimer and Mobasher take such shifts in modality to indicate that speakers see the caution not as warning, but threatening (1995:62-66). Four potential explanations for this distillation present themselves: first, the detainee may genuinely believe that the caution requires speech; secondly, he may be unsure of the caution's meaning but, through reformulation, trying out a reading for ratification or correction, his mumbled hedge *I think* and the tag question *aren't I?* may mark uncertainty; thirdly, he may realize that he is not compelled to speak but finds encoding modality difficult or unnecessary; finally, he may understand the caution's subtlety but may be using his reformulation turn to self-present as someone who recognizes, appreciates and fulfils institutional obligations. If this reformulation accurately represents this detainee's view of the caution, there is cause for concern. The detainee below similarly overstates, but introduces prohibition, if one does not speak in interview one cannot speak at all:

it means if I don't say anything I can't say it later different but uh if I say anything
(.) different ((well whatever)) I'm going to say I need to say it now don't I?

[D25]

He aborts his explanation with *well* which seems to function here as a discourse marker specifying the transition to a summary of the caution's upshot and personal relevance. Other interviews similarly overstate:

anything I say now (.) can't change it after whatever	[S9]
that anything ((wrong)) I might say will be brought up in court	[S22]
I can't produce any evidence in court that I don't say to you isn't it?	[S28]
I've just got to answer the questions on tape	[B29]
more or less a- tha- I'm answering the questions that you're ask- asking me	[S23]
anything that I say in the interview I- I should erm say it all in here (.) so I don't have to say it all in court sort of thing	[B1]

These detainees raise the themes of:

- **Necessity** – *got to* (S28), *I'm answering* (S23);
- **Obligation** – *should* (B1), *will* (S22);
- **Exhaustivity** – *say it all* (B1), *anything I say* (S9, S22);
- **Prohibition** – *can't change* (S9), *can't produce* (S28).

The final detainee additionally presents relationships between talk in interview and court which do not pertain, through *so* – suggesting that he understands that if one speaks in interview, one can avoid speaking in court. Whilst these reformulations may accurately present the caution's logical conclusion in some cases, they do not present its universal meaning. This may simply suggest that these detainees do not know what to make of a warning which only warns of possibilities. Others misrepresented different aspects:

if I keep anything I'll get a telling off later [both laugh]	[D2]
--	------

This detainee does not relate the caution to inferences, transforming *harm your defence* into *get a telling off* and implying that not mentioning information will have a minor personal effect rather than a potential major institutional one. She also ignores the relationship between words in interview and in court.

Many critics of the legal changes which precipitated the current caution saw the wording as articulating the reduction, or even removing the right to silence (see Section 9.2). These detainees' reformulations raise a related possibility, that the caution's wording may lead detainees to believe, erroneously, that they have no right to silence. These detainees believe, or present themselves as believing, that the caution says something much more certain than it

does. If detainees offer these reformulations believing them to be accurate, officers need to work hard to recognise such errors and reinsert hedged conditionality. AO19 described doing just this, identifying and responding to patterns across multiple cautioning exchanges:

they tend to interpret [the medial sentence] that they do have
to say something and we have to clarify that point time and time again

Officer training might usefully highlight the need to be alert to, and potentially to dispel, these frequent potential misunderstandings and more generally to integrate observation into practice, like this. This is particularly pressing because the data reveal that officers themselves make similar errors when explaining to detainees:

if you do not say anything the courts when they later hear you in the court room ...	}	... inferences might follow	[D13]
if I ask you a question and you don't answer the question ...			[D31]
you don't have to answer my questions yeh? however if you don't ...			[B17]

Reformulations like these invite speculations about whether officers are exploiting their reformulation turn. Officers hold a particular type of power during cautioning exchanges. Apart from institutional power, the requirement to explain, coupled with the possibility of later audit, theoretically positions them as impartial purveyors of fact. This ostensible impartiality also brings power. It led some officers to request truth in various parts of their reformulations.

the second bit means that uh if you do say something you're
expected say everything and tell the truth about what happened [A7]

if you do say something you're expected to tell the truth about (.) what I'm going to ask you [A48]

These officers both imply that detainees must either be silent or honest. One officer even incorporated an instruction about truth-telling into his reformulation, presenting his instruction as if it follows from the less contentious matters through *so*:

the court may be less willing to believe you (.) so the time to tell the truth is now [B15]

He puts his interlocutor into a position where he almost has only two options, either telling the truth, or lying, clearly not the caution's aim.

11.8 Close

Although more of the meaning of the medial sentence could usefully be expressed, either within the official wording or by officers, the sentence's propositions are somewhat unavoidably vague. No-one inside or outside any given interview can know whether particular cases will reach trial and if they do, what the court will make of detainees' defences. No amount of alteration to the official wording will 'clarify' this. Officers in these data did not attempt to quantify the uncertainty of first- or second-order caveats by specifying, for example, how likely future problems are for particular detainees who are silent in interview. But they did highlight the existence of these caveats using illustrative examples, metalanguage and asides. The notion that detainees should select a course of action on the basis of a series of uncertainties in such a serious situation is quite mind-boggling.

Government health warnings on cigarette packets have recently stopped using the word *may* (*smoking may seriously harm your health*), instead using unmitigated formulations which stress potential consequences of cigarette-smoking and their severity (*Smoking kills, Smoking causes heart disease, Tobacco seriously damages health*). These formulations have been altered in line with knowledge about the content of the message, which has come from medical advances. As time passes the effects of the CJPOA are becoming increasingly apparent and the likelihood of silence actually prejudicing a case is now more easily estimated (see Section 9.2). Practice jury directions keep pace with these developments. Whilst the official wording itself would become unwieldy if it explored the likelihood of courts drawing inferences, this could usefully become a part of officers' recontextualisations and officers might be kept updated about exactly what the caution, particularly its caveats and their caveats, do mean. For example, events in Brussels and London have clarified that *something* which the detainee relies on must be a *fact*; the definition of a fact is now emerging from case law (Dennis, 2002:28-30). There is every reason for recognising emergent meanings in cautioning practice.

CHAPTER 12: WORKING WITH SYNTAX AND LEXIS

12.1 Introduction

By reformulating, officers give detainees *the opportunity to say “well talk to me in English”* (AO42), responding by incorporating ‘simple language’, explaining ‘difficult’ words and using illustrative scenarios. This Chapter examines how this materialises around the four lexical items highlighted in the official wording below. The data themselves recommended these items for scrutiny (Sinclair, 1990; cf. Cotterill, 2000):

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 will be given in evidence.

Responses to these items were diverse. Some reformulation activities seem to be about ‘simplification’, trying to make things ‘easier’ to understand. Others potentially alter the caution’s experiential meaning, but do so subtly and may nonetheless appear to be concerned only with simplification.

12.1.1 Simplification

Many officers claimed to simplify, when explaining, using *simpler terminology ... which everybody understood* (AO34) and *layman’s terms ... rather than ... doing the official jargon* (AO40), which we could characterise as register shift (Section 5.3.3). Accomplishing this shift proved testing for some, requiring that officers’ *language skills come into hand* (AO35). Some officers were articulate about how they identified the target register. They described drawing on notions of frequency incorporating *ordinary words* (AO48) or notions of appropriateness, either by invoking personal perceptions of difficulty (*you can use terms which you understand and hopefully that somebody else can understand*, AO06) or by hypothesising their interlocutor (*I use terms which I think that the person will understand*, AO48). For some officers ‘simple language’ is not a constant, but requires lexical accommodation according to audience and context (see Section 13.5):

you'd maybe use different words with different people ... you would try to
make it simple to fit those particular circumstances

[AO47]

For other officers, *simple* language equated with *normal English* which was unitary and comprehensible to *the public ... whether juveniles or pensioners* (AO29). For some, simplicity related to length in both the official wording and its explanations. AO48, for example, praised long reformulations which explore and *embellish*, whilst AO47 equated lengthy recontextualisation with excessive detail, leading to semantic obfuscation.

Explaining particular lexical items or register shifting are likely to be important to explanations of the caution because detainees misunderstand some of its words through “interference from their real-world lexicon” (Cotterill, 2000:15), as the caution uses “everyday words in a specialised sense” (Gibbons, 1999:158), “common words with uncommon meanings” (Jackson, 1995:113). This phenomenon can afflict some quite unlikely words and phrases (Jansen and Steehouder, 2001:18; Kempson and Moore, 1994:43) and constructions (Jackson, 1995:121). Difficulties arise because such terms do not appear technical “at first sight”, so readers might not realise that they need “special attention” (Jansen and Steehouder, 2001:18). Commonly, “only the expert user of the language will know *when* terms are used in a monosemic, exclusively legal way, or when the attribution from ordinary language ... is possible” (Jackson, 1995:113). Thus the role of the reformulating police officer is obvious. It involves identifying which words are used in a “legal way” and explaining what that “legal way” is.

12.1.2 Experiential explanation

Police officers do not all respond to this challenge identically. It is extremely profitable to ask why (Polanyi, 1980). As Chapter 2 discussed, “recontextualisation is never a pure transfer of a fixed meaning” (Linell, 1998:144). Cautioning officers “orient to the institutionality of the context” (Drew and Sorjonen, 1997:99) partly through their selection of terms. However, there is something more at work here. Through rewording (Fairclough, 2001:94), officers’ explanations work on the caution’s experiential value. Examining this work provides “a trace of and a cue to the way in which [officers’] experience of the natural or social world is

represented” (Fairclough, 2001:93) or to how they might wish to represent the social world to detainees.

Officers were aware that the caution might have a general experiential impact. AO14 observed that novices could find it *quite intimidating* and accordingly offered them reformulations which were not ‘neutral’, explaining for *[inexperienced] people I always back it up with “don’t worry this is only to do with this”*. This can be observed in interviews:

right I will caution you first before we begin OK don't worry about it
[states official wording] do you understand that?

[D2]

A few officers were acutely aware of the potential for unintentional bias in reformulation, accordingly identifying a need to avoid *blurring* distinctions between explaining (officers’ responsibility) and advising (solicitors’ responsibility) (AO45) and to avoid going into *great depth* (AO47). These officers asserted that they had to be *careful* in order to avoid giving *the impression that they’re influencing the suspect* (AO26). One Sergeant indeed described an emerging trend for police trainers to suggest leaving reformulation to solicitors wherever possible because *that way I’m not going to mislead them or put my own slant on* (AO18). Other managerial officers voiced an opposing anxiety, encouraging officers to reformulate ‘*to be on the safe side*’ as *you’re never going to get criticised for that* (AO28) (cf. Cameron, 2000:326). The dominant view was that reformulations are unlikely to mislead. AO19, for example, explained:

every officer probably explains it differently but the meaning is always the same ... we all look at one word and read it in a certain manner we’d all read a book and summarise that book in a different way but also at the end of the day the core meaning of it is the same

[AO19]

For him, the meaning of a reformulation inevitably duplicates that of its source, therefore, biased reformulations are inconceivable. AO23 agreed that officers could not produce loaded reformulations, explaining *I don’t think you could ever misconstrue [the caution] to make it to the police advantage ... it’s for their benefit that it’s being explained*. Here, audience dictates intent.

12.2 Metonymy and polysemy in court

The first example here, *court*, attracted officers' attention because they suspected that detainees might simply miss its legal sense (Section 11.6). AO27, for example, identified a need to *explain the process possibly of the courts how the courts work*. Reformulating officers indeed engage in such disambiguation, focusing on the word's metonymy, in denoting a place and a collective of people, and its polysemy in denoting different types of court. 26% of officers who explained the sentence which contains *court* addressed its metonymy, typically calling attention to all its possible human referents:

the court and it's magistrate or judge and jury	[S4]
the magistrates or the judge or the jury	[C1]

Others were less exhaustive, identifying just one potential referent and in some cases combining that with catch-all pronouns:

the magistrates	[D15]
the magistrates or whatever	[B21]
the judge	[S21]
the courts the judge whoever	[S16]

Such illustrations additionally attend to *court*'s polysemy. British courts presently try offences either by magistrates or a judge and jury. Many offences are automatically allocated to one of these trial modes, with some triable 'either way'. Officers who glossed *court* as either denoting *magistrates* or *judges* were possibly prospecting the likely mode of trial if their addressees attended court. Anglo-Welsh courtrooms also feature clear role-allocation: some participants decide guilt or innocence; others oversee cases and pass sentence. Officers attended to polysemy along this dimension too, exemplifying potential participants at court by role either mentioning overseers:

whoever the judge or magistrates	[A13]
the magistrates or judge or whatever	[D12]

or decision-makers:

the jury or: the magistrate whatever	[D19]
the jury or the magistrates	[D10]

Other officers provided more detail, presenting judges and juries working together, and in so doing, describing a small aspect of trial procedure:

the judge may direct a jury	[S11]
it would be open for a judge to direct a jury	[S20]

Two officers avoided naming particular decision-makers, instead simply pointing out that metonymic *court* denotes people, not a location:

the court people in the courts	[A33]
people	[C6]

Whilst illustrating *court*, the final four examples above could be seen to introduce additional ‘difficulty’. In summarising procedure S11 and S20 introduce the ‘specialist’ sense of the ‘everyday’ word *direct* and by using *people* A33 and C6 risk implying that all people in court will decide a case. However all of these reformulations simply explain, they do not evaluate the court or suggest an orientation to court for the detainee. The other examples in this Chapter are rather different.

12.3 Negation

As Section 5.2.3 noted, negation, especially through *not*, has been linked to comprehension difficulties (Kempson and Moore, 1994:42). There are two occurrences of *not* in the caution and in these data, officers respond differently to each. The first occurrence is in the verb group of the caution’s first sentence, *you do **not** have to say anything*. Officers’ explanations here centred on three patterns:

- 1 Virtually repeating the official wording, perhaps incorporating contraction:
you **don’t** have to say anything [A21]
- 2 Altering the main verb (*answer*) and accordingly, the direct object but keeping negation within the verb group:
you **don’t** have to answer my questions [B17]
- 3 Moving negation from the verb group as a hidden negative or negative pronoun:
you have the right to remain **silent** [D11]
every English man and woman is entitled to (.) say **nothing** [S8]

Some officers combine these:

the first bit you **don't** have to say anything [←pattern 1] (.) you **don't** have to answer any question I put to you alright? [←pattern 2] you **can** remain **silent** throughout [←pattern 3 (hidden negation)] [A2]

first of all is that you **don't** have to say anything [←pattern 1]
OK it's your right to **say nothing** [←pattern 3 (negative pronoun)] [B7]

These reformulations operate simply at the lexical and syntactic levels. Remaining with the first occurrence of *not*, however, some officers reformulated much more inventively by indicating the signification of silence in interview. They told detainees that their silence would not be negatively evaluated or effect face, one explained *you can ... say nothing... won't offend me alright* (A38). A few officers reinforced this using illustration (Shuy, 1997:187-191), almost advising detainees about how they might perform silence, recommending, for example that the detainee seeking silence *could if you wanted just stare out the window* (D30). This practice of exemplifying ways of being silent was widespread (Section 14.2.2 provides further discussion). Some officers added clauses which stressed that the silence-talk choice is the detainee's:

it's up to you if you want to answer them or not you don't have to (.) you
can answer some of them all of them or none of them (.) and **that's up to you** [A26]

These reformulations of the negation of the first sentence all represent detainees' silences as passive but autonomous, they are essentially 'neutral'. If anything, some even facilitate silence. This contrasts with presentations of the negation of the medial sentence (*it may harm your defence if you do **not** mention when questioned...*). Popular opinion has it that this section of the caution encodes silence using *fail* (**if you fail to mention*)¹. This formulation would be fairly inappropriate, implying that invoking rights constitutes failure. Nonetheless, some interviewers reformulate the medial sentence's *not* using this word:

if you answer a question now or **fail** to answer a question now [A16]
if you **fail** to give an account [S6]

Such reformulations present silence as undesirable and perhaps signifying inadequacy (van Dijk, 1995; Hodge and Kress, 1993:15). This word is not confined to the explanatory sections

¹ *Fail* is cited fairly widely as being part of the current caution's wording, for example, by the BBC: http://www.bbc.co.uk/radio1/onelife/legal/the_law/advice_charged.shtml (see Section 9.7.2).

of officers' reformulations: some use *fail* when stating or re-stating the official wording itself, suggesting that the legal institution itself sees silent detainees as failing. Other officers reformulated this negation using a different loaded word:

if you **refuse** to answer questions

[A27]

if you do answer a question now or if you **refuse** to

[C1]

These officers present silence during interview as even more calculated. Failing to speak connotes inadequacy, but refusal connotes deliberate obstruction. Obviously, detainees who choose silence during interview may indeed do so obstructively. *Refuse* might excellently capture that. However, whether it is an appropriate word to use when offering and explaining the right to silence is a different matter, because "the choice of a particular way of representing events gives them a particular meaning" (Mehan, 1993:241). Viewed critically, these officers disincentivise, even de-legitimate, silence. Such a view would appraise the following examples particularly negatively:

if you **fail** or **refuse** to answer any questions

[B19]

if you **fail** or **refuse** to answer questions put to you now

[B23]

Whilst these formulations may have the perlocutionary effect of discouraging silence, their source may be innocuous. The police *Codes of practice* uses the formulation *fail or refuse* repeatedly to denote silence, so these officers may simply have borrowed the formulation from there. Thus, far from evidencing attempts to goad detainees into unguarded talk, widespread appropriation of this string might rather evidence intertextuality: officers very obviously appropriating official discourses². Nonetheless, *fail or refuse* casts silent detainees extremely negatively, and therefore its use in written institutional texts is problematic if that use dissipates into explanations of the right to silence.

² This hypothesis is supported by the related observation that officers who used *fail or refuse* also all use a slight variant on the string *questions put to you* which also appears throughout various written police texts, such as the *Code of practice for the audio recording of interviews under the Terrorism Act 2000* (Note 3A).

12.4 Different situations, different cautions: *questioned*

The short, vague, subordinated adverbial clause *when questioned* features in the caution when it is issued at arrest and in interview³. At arrest, *when questioned* typically prospects interview, a distant interaction, because, at arrest, officers can only ask detainees limited questions and only in restricted circumstances. Yet at interview, the same words prospect the imminent interaction. Effectively the meaning of *when questioned* in the caution depends on the situation in which it is said. This causes problems:

I think its often about timing with prisoners when they're in custody (.)
they're not sure at which point they're allowed to say things and they're
not allowed to say things (.) or they should say things and they shouldn't
say things

[AO05]

Officers were quite aware of the two different meanings of *when questioned* and this is reflected in their talk. Looking to the caution at arrest, officers appreciated institutional justifications for including *when questioned* at that stage, particularly the need to shore up verbal evidence obtained then. Most were nonetheless uncomfortable about its implicature, through the maxim of relation (Grice, 1975), that *questioned* might denote something imminent (Levenson, Fairweather and Cape, 1996:218):

at the point of arrest its not wholly appropriate to start talking about
when they're going to be questioned because ... it doesn't mean anything
to them at that point ... they're not sure whether in our terms they're
being questioned at the moment [of arrest]

[AO05]

AO40 noted that, institutionally, any talk from detainees about the investigation at arrest, is evidentially dubious, explaining *I would rather I didn't get anything at that stage because ... this is where you're open to accusations like the old days* although, as AO02 acknowledged *that's a time ... when they're more likely to say something*. The Law Society shares these concerns and accordingly recommends that the caution at arrest should be reworded, removing the medial sentence completely (2002:7)⁴. Officers too suggested a solution – relexicalisation, perhaps replacing *questioned* with *interviewed*, which was felt to be less ambiguous (AO05), although certainly not with *interrogated* (AO45). For the moment,

³ The caution is also issued for a final time at charge. At that stage, the official wording changes to reflect that questioning does not take place at that point: *if you do not mention now something which you later rely on*. Officers doubted whether detainees even noticed this change.

⁴ The caution recommended by the Law Society at arrest is currently used between charge and a court attendance or if detainees have been denied legal advice (PACE *Codes of practice*, Code C Annex C, Paragraph 16.4(a)).

however, officers must devise a response. At arrest they accordingly caution tactically to silence detainees, telling them *don't talk about it now ... we need to talk about it but it has to be later and it'll be on tape* (AO07) and even *you've been given the caution my advice would be part of that caution is you do not have to say anything and I think it would probably be in your best interests if you keep quiet* (AO01). This happens on arrest and during journeys to the police station:

a lot of them will still try and talk to you about the offence while you're travelling in the car and you have to explain to them "look this is not the place to talk"

[AO11]

At interview too, officers add circumstantial elements (Halliday, 1994:151) but, of course, different elements, and without intending to silencing detainees. The typical example below has been divided and formatted, for reference:

- | | | | | | | | |
|---|------------------|---|--|------------|----------|------------------|-------|
| | | S | | V | iO | dO | |
| 1 | now (.) | myself and Jim | here's going to | ask | you some | questions | |
| 2 | about why | we came to see you (.) you know what we was on about this morning why we came to see you | | | | | |
| 3 | and | we'll be inviting | you to make replies to those questions | | | | [A12] |

- In 1, the officer's active construction thematises two questioners and specifies a questionee. He converts *questioned* into the verb + direct object *ask ... some questions*, prospecting upcoming activities exactly;
- In 2, he provides, recasts and repeats a questioning topic;
- Finally, in 3, he prospects the detainee's involvement.

This officer therefore translates *when questioned* into a detailed description of its entailment in context. The officer below packages detail differently, but still specifies the identity of a questionee (*you*), questioner (*me*) and questioning time (*now*):

when questioned you're only going to get questioned by me once and that's now OK?

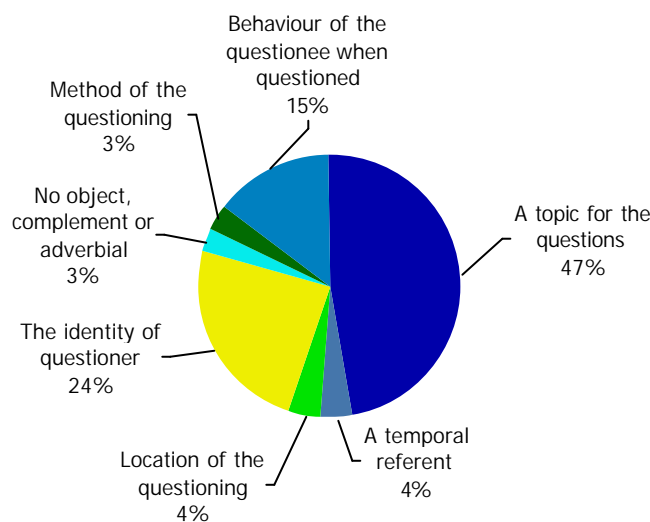
[D6]

The caution does not provide these elements so officers add them *ad hoc* (Section 11.8). The caution's omission of such details is rather anomalous in comparison to other 'everyday' texts. Providing a preliminary comparison, occurrences of *when questioned* in the news sections of the COBUILD Corpus are typically followed immediately by specification of:

Circumstantial Element	Examples – <i>when questioned</i> ...
Topic	about his intentions as to why he made the calls on their ambitions
Temporal referent	after the study was completed during the ... press conference in the 1970s
Location	at the airport in London
Identity of questioner	Using a name <ul style="list-style-type: none"> • by O'Donnell Using a social/political/professional role <ul style="list-style-type: none"> • by defence lawyers, by the pollsters

Figure 12.1 – Examples of circumstantial elements following *when questioned*

Indeed, throughout the speech and news sections of the corpus, 97% of the string's occurrences collocate with a circumstantial element, most commonly a topic (see Figure 12.2). The three most common words to follow *questioned* in those section of the corpus (by t-score), *by*, *about*, and *whether*, each introduce such clarification (cf. Sinclair, 2003:pc; Fox, 1993:184; Coulthard, 1993; 1994).

Figure 12.2 – Post-positional information typically supplied with *when questioned*

The caution itself could disambiguate *questioned*, by detailing, for example, participants, specifying whether questioning will come only from the speakers or from others too. The official wording could indicate topic (the reason for arrest) or provide temporal reference (prospecting interview). It could add little more than this because much circumstantial detail

varies across situations, indeed even interviewing is not a given. Officers could, however, receive guidelines on reformulating which indicated this potential gap and recommended providing circumstantial details, perhaps using examples from naturally-occurring data. The need to foreground some semantic aspects of the caution at particular stages of detention turns the caution into a text which is temporarily only about those aspects.

Thus officers explain the specialist sense of *when questioned* by specifying its meaning in context, and could usefully do more of the same. However the excerpts above also introduce experiential aspects. Officers were quite clear that their reformulations at arrest were intended to bring silence whereas at interview officer D6, the final example above, appears to encourage talk using the time adverb *once* to highlight the interview's uniqueness. Other officers state uniqueness on-record:

this is **your** opportunity to explain the circumstances of what I'm going to **ask**

[B28]

This officer, like the others in this sub-section, is explaining *when questioned*. This is less obvious than in the previous excerpts as, rather than including a lexical item with a clear semantic connection to 'interrogative' at the outset, he introduces the upcoming interaction using the more evaluative *opportunity*, only later identifying a questioner and topic about which he will *ask*. He thereby re-presents questioning not only by specifying using circumstantial elements, but also by using words which have been "metaphorically transferred" from elsewhere (Fairclough, 2001:94-95). This representation is not inaccurate, the interview is an *opportunity* to present a defence, and detainees who miss that opportunity might indeed regret their reticence eventually. However the interview is also an opportunity for detainees to remain silent; through silence they might avoid court altogether, and this may be obscured if officers represent 'questioning' as an *opportunity* to speak. This example is not anomalous – over a quarter (28%) of all officers who explained the caution in interview referred to the interview as an *opportunity* or *chance*, invariably to speak, never to remain silent. Officer interviews revealed that this kind of presentation might be strategic, from officers who *use [cautioning] to our advantage as best we can* (AO23). This appropriation of the caution to support investigative endeavours continues throughout interview:

it's really towards the end of an interview when you're reminding somebody that "this is your chance to give your version of accounts alright and there's no point going to court and saying something else which you're not going to say here"

[AO04]

This reconstituting of *questioning* invites consideration of what officers' reformulations 'are' – interpersonally (to the detainee and between officer and detainee), textually (whether they are 'explanations') and pragmatically (whether they do whatever the original did). Semantic prosodies (Louw, 1993) and connotations (Fowler, 1991:80-87, 93-109; Fang 2001:591, 604; Bell, 1991:195-198) of *opportunity* are positive, so officers who use this reword (Fairclough, 2001) adding potentially persuasive meaning which may cause detainees to reinterpret 'questioning' as including a "discriminatory aspect" (Linell, 1998:151; see also Bernstein, 1991:184). Some officers who describe the interview as an *opportunity* provide cotext which could also be seen as persuasive:

I just want to give you	the opportunity now for you	to answer	our questions	[B21]
this is	your opportunity	to explain	the circumstances	[B28]
it's	an opportunity for you now	to like explain	the situation	[D10]
this is	your opportunity	to tell me	what happened	[S10]

Considering the determiners, even these few examples demonstrate variability. Some precede *opportunity* with a definite article (~ this *opportunity* to explain is unique); conversely others use an indefinite article (~ this *opportunity* is one of many⁵); others use possessive pronouns (~ this *opportunity* is all yours), each presenting rather different opportunities. The predicates above are more uniform, each presenting interview as an opportunity to do something relatively unremarkable, to *answer*, *explain* or *tell* and in doing so, to address *questions* or describe events. Not all officers complete the verb group with an expectation of such impartiality from detainees, however:

it gives you	an opportunity (.)	to give	an account	[A45]
--------------	--------------------	---------	------------	-------

A45's 'indefinite article + *account*' suggests that he does not anticipate hearing *the account*, or even that only one account exists. Therefore this officer could be said to be constructing a slightly different opportunity here, one which encourages the detainee to do something rather more tactical than the earlier examples. This emerges even more clearly elsewhere:

this is	your opportunity	to give	your version of events	[D1]
now is	your opportunity	to tell me	your side of the story	[A19]

⁵ Detainees are cautioned again on charge, and in theory have an additional 'opportunity to explain' then.

These officers present the interview as a slot in which detainees can present their story of choice. Thus they positioning detainees as strategic players. Whether or not these representations influenced detainees' expectations of upcoming interactions, they certainly construct the institutional order differently from one another.

The officers below also present questioning as an opportunity, but incorporate this differently:

the magistrates or judge or whatever are going to say "well hang on you had the **opportunity** here to answer these questions" [D12]

the court may (.) think "why didn't you say it when you had the **opportunity** during the interview?" [A38]

The earlier officers incorporated *opportunity* without suggesting who might subscribe to the view of interview-as-opportunity other than, perhaps, the speaker. These officers incorporate interview-as-opportunity into the hypothesised world view of the court which may later assess the detainee. Detainees who heard those earlier reformulations could either accept or reject their truth-claims, deciding that, in their view, the interview was not an *opportunity*. Detainees who reject these later presentations would need to convince themselves that the court would not behave as predicted by a police officer. Officers are sensitive to different perlocutionary potentials of the caution at arrest and at interview.

12.5 Defining *something*

Something implies that detainees should mention some particular thing, not 'anything', nor even 'everything', because *some* is "specific though unspecified" (Quirk, Greenbaum, Leech and Svartvik, 1985:391). *Something*'s position in a negative polarity environment and conditional clause invites a different pronoun (Leech, Cruickshank and Ivanic, 2001:482; Quirk *et al.*, 1985:782; Collins COBUILD English Language Dictionary, 1987:55, 484, 1388; Labov, 1988:166; Labov and Harris, 1994:284) which could "effectively alter listeners' interpretation of a situation and their probable course of action" (Labov, 1988:168; Labov and Harris, 1994:285-6). Some officers' reformulations attended to all this by removing *something*. Throughout their 134 reformulations of the medial sentence, although *something* remained dominant, it only appeared 131 times, whilst *anything* appears 53 times. This officer, for example replaces *something* with *anything*:

anything that you later m- (.) mention (.) could go against you

[A9]

Officers also specified what kind of evidence *something* might denote:

say this goes to court and you mention something during the trial like **a defence** or **an alibi** something along ... that sort of line or nature [B34]

the court can ... say... why didn't you tell the police that at the time lyou know for example **if you wanted to say 'well it was so and so that did it'** [D23]

if it goes to court you come up with this (.) **reasons for your actions like your involvement** [C5]

if you go to court and you're going to (.) tell the jury (.) ahh either thum- you know the **reason why you did something** or **you're going to say "it wasn't me because (.) of (.) this"** [S24]

Whether or not detainees realise that these officers' examples are purely illustrative⁶, the examples themselves invite speculation – why has each officer selected the kinds of evidence they have? Are particular examples especially relevant to each officer's addressee, do the officers see them as archetypal, or are they simply the first potential referents which come to mind? Across officer reformulations, many exemplified *something* by describing three types of evidence. These are exemplified by the six officers above, who presented *something* as denoting evidence which:

- acknowledges guilt and legitimises or mitigates guilty actions (**highlighted in red above**);
- asserts or seeks to demonstrate innocence (**blue above**)
- are somewhat ambiguous about whether concerned with guilt or innocence (**green above**)

Detainees thus hear different representations of evidence, from different officers, some fairly 'balanced', having multiple referents (B34, S24), others exemplifying either guilt (C5) or innocence (D23). Officer interviews suggest that examples are not habitual or chance, but that their selection may be:

⁶ The first three officers exemplify *something*, through the words in boldface, presenting their examples as examples by, introducing them with *for example* or *like* or following them with idiomatic phrases which convey generality. In contrast, the other three do not present their *somethings* as examples, instead implying the bold items as exhaustive.

- **intertextually motivated** – Before interview, detainees may indicate their intentions. For example, they may intimate whether they plan to *go no comment* (AO15) or conversely to *throw themselves on the knife and cough the whole lot* (AO45)⁷. Examples of *something* may address such prior talk. For example interviewees who have voluntarily entered custody to mitigate guilt do not need to hear that *something* means ‘evidence of innocence’, since in context innocence is irrelevant;
- **contextually motivated** – Even if officers are unaware of detainees’ plans for interview, they may invoke contextual information about the alleged crime, interviewee (experience, disposition and so on) and available evidence in order to decide how to exemplify *something*.

Conversely, officers may ignore such ‘facts’. Their examples may be:

- **discursively motivated** – Officer C5 (above) exemplifies *something* which relates to guilt. He present the interview and subsequent court appearance as opportunities to express and explain guilt. This could be said to render that reformulations persuasive. Officers, like D23, who present the interview as a time when detainees might deflect guilt onto another, apparently use the cautioning exchange to different ends.

A final set of officers provided examples of *something* which were not at all ‘neutral’:

if you wait until the court to decide (.) you know what **your excuse** was (.) for example [A15]

say this goes to court and you come up with (.) **a fantastic story** which you didn't mention to me while I was talking to you [A46]

Such representations potentially cast detainees as predisposed towards dishonesty (cf. Levinson, 1983).

⁷ Detainees may indicate such intentions themselves or through a solicitor.

12.6 Close

Sarangi finds that within investigations of child abuse, “professionals from within and across various institutional settings may attribute different evidential status to the same piece of information” and may classify information differently at different stages of an investigation (1998b:247-248). Police officers attribute different signification to the caution, depending on when they are delivering it, and to whom. This is potent as “the most effective use of power occurs when those with power are able to get those who have less power to interpret the world from the former’s point of view, [here power is] exercised not coercively, but subtly and routinely” (Mumby and Clair, 1997:184). It is also, perhaps, incidental not deliberate, as “much of the time people in their lay explanations will not be strategically planning, or self-consciously adjusting their discourse in a Machiavellian fashion, but just ‘doing what comes naturally’ or ‘saying what seems right’ for the situation” (Wetherell and Potter, 1988:171).

I have not speculated on the impact that officers’ reformulations might have on comprehension, but on perlocution. The detainee may find extrapolation helpful in demystifying, or distracting by providing excessive detail. The caution densely packs meaning into certain words. Officers unpack and represent this information, expanding on the wording, through reference to context, sometimes simply ‘explaining’, sometimes apparently or actually seeking to achieve something more through explanation. In explaining, some officers preserve the caution’s ambiguity and vagueness, simply relexifying; others disambiguate, fastening meaning at a particular point within the potential semantic territory. Explanation also creates a tension between presenting the full pragmatic force of the medial sentence and mitigating that force in a variety of ways, such as foregrounding the limits of the caution’s applicability. The caution cannot avoid vagueness as it is used universally, but officers might usefully receive guidance in creating fixity in context.

CHAPTER 13: THE COMPREHENSION-CHECK ROUTINE

13.1 Introduction

In some settings, incomprehension may be observable through language, or manifest in hesitation and in requests for clarification, repetition, detail and contextualising information (Adelswärd and Sachs, 1998:194-6). In detention however, detainees are less forthcoming, so, officer-driven comprehension checking is typically built into rights administration. In the US, comprehension checking is obligatory within Miranda's syntax (Shuy, 1997:177). In England and Wales, it is optional. In these data, some officers give it great prominence, breaking the caution or its explanation into three and punctuating with comprehension checks (cf. Fenner, Gudjonsson and Clare, 2002:90), whilst others do not check comprehension at all. Usually comprehension checking comprises a *yes/no*-inviting question and a request for a reformulation (introduced in Chapter 9, cf. Cotterill, 2000:17). The excerpt below is typical.

- | | | | |
|---|---|---|--------------------|
| 1 | P | [official wording] do you understand? | |
| 2 | D | yes | |
| 3 | P | could you explain to me what you understand <u>by</u> that please? | |
| 4 | D | anything that I don't mention now ((and I don't say anything)) (1.0) can (1.0) I do (((a bit)))// | |
| 5 | P | I'll go through it for you alright? | //oh OK//
[S13] |

After hearing the official wording, the detainee claims comprehension. The officer's rejection of this claim (line 3) appears wise, as it precedes an apparent failure by the detainee to explain any aspect of the caution in an immediately recognisable way (turn 4). Indeed the officer apparently takes turn 4 to have demonstrated non-comprehension as he responds with further explanation. Yet within turn 4, having aborted his attempt to reformulate, the detainee does not simply disregard comprehension, instead returning to but reducing his comprehension-claim, asserting that he really does understand *a bit*. This excerpt raises four sets of questions which will be addressed here: (1) Why does the detainee repeatedly claim comprehension but the officer repeatedly ignore those claims? (2) Why does the officer prospect his explanation as being *for* the detainee and include *please* and *alright* in turns which are essentially institutionally mandated? (3) What is the officer attempting to check and test here? What do his checks and tests yield? What does the detainee demonstrate? (4) How might the officer respond to the detainee's reformulation? What might inform his response?

13.2 What is comprehension checking?

Comprehension checking appears prudent following a difficult, important wording. Officers had mixed feelings, however, about the efficacy of the *yes/no* question as a comprehension check. At one extreme, a few officers saw it as invincible, enabling detainees to question the caution's meaning (*if they don't understand they usually tell you* (AO23)). These officers trusted detainees to appraise their own comprehension correctly, honestly (AO12) and in detail (AO05) or were unperturbed if they did not (*if they say "yeah I'm happy with that" then you just go on*, AO35). Nonetheless, "legal advisers and police officers should be wary of accepting suspects' reports that they understand the caution" (Clare, Gudjonsson and Harari, 1998:328) as such reports are likely to be "precarious" (Shepherd, Mortimer and Mobasheri, 1995:66). Indeed, the overwhelming majority of officers in these data were very sceptical about the comprehension-check routine. AO11, with over four years of experience, spoke for most, explaining that he had *never* interviewed a detainee who admitted non-comprehension. Officers were convinced that *most people say that they understand it even if they don't* (AO06). This was not just the impression of officers. In the interview-room data, immediately after cautioning, even detainees who did not answer to *do you understand* in the affirmative, typically responded somewhat positively, claiming to understand *half*, *most* (A33) or *some* (A20) of the wording. Indeed, of the 119 interviewees who audibly responded to this check, 116 (97%) evaluated their comprehension positively¹. Of the remainder, two admitted understanding *not much* (D26; D29) and one sought a repetition of the official wording. None explicitly admitted complete incomprehension. Yet when 85 of these detainees were immediately asked to recontextualise, only one explained all three parts. Of the others:

- **44.2%** recontextualised propositional content of only **one sentence** ($n=38$), of which:

<ul style="list-style-type: none"> ○ 5.8% ○ 25.6% ○ 12.8% 	}	of the total attended only to	{	<ul style="list-style-type: none"> the first sentence ($n=5$) the second sentence ($n=22$) the third sentence ($n=11$)
--	---	-------------------------------	---	--
- **7%** recontextualised propositional content of only **two sentences** ($n=6$)
- **27.9%** recontextualised **something different** from the caution, either something which might be seen as not part of it, or as only distantly following from it ($n=24$)
- **19.8%** were **unwilling or unable** to try to recontextualise ($n=17$)

¹ Fenner, Gudjonsson and Clare used methods from psychology, but very similarly found 96% of interviewees claimed to have understood the caution yet were unable to explain it correctly (2002:89).

These detainees might be expected to want to demonstrate claimed comprehension, yet over half recontextualised ‘incompletely’ and over a quarter ‘incorrectly’.

What do detainees’ responses mean? Possibly, detainees really do not understand the caution but confirm understanding because that is *people’s natural reaction* (AO09), in other words, they feel “obliged to affect signs of comprehension” (Goffman, 1981:26). Various branches of linguistics identify agreement as unmarked, an expected answer (Levinson, 1983:336) or preferred second (Pomerantz, 1984; Bilmes, 1988; Nofsinger, 1991:89; Brown and Levinson, 1978:66; Coulthard, 1977:70; Heritage, 1984:268). Beyond linguistics too, psychologists know this phenomenon as acquiescence or yea-saying (Cronbach, 1946; Bentler, Jackson and Messick, 1971; Knowles and Nathan, 1997), suggestibility (Gudjonsson, 1983; 1984; 1988; 2002) and social desirability responding (Forgas, 1985). From these perspectives *yes* means “I want you to think I understand”. There are certainly pressures to confirm understanding falsely in detention. First, interactional pressures: people who admit incomprehension admit that they have “not been considerate enough to listen”, are “insufficiently knowledgeable to understand ... or that the speaker himself may not know how to express himself clearly. In all cases implying something that the uncomprehending person may be disinclined to convey” (Goffman, 1981:26). As an officer explained, detainees *don’t want to appear stupid* adding *that’s certainly not the reason for the question* (AO05). Secondly, there are institutional pressures. The desire to claim comprehension may be intensified by detainees’ disenfranchisement (Antaki, 1988:13) or powerlessness in interview and by attendant unequal distribution of interactional rights (Harris, 1984). They may feel that the situation prevents them from revealing incomprehension through “constraints about what will count as allowable contributions to given institutional activities” (Drew and Sorjonen, 1997:104; Levinson, 1992), and their response claims equal status (Russell, 2000:43), asserting a presence in the interaction.

On the other hand, detainees’ affirmations may suggest that they have misunderstood the whole cautioning exchange. In that case they may not hear *do you understand?* as a genuine request for information, instead taking the question as somewhat phatic (Coupland, Coupland and Robinson, 1992). In this scenario *yes* means “I understand to the extent that I think this matters” and positive replies are essentially back-channel cues (Goffman, 1967), receipts (Heritage, 1985), indicating little more than having heard the officer (Russell, 2000:43). They

convey “I have processed, or purport to have processed, the preceding clause; you may now go on” (Prince, 1990:284). This perspective assumes that the underlying meaning of *do you understand* is “would you like help to understand, can I explain?”, that the comprehension check initiates an exchange which aims to improve comprehension (cf. Goffman, 1981:26). Many officers themselves described having come to see detainees’ insincere responses as evidence that they do not buy into the response turn as a genuine opportunity to evaluate and rectify incomprehension. Others state that they do not recognise the turn as such, perhaps having been provided with insufficient or indistinct contextualisation cues (Gumperz, 1982:130-152).

Alternatively, detainees may not be claiming comprehension falsely, but are “simply misguidedly confident” about their abilities to understand (Fenner, Gudjonsson and Clare, 2002:90) through a lack of appreciation of “baseline comprehension” which prevents them from realising what is expected of people who understand (Cotterill, 2000:20-21). In this case, *yes* means “as far as I know”. Developing this perspective, *do you understand?* becomes a rather silly question. As White and Gunstone observe, “language traps us here because we say ‘I understand it’ or ‘He does not understand’ when we really mean the level of understanding is above or below some arbitrarily set degree”. For them, understanding is a continuum, not a dichotomy (1992:6). Thus ‘understanding’ may mean recognising words or processing meaning (Shuy, 1997:182; cf. Owen, 1996:293; Kreidler and Kreidler, 1985:186; Teubert, 2001). Specifically, detainees who ‘understand’ must presumably:

1. recognise the caution’s words;
2. know their potential meanings;
3. identify the correct intended meaning, discarding others;
4. know the words’ meaning in combination and collocation;
5. relate meanings to context and to future contexts;
6. select a course of action through ‘understanding’.

The officer who asks *do you understand?* might, at the interpersonal level, be asking, “have you reached stage 6, can you now make decisions so that we can proceed?”. Detainees may believe that they are only being asked about one of the earlier stages, although as we will see, their responses suggest attention to stages throughout this outline.

Alternatively, detainees' apparent ambivalence to comprehension checking may stem from the nature of interview preamble. McDermott distinguishes interactions whose organisation encourages or facilitates talk, such as greeting exchanges, from those which do not, such as court appearances. In other exchanges inarticulateness prevails when "although one is invited to say something, the words are not available" (1988:37). Invoking Bateson's (1972) perspective on speakers' capacity for articulation, McDermott thus describes police interviews as having potential to "organise inarticulateness" (1988:38), eliciting "mutterances" (1988:42). He recommends that, in examining articulate versus inarticulate talk, we should replace questions of ability with sociocultural questions about situations in which such talk, arises (1988:41) and concludes that as analytic terms, "fluency and inarticulateness" distinguish "kinds of situations" not "kinds of persons" (1988:61). From this perspective, responses to *yes/no* comprehension questions or paraphrases do not index 'understanding' (cf. Grisso, 1998); instead they are artefactual instantiations of contextualised talk evidencing detainees' responses to the rather odd request for a reformulation. Thus detainees who claim comprehension but then apparently invalidate those claims through 'inadequate' reformulations can be seen to have evaluated their comprehension successfully but produced explanations which do not demonstrate comprehension in an institutionally ratifiable way.

Institutionality is the final arbiter of comprehension checking. As well as its ostensible communicative function considered so far, the *yes/no* comprehension-check question has an archival function which addresses felicity: "are you prepared to confirm understanding (whatever that may be) and thus to enable this interview to proceed legitimately?" and authority: "are you prepared to confirm understanding in a way which will convince any ratified overhearers of your confirmation's validity?" (cf. Goffman, 1981:9-10). Detainees may be unaware of the need for their responses to unambiguously address these two questions. In contrast, officers may be preoccupied with ensuring that cautioning has "fully performed" communication (Gibbons, 1999:160) and has successfully recorded "expert information for scrutiny by another expert" (Cooke and Philip, 1998:25). Officers described this preoccupation leading them to recontextualise *to be on the safe side* (AO45), guarding against problems in court when detainees may suddenly assert *I just wanted to get out and I said "yes" but I didn't really know what he was talking about* (AO40). Thus, the officer who requests a recontextualisation is saying "in this instance, it's not enough for you to just tell me that you understand; you need to show me too".

13.3 Mitigating comprehension checking

Despite officers' institutional motivation for comprehension checking, they oriented moment-by-moment to interpersonal concerns too. By asking detainees whether they understand, responding to their assessment with a request to explain and then delivering an explanation of their own, officers may appear to doubt detainees, somewhat confrontationally ('go on then prove it'). Indeed in the excerpt at the beginning of this Chapter the detainee who found himself unable to authenticate his comprehension claim reasserted it, claiming to understand *a bit* (turn 4). This suggests that, to him, the cohesive ties between his comprehension claim and the officer's request for proof were direct. The request for an explanation challenges his comprehension claim and he can only respond by rising to that challenge or reasserting his initial claim; when the first fails he resorts to the second. Many detainees similarly resort to restating comprehension after attempting recontextualisation (restatements highlighted in bold):

D um I have the right to remain silent
P yep
D and erm phhh
P what it is =
D = **I do- I do know me rights** [D19]

if I don't give you no evidence well if I don't say something now
I say it later on (.) uhr (.) **well I understand it anyhow** [A14]

Others, apparently similarly bemused by the recontextualisation request, also reasserted comprehension claims by indicating awareness of the caution's source:

P what do you understand from that caution then?
D **what you just said** [S28]

if I don't mention anything now ((clears throat)) that I later rely on I
in court then it can (.) I- **what it says on that sheet what you just said** [S1]

These statements suggest that detainees do not take the comprehension-check routine as a mono-dimensional attempt to assess comprehension, appearing somewhat flustered by being put on the spot².

² The detainees hint at the futility of the cautioning routine and could therefore be said to be criticising the institutional agenda which they have perceived as only pretending to be about their needs. Detainees commented explicitly on such pretence when critiquing the *Notice to detained persons*.

Any request to prove comprehension is rather unusual. In private communication “participants tolerate a high degree of non-acknowledged, unresolved potential misunderstanding” (Blum-Kulka and Weizman, 2003:110) tending to presume “working agreement” on meaning despite mutual agreement being unlikely (Goffman, 1981:10). This is normally quite acceptable because “[a]t the heart of language use is the tacit assumption that most of the message can be left unsaid” and that shared knowledge and, perhaps, impatience will maintain communication (Slobin, 1982:131-2, in Lee, 1992:9). Indeed, “edging into ambiguity” is common and only “significant” when “interpretative uncertainties and discrepancies exceed certain limits” (Goffman, 1981:10). In legal settings, limits of acceptable ambiguity are narrow – matters which are laboured in administering rights might remain implicit elsewhere. Yet labouring comprehension checking is potentially face-threatening in legal settings as it is elsewhere (House, 2003:110). The comprehension-check routine contains powerful Face-Threatening Acts (FTAs) which can themselves, if unmitigated, coerce detainees into claiming comprehension (Russell, 2000:43). These FTAs threaten detainees’ negative face through imposition and their positive face through challenge and the implication of failure (after Brown and Levinson, 1987:66). Bald-on-record recontextualisation requests are, however, legitimate within cautioning procedure and accordingly some officers produce them:

- 1 P [states caution] what does that mean then?
- 2 D that it - jus- exactly as you said ((there))
- 3 P which means what? [S11]

This detainee, perhaps in response to the lack of mitigation, resists reformulating. Officers were not naïve about face-threat here and accordingly described attempting to caution *without trying to be patronising* (AO20) or *insulting* (AO24). During interview preamble, officers attended to face threat through redressive action (Brown and Levinson, 1987:69), mitigation (Fraser, 1980), disclaimers or self-reports which shift frame (Goffman, 1981:284-292):

- P I’m going to explain it to you not because I think you’re daft or anything like that but it’s so that I know that you understand what I’m talking about OK?
- D yep [A2]

This officer uses metadiscourse to mitigate face threat, combining positive and negative strategies (after Brown and Levinson, 1987:101-230):

- | | |
|---|---|
| <ul style="list-style-type: none"> • Positive strategies <ul style="list-style-type: none"> ○ warranting his recontextualisation ○ attending to the detainee ○ using slang ○ hedging opinions ○ asserting concern ○ being optimistic (of mutual interest) • Negative strategies <ul style="list-style-type: none"> ○ hedging ○ showing reluctance to impinge ○ giving overwhelming reasons | <p>Linguistic realisations</p> <p><i>because, so</i>
(see Johnstone, 2002:204-6)</p> <p>having assessed whether he is <i>daft</i></p> <p><i>anything like that</i></p> <p><i>I [want to] know that you understand</i></p> <p><i>I'm going to explain it</i></p>
<p><i>I think</i></p> <p>Implicitly apologising throughout</p> <p><i>because and so</i></p> |
|---|---|

Some officers positioned their recontextualisation-requests or imposed recontextualisations as something other than challenges to detainees' professed comprehension, instead as:

1. **Mutually beneficial:**
 - so I can know that you understand it properly [D19]
 - so that I'm satisfied you understand what that means [A49]
2. **For officers:**
 - just for our peace of mind [A8]
 - just for- for my benefit [A11]
3. **Circumstantially motivated:**
 - it's the first time that I've met you [D18]
 - because of your age and because you've never been ... interviewed on tape before [A25]
 - because obviously you haven't been to a police station ((before)) [A43]
 - because you haven't got a legal rep with you [A31]
4. **Routine or procedural:**
 - everybody says "yes" but I always like to go through it with them anyway [A10]
 - for the benefit of the tape [A37]
5. **Non-malevolent:**
 - I don't wish to be awkward [A9]
 - I don't want to insult your intelligence [A11]
6. **Strictly unnecessary:**
 - you've been educated and I don't really want to go over that too much with you [D30]
 - I'm sure that you fully understand it [S1]

7. Motivated by the difficulty of the wording:

it keeps ... lawyers fully employed sorting out words like that	[A9]
it's quite a mouthful	[C1]
it's quite a difficult - difficultly worded piece of legislation	[B10]
it's a bit of a long winded caution that isn't it?	[B33]

8. Motivated by the caution's importance:

I think it's important that you understand the implications of the caution	[D18]
it's quite important that you understand that	[C5]

9. Motivated by the need to go beyond the official wording:

I'll explain a little bit further	[D7]
I like to know that whoever I'm speaking to fully understands the implications of the caution	[D11]
it's a lot of words and uhm unless you actually break it down it's it - uh you don't necessarily get the full sort of meaning of it	[A19]

10. Motivated by features of comprehension:

you may have heard it being said (.) lots of times but do you understand	[B6]
I appreciate some people may understand that some people may not	[D11]

Strategies 1-4, seek to reposition face-threatening parts of the cautioning exchange as not driven by the detainee, 5 and 6 discount potentially face-threatening readings and 7-10 problematise the wording, thereby allowing officers to align with detainees in finding difficulty. Theoretically, we might expect more uniformity as Brown and Levinson claim that “any rational agent will tend to choose the same genus of [politeness] strategy under the same conditions” (1987:71). The diversity above suggests that officers assess the seriousness of these FTAs, invoking social distance, relative power and ranking of imposition, perhaps case-by-case. One overriding concern does however underpin many of the 10 strategies – dissatisfaction with the comprehension-check apparatus itself:

1	P	can you just explain it to me	
→ 2		so that I know you've got an understanding of it huh	
3	D	[silence] (3.4)	
4	P	do you want me to explain it?	
→ 5		you understand it but you can't explain it? OK that's alright (.)	
→ 6		I've just got to explain it for the benefit of the tapes OK?	[C3]

This officer seeks (line 1) and legitimises (line 2) a recontextualisation. When the detainee appears unable to oblige (line 3), the officer does not problematise the resulting silence but ‘resolves’ it, offering to recontextualise herself (line 4). Indeed she legitimises the detainee’s silence (line 5), positioning it not as obstructive or indicating stupidity but simply as a consequence of the difficulty of the reformulation task. She similarly introduces her own

recontextualisation not as correcting a poor performance but as obligatory within cautioning procedure. However, her account of the comprehension-check routine is conflictual. In the lines highlighted with an arrow, she first commodifies comprehension as demonstrable through talk (line 2) but then suggests that talk may not index comprehension (line 5) and may not even improve comprehension (line 6). This self-referential mitigation neatly identifies the tension between feeling discomfort with the comprehension-check apparatus and having to use it. This discomfort does not, in itself, illustrate that officers found the apparatus unhelpful but simply that they were conscious of it, whilst using it.

13.4 Using comprehension checking

It seems self-evident that, having asked detainees to reformulate, officers should attend carefully to the resulting talk. However, this is rarely straightforward. How might officers respond to detainee-recontextualisations like the following?

- | | | | |
|-----|---|--|-------|
| 1 | P | [recites caution] do you understand that caution? (.) | |
| 2 | D | yeh = | |
| 3 | P | =yes? = | |
| 4 | D | = yes | |
| 5 | P | what does it mean to you? (.) I have to be sh-p- like sure that you understand it before we start | |
| → 6 | D | that anything you ask me (.) erm (.) hhh ((and you get off me that I answer it)) and if I don't answer it of my own choice it can harm erm defence (.) I think [laughs] I can harm my erm- | |
| 7 | P | wha- probably best if I (.) break it down into three parts = | |
| 8 | D | = I do understand it I do understand it | |
| 9 | P | [recontextualises] | [S21] |

This detainee's incomplete explanation, which implies that the caution permits coercion (turn 6), sits uncomfortably with his repeated comprehension claims (turns 2, 4 and 8). Section 13.2 considered whether detainees fabricate comprehension for one reason or another. However, examples of comprehension checking in action like this suggest things may not be so straightforward. Did this detainee think he had understood, only to discover, through talk, that he did not? Does he 'understand' but find himself unable to articulate that (at this moment)? Do his words indicate greater understanding than they superficially suggest? It is unlikely that he believes that his words demonstrate comprehension as he marks uncertainty and a possible call for clarification and assistance through *I think* and laughter. The officer

apparently shares this view: implicitly negatively evaluating, by stating that it is *probably best* to disregard the detainee's recontextualisation move and 'replace' it with his own. An initiation-response-feedback sequence mapped onto turns 5-6-7 would place the disregarding turn (7) as decidedly negative feedback (cf. Sinclair and Coulthard, 1975) through the constitutive properties of the third position activity (Heritage, 1985). Despite the detainee's protests of comprehension, the officer subsequently recontextualises all three sentences, making no further reference to the detainee's words, although referring twice to a recontextualisation which he, himself, gave before interview. Such minimal attention to specifics of detainees' reformulations was common in these data:

- D it means if (.) I don't erm give the information (1.6) now and I were- (.) later rely on something in court maybe it (.) could be held against me
 [intervening side-sequence] ...
 P right I'm quite happy that you understand that I presume also Mr. [solicitor name]'s also mentioned the caution to you [A42]

This detainee's reformulation is incomplete, like that from the detainee above [S21]. It mentions only the middle sentence without explaining even its implications fully. As in the previous excerpt, this officer disregards the detainee's turn. Here, however, disregard is realised through positive evaluation. This officer too refers extratextually to an earlier exchange, in this case one which is assumed, thereby trivialising the extended cautioning-exchange by contextualising it within a macro-legal-interaction in which explanation has already been accomplished. This excerpt shows similar inattention:

- D well I do not have to say anything unless I wish to do so
 P [laughs deeply] you're quite happy you fully understand it?
 D yeah [A47]

This officer's evaluation of the detainee's comprehension is not even explicit. Contrast these with the exchange below with a juvenile offender:

- 1 D that if (.) I do not say anything it'll (.) it'll rely on in court (.) or
 2 P that's right that if it does go to court
 3 D it can be brought up
 4 P the magistrates might have an inf- an inference [pronunciation] infearance about the fact that you haven't said anything
 5 D right
 6 P OK?
 7 D yes [D1]

The initial detainee-recontextualisation here shows considerably less fluency than those in the previous excerpts. If it were taken to indicate a level of comprehension, that level would be low. The turn suggests particular difficulty with the verb *rely*. However, after explicitly acknowledging and positively evaluating the detainee's recontextualisation (*that's right*), this officer does not dismiss that recontextualisation but extends it by qualifying the detainee's reference to *court*. Then something even more unexpected happens. The detainee re-joins the recontextualisation, having apparently incorporated the officer's contribution. Through turn 2, the officer accomplishes a transition from a monologic recontextualisation turn to a co-constructed recontextualisation move. He augments the detainee's contribution and the two then build a joint recontextualisation, over four turns, 'joint' in that no turn is disregarded by being 'deleted' and 'replaced' through talk but instead each turn augments and implicitly ratifies the emergent text (Coates, 2003:58-9; Ochs, Smith and Taylor, 1996:98; Trinch and Berk-Seligson, 2002:412; Engström, Engström and Kerosuo, 2002; Local, 2000:3). The detainee dictates the extent of the recontextualisation, introducing the propositional content of the medial sentence (turn 1) and the final sentence (turn 3), and the officer confines himself to those sentences. The excerpt below, too, shows speakers adding depth through co-construction:

- | | | |
|-----|---|---|
| 1 | D | well if I say anything now and don't (.) if I say something (.) like not now and it comes up later on in court it can go against me [sniffs] ((inaud.)) |
| → 2 | P | it could go against you doesn't doesn't mean that it will go against you |
| → 3 | D | could go against me [sniffs] |
| 4 | P | if you've got a good reason why you haven't said something in here then the court may well understand that OK? |
- [D20]

In turn 1 the detainee attempts a jumbled recontextualisation. It is cluttered with temporal reference and the position of the negator *not*, following a grammaticalised *like*, after the direct object rather than with an auxiliary *do* within the verb group, suggests the meaning 'if I speak at some other time' rather than 'if I do not speak now'. More transparently, the turn uses phrasal *comes up* which has some equivalence with *mention* in vaguely introducing agentless questions and answers. Yet, the officer does not disregard or unpick this recontextualisation, instead building on it, by highlighting an area where, as he understands it, the detainee has oversimplified. The detainee has presented inference-drawing ambiguously (using *can*). The officer apparently takes this to indicate that the detainee sees inference-drawing as being concerned with permission rather than possibility. He therefore realises reintroduction of unambiguous possibility by repeating the relevant section of the detainee's

recontextualisation, but changing the auxiliary verb to *could* and adding *doesn't mean that it will* to highlight the addition. The detainee then adopts this change, through echoing. This addition and echoing co-constructs a mutually acceptable formulation. Both of these officers, then, seek to ensure that detainees have understood the caution's lack of certainty, yet neither attends to the incompleteness of the resulting recontextualisations. As we have seen many detainees distil possibility from the caution; collaborative reinsertion shows considerable sensitivity to this trend. These officers thus avoid imposing "the single voice of a transcendental order which does not allow for conversation or challenge", which makes explicit "the multiplicity of voices" here. However, it does not avoid producing "distorted" texts (Silverman and Torode, 1980:64), indeed, in these examples, 'full' reformulations are not accomplished.

Officers explored why layered, multi-party recontextualisations like these develop. AO33, for example, perceived a need to *get them to try and say it in their own words and just work round [explaining] that way*. Some officers did this quite spontaneously:

if they're way off the mark I might come in and say "yeah that's part of it but should it go to court and you change your mind" *et cetera* ... "do you understand that?" "yep?"
 "OK then and anything you do say may be given in evidence what do you think that means?" [AO01]

This practice fits well with findings that the caution is understood better when administered piecemeal than in full (Fenner, Gudjonsson and Clare, 2002:90). Others described encouraging their interlocutors to drive recontextualisations, through questions:

"what don't you understand about it?" and they'll come out "well what does this bit mean?" and then you can elaborate on that ... "what else aren't you happy with?" and you go to that bit ... let them tell you what the problem is first and you can deal with it from there saves you time and they know exactly what they want [AO35]

This officer suggests an interactive method, but one which requires metalinguistic awareness from detainees as well as a willingness to disclose perceived difficulties, thereby potentially exhibiting vulnerability, assertively. It also requires careful attention from cautioning officers to avoid 'incomplete' recontextualisations like those above. The officer below avoids incompleteness, exemplifying how a joint recontextualisation can 'succeed' (propositional content from the caution's three sentences is numbered in square brackets):

- | | | |
|-----|----|--|
| 1 | P | do you understand what that means? |
| 2 | D | yes |
| 3 | P | can you tell me in your own words what that means to you? |
| → 4 | D | (2.1) it means (.) by opting to [1] the- my right to silence at a later date [2] if th- any other th- information I give to my solicitors comes to court (.) the court could deemed it to be that it I had the opportunity to give it today and that it is therefore irrelevant and they would not believe me in the courtroom |
| 5 | P | hhh. pretty pretty much spot on I'd say yeah I've never heard that way of doing it before but I think you've got the gist of it |
| 6 | P2 | it's a good way= |
| 7 | S | =I did explain it to my client before we came in |
| → 8 | P | [3] right not a problem just as uh- on top of that obviously a record of this is being made and it can be produced in court if necessary (.) yeah? [D20] |

Here, the detainee recontextualises sentences 1 and 2 but neglects sentence 3³. The officer spots this omission from the detainee's turn and, implicitly, from his 'understanding' and adds it (turn 8). This impressive recontextualisation presents comprehension checking as for the detainee, not possible subsequent overhearers, by attending to the detainee's contribution and only supplying content which the detainee has not. 10% of officers recontextualised jointly with detainees or oriented to their interlocutor's previous contribution, particularly in Force D, where 16% of recontextualisations were produced this way. Such active explanation positions misunderstanding not as "an accident ... but ... a resource, a 'rich point'" (Hinnenkamp, 2003:61, see also Agar, 1993:1004) providing "occasions for learning" (House, Kasper and Ross, 2003:2). From this perspective, attempts to *remove* miscommunication or misunderstanding are futile, acknowledging and working from miscommunication being more profitable.

13.4.1 Is there a future for active comprehension checking?

Detainees' recontextualisations are typically syntactically incomplete, which is problematic to the extent that it clouds their formulations. Fluency is "well below the surface" where institutional representatives may "not have time to look" (McDermott, 1988:51):

it could be (.) used against me at a later date (.) by refusing

[S5]

³ As I mentioned in Section 10.6, the proposition that interview talk can be given as evidence in court follows logically from a presentation of courts possibly drawing inferences from that evidence.

This detainee provides no clear referent for *it*, no qualifier linking to the current interaction (*now*) and an incomplete verb group (missing infinitival *to talk*). Yet this does not necessarily indicate incomprehension. If we approach this recontextualisation not with the question ‘does this adequately paraphrase the caution (as if for a naïve listener)?’ but instead by asking ‘what aspects of the caution are included (which might be available to someone familiar with the wording)?’ we find that the detainee in interview S5 takes in the ideas of:

- possibility (*could*);
- evidence-giving in court (*used*);
- negative inference (*against me*);
- temporal sequence (*later date*);
- deliberate silence (*refusing*).

He does not demonstrate that he has fully worked out these ideas in isolation or combination, but to say that he has not understood the caution grossly oversimplifies. Nonetheless, it is one thing to take such superficially incoherent ramblings as indicative of some degree of comprehension, but it would be quite another for all officers to work with such formulations in police interviews amidst other demands. Nonetheless, we have seen that some officers do just this very successfully. Officers were articulate about this practice. Some described listening out for full propositional content and using the reformulation to decide how to proceed (AO45). Others had evolved ways of evaluating detainees’ propositions speedily by integrating them into a tripartite structure (see Section 10.4.1), a practice also recommended implicitly by Grisso’s method which rates paraphrases according to their inclusiveness (1998; see also Shuy and Staton, 2000:131-136). At the lexical level, detainees who recontextualised the medial sentence tended to regurgitate parts of the official wording, particularly *harm your defence*, *rely*, *mention* and *something* (see Chapters 11 and 12). Some officers described taking this to indicate comprehension:

they will actually use the words *harm my defence* because ... they’ve spoken to a legal representative on the telephone or ... they’ve read their rights ... and they’re starting to get familiar with ... the words that are being used [AO05]

Conversely, even other officers admitted resorting to the official wording when they did not understand, the more usual signification attached to regurgitation in the research literature

(Russell, 2000:44; Grisso, 1998). If officers are to genuinely assess comprehension, by attending to detainees' reformulations, they might benefit from help in knowing what to look out for, either from distilled research findings or dissemination of good practice. For example, such advice might take in research which suggests that paraphrases typically focus on what those paraphrasing find most "comprehensible" and "important to the gist" (Charrow and Charrow, 1979:1310), which is used by novices to "focus, or seize, on one aspect of what the expert was saying" (Bean and Patthey-Chavez, 1994:218).

They might also be offered alternative ways to approach checking and improving comprehension. For example an adaptation of Grisso's methods could increase the functionality of cautioning exchanges, asking officers to:

- Present bogus (and genuine) readings of the caution, both to demonstrate their difference and to check comprehension (bogus explanations could incorporate misunderstandings which crop up frequently in authentic data (see Section 11.7));
- Request definitions of important words, such as *rely*, which might identify conceptual gaps;
- Present scenarios to check rights application (1998).

Multiple-choice questioning or use of think-aloud protocols could also be considered (Section 2.3.2). This might facilitate embracing the comprehension check as more than an institutionalised performance of procedural adherence, an (un)official script in which the detainees' turns are incidental. It would re-cast detainee recontextualisations as catalysts to almost pedagogic exchanges and would widen the boundaries of what rights communication might involve. Officers themselves introduced this possibility. Increased use of collaborative recontextualisations would potentially encourage attention to detainees' contributions. However, comprehension is not necessarily best achieved for all through interactivity, and collaboration may be impossible for some officers, or officers in some situations. Nonetheless, for officers, who must daily explain the caution, raising awareness of alternatives to their usual routine might make their job easier.

Officers need to know when comprehension checking is complete. At present, the cautioning exchange structure seems so established that once the structure has been completed,

cautioning is inevitably completed too. The procedure is governed by institutional rather than interpersonal criteria. In other settings, repetition and redrafting continue until “the final product of the exchange, the solution, is achieved” (Bean and Patthey-Chavez, 1994:210). However, this means that at the beginning of the cautioning exchange the detainee’s affirmative response to comprehension checking is taken to indicate incomprehension, whereas at the end of the exchange it indicates the opposite. Expecting officers to judge that they have assured comprehension is rather unrealistic. For example, speakers adjust comprehension criteria according to “the person who is doing the understanding” (White and Gunstone, 1992:7), so officers may find it difficult to be objective. Additionally police procedure gives no guidance on how an officer might work towards comprehension if reformulating fails. On the rare occasions when officers describe detainees repeatedly claiming incomprehension, their only recourse is to re-explain.

Whether it is appropriate for police officers, of all people, to attend to comprehension of the caution and to do so at the beginning of interview, in any case, remains unresolved.

13.5 Replacing comprehension checking

Although a few officers *always* reformulate due to the evidential significance of interviews (AO34) whereas, at the opposite extreme, some do so *only if it’s asked for* (AO22), this does not mean that officers invariably ignore their interlocutor. The dominant set of officers decide whether and how to recontextualise on a case-by-case basis. Some officers invoke their perceptions of detainees’ comprehension during comprehension checking (Cotterill, 2000:21) in deciding whether and how to explain the caution. They attend, for example, to extra-linguistic cues, reformulating *if it would appear... that [detainees] don’t understand* (AO02) *by the look on their face* (AO17). A greater number supplement or even replace information gathered during cautioning exchanges by using a variety of other measures outside interview to evaluate detainees’ likely comprehension. These methods range along a continuum from those based on objective, observable criteria to impressionistic criteria. This practice recalls Adelswärd and Sachs’ description of the work of a nurse, communicating risk to patients, who “modified the meaning and risk of test results according to her assessment of each patient”, calling on the bigger picture of test results and her knowledge of the individual (1998:197).

Looking first to ‘objective’ measures, many officers described considering detainees’ ages when deciding:

- whether to recontextualise (*if it’s a juvenile I automatically go through* (AO02)) and
- how to recontextualise (*if it’s a youngster ... you might take a bit more time* (AO03) or *avoid certain words which they may not understand* (AO02) *adapting one’s attitude, demeanour and language* (AO09))⁴.

As AO09 explained, he responded to age when modifying his explanation through lifeworld experience (*I’m a father I know the way you have to speak to children to get it over*) and through a humanitarian attitude to youngsters which shaped his approach (*just because they’ve been out stealing or whatever it doesn’t make them not a child*). Detainees’ experience of detention also emerged as a central consideration. Whilst a few officers give *a short explanation* (AO19) even to ‘regular’ arrestees, generally the less familiar one is with detention, the more likely one is to hear a recontextualisation. Thus most officers said that they would never recontextualise for regulars, *the hardcore* (AO14), because there was *no point* (AO15), such detainees were *pretty clued up* (AO11) and *probably knew it better than them* (AO47). Others suggested that they would only explain to first-timers (AO25) who were likely to receive *some depth* (AO19) and recontextualisations which were *slower and more clear* (AO03)⁵. Officers also claimed to consider *intelligence* (AO10), some noting whether detainees had a *mental health background* (AO31) or degree (AO48)⁶.

These factors are ‘objective’ in that officers can know them with certainty. However, many officers call on (inter)personal evaluation of detainees when taking recontextualisation decisions too. For example, in the case of *intelligence* seeking to *get an impression* (AO24). Amongst these more ‘impressionistic’ criteria for recontextualisation decisions, officers drew on perceptions of what we might call socio-economic class. AO11, for example, varied his explanations to *suit* his interlocutor, whether someone *living in a big posh house somewhere*

⁴ Some officers presented explaining to juveniles as policy, others as personal choice. Several described exploring key concepts, particularly truth and falsehood. This has been encouraged in response to high-profile investigations of children (see Haydon and Scratton, 2000).

⁵ Fenner, Gudjonsson and Clare found no significant differences between the comprehension of those with “experience” of arrest and those without, although 90% of their sample had been cautioned before (2002:88-9).

⁶ Detainees who “may be mentally disordered or mentally vulnerable” should receive particular treatment. For example, they should be accompanied by an appropriate adult (*Code C, The PACE Codes* 2003:48).

in a nice area or Joe Bloggs on some of these council estates. This kind of interactional work shares some features with crossing, in which convergence is more usually towards “an absent reference group” rather than “the immediate addressee” (Cameron, 2000:325; Rampton, 1995) and with audience design (Bell, 1991; Polanyi; 1981). Similarly AO31 explained to novice detainees who exhibited *nervousness* but not to novices who *appeared reasonably confident*. Some officers could not quite describe their recontextualisation criteria but were convinced of the effectiveness of what some called *instinct* (AO12), impressions formed often *before interview* (AO15):

- F is it difficult to decide either how to vary it or who exactly needs how much?
 P no you know straight away what the level is
 F any particular things that you'd use in making that decision?
 P no you're not aware of it [AO44]

Others described how such impressions were formed, through building *some sort of relationship*:

even within the first two minutes even when you're sitting there getting them to tell you their name their date of birth and their address ... even in the charge room before you actually go into the interview ... you know there's an instant - and not rapport in the way “great we're going to be buddies for the rest of our lives” but if you can get on with that person or relate to them or find some common ground then it's usually easy [AO20]

Officers' use of these criteria was not immutable. AO09 noted, for example, that age influenced him in deciding whether to recontextualise, but not age alone:

like anything else you get some children that are sort of 15 going on 21 you get some 21 year olds going on 15 so its all relevant and you have to adapt to the individual [AO09]

Furthermore particular factors assume different significance for different officers and on different occasions. Whilst AO10 prioritised age, invariably explaining to juveniles *regardless of how many times they've been in custody*, AO15 for example used both age and experience. AO33 illustrates the criteria which just one officer may invoke when planning a recontextualisation (format mine):

AO33's recontextualisation (Words relating to her criteria are highlighted)	Criteria mentioned
I mean obviously an adult and a you know a child	Age
depending on their level of (.) of understanding	Perceived comprehension
or how t hey come across generally really	Disposition
what their language is like generally ...	Language abilities
often you can sort of get a rough idea of what um even even by their just their occupation you know I mean sometimes we're dealing with people who are bank managers or solicitors ... obviously	Occupation
with people like that they- they've got a good education ...	Education
whereas some of your juveniles or I don't know maybe	Age
less fortunate people who whose sort of	Intelligence?
English and	Language abilities
handwriting skills and things are are not so good	Handwriting – Literacy?
you know I would take more time to make sure that they understood (.) before we started	

Although she does not claim to use all of these criteria when assessing every detainee, she indicates the lengths to which officers will go when seeking to evaluate comprehension. It is not surprising that some officers apparently disregard detainees' talk during cautioning exchanges if they do not locate their decisions about whether or how to reformulate exclusively inside those exchanges.

CHAPTER 14: THE UTILITY OF CAUTIONING

14.1 Introduction

Research on the caution has predominantly been concerned with message mediation, the referential function (Jakobson, 1960:357), what the caution is like and what the caution means. But what does the caution do, and what do interactants do with the caution? It is widely recognised that speakers do things through language, that they do things simultaneously through language and that they do things through language whilst ostensibly doing other things. Clark, for example, disputes the dogma that “understanding what a speaker is doing consists of representing a single layer of actions” with a single layer of motivations (1996:592-4). For Gee, the belief that “the primary purpose of human language is to communicate information ... is simply a prejudice”. He instead proposes that the two central functions of human language are “to scaffold the performance of social activities ... and to scaffold human affiliation within cultures and social groups and institutions” (1999:1). In particular, recontextualisation has “multiple social implications”, being linked to effecting and indexing social and ideological transformation (Mertz, 1996:232). The caution scaffolds the accomplishment of the social activity of interview by framing that activity, enabling participants to work on footing and allowing them a space to negotiate aspects of the upcoming interaction, such as terms of address and the accomplishment of silence. It scaffolds affiliations by allowing participants to locate themselves, constructing identities as cautioners, as procedurally adept police officers and as compliant or defiant detainees. This Chapter is not intended as a taxonomy of speech acts accomplished in this setting, but an exploration of what else might be going on, beyond what might be expected, in an apparently tightly goal-oriented institutional interaction.

Whilst officers see the caution as *a basic tool of the trade* (AO45) through which to pursue institutional objectives outlined in PACE (1984) (AO44), it also takes on much greater significance. First, knowing the wording (AO42) and being able recite it from memory (AO45) is central to being a police officer. Secondly, the ability to explain the caution is definitive of officers, such that those who cannot explain *shouldn't be giving it in the first place* (AO42), explanation being an identity-constructing *police ceremonial* (AO45). Whilst

officers pointed out that some detainees exploit the caution to *play the system*, it more importantly offers *protection* (AO01). The many officers who noted this ethico-legal functionality saw the caution and cautioning exchange as *safeguards* for detainees and officers alike, describing cautioning as *important to me as a police officer who wants to keep his job and try and do as good a job as I can* (AO04) and *most certainly for the benefit of the people we're dealing with* (AO34).

14.2 Scaffolding the performance of social activities

14.2.1 Framing and footing

Framing (Goffman, 1974; see also, Bateson, 1981; Tannen and Wallat, 1987; Tannen, 1983) involves “using the linguistic features of a register [to bring] the situation associated with the register into interactional play” cueing, for example, “beginnings, endings and internal parts” (Johnstone, 2002:149). Thus framing can denote transitions between topics and activities. Cautioning officers signal whether cautioning is in the frame of informing or testing for example; if they do not, detainees must figure this out for themselves. Moreover the caution itself acts as a frame, marking the change of state from ‘not under arrest’ to ‘under arrest’ and from ‘not in interview’ to ‘in interview’. This is significant because “when a frame changes, participants’ footings and ways of interaction change too. An entirely different reality comes into being” (Telles Ribiero, 1996:182).

Changes in footing imply changes in “the alignment we take up to ourselves and the others present as expressed in the way we manage the production or reception of an utterance” (Goffman, 1981:128); each utterance signifies varying degrees of awareness and detachment, otherness or “our-own-ness” (Bakhtin, 1986:89). As Section 9.6.1 indicated, officers may shift footing when cautioning in order to accomplish a somewhat pedagogic role successfully.

Whilst framing and footing as analytic constructions can inform data analysis, they are also familiar concepts to officers themselves. Officers discussed the caution’s interactional function in marking, dividing and bringing solemnity to arrest and interview, AO39 proposing that they reflect this prosodically (*our voice alters* by becoming *more officious*). Officers presented these functions of cautioning as salient to detainees at arrest. At that stage

cautioning signals *that something official is happening* (AO24), marking *an official starting point* (AO31), and in interview when it serves as *a physical marker in their custody ... almost like putting a flag up and saying “right now the investigation starts and everything that’s said between us now is the real thing”* (AO24). Officers only caution if they expect to *gain something ... evidentially* so, they pointed out, it is crucial that detainees recognize this framing function (AO31). They felt that even novice detainees do recognise framing, through exposure to television programmes in which cautioning suggests, very successfully, *somebody’s in trouble* (AO42), or *things are being taken fairly seriously* (AO05). One benefit cited of this recognition was that even if detainees cannot understand the caution, for one reason or another, they may still recognise how it changes their situation. As one officer explained, detainees who look back to cautioning are likely to reflect:

“I remember you giving me [a caution] but I couldn’t tell you what it said” so they actually understand that you’re doing something as far as the officialdom stands they’ll still say “but I couldn’t tell you what you said”

[AO39]

The caution’s power as a transition-marker from ‘not under arrest’ to ‘under arrest’ and ‘not serious’ to ‘serious’ was felt to have drawbacks however, being particularly problematic during interactions with ‘voluntary attenders’ and detainees stopped for ‘minor’ traffic offences¹ (see Section 11.6). AO38 points out that for such addressees the caution can be *a shock*, distracting from subsequent procedure (AO38) and even leading them to wrongly conclude that *everybody who gets cautioned gets arrested*, potentially clouding their own status (AO29).

For some officers, the framing function was too potent, as the formulaicity and formality it brings potentially interfere with investigations (see Section 9.8.2). AO01 noted that, following PACE (1984), officers can no longer *do things on an informal basis*, so investigations may seem *to get very heavy very quickly*. Officers suggested that this aspect of cautioning led them to attempt to shift to a less formal footing through talk, supported by non-verbal signals, after cautioning:

¹ As well as being administered within detention on arrest, interview and charge, the caution is also recited to people who agree to be questioned by police voluntarily. This kind of questioning may take place in various locations, including the police station, detainees’ homes or the roadside after an accident or driving offence.

I'll ... say to [novices] "that's the formal bit out of the way and now we'll just speak fine" because that makes people more relaxed ... I'm quite relaxed when I interview if required I'll sit back I'll ... fold my hands [AO31]

AO14 sought to defuse *a terrifying moment* through recontextualisation itself, telling detainees "*well don't worry all it means is this*". AO31 hinted that such apparent compassion has an agenda by adding that it enables him to *get more out of people than being oppressive*. Thus, the cautioning potentially devalues interviews as investigative tools and recontextualisation offers a way to redress that. Some officers did this by claiming a footing of "only passing on information from another person", which distanced them from the reported text and responsibility for it (Wood and Kroger, 2000:102; see also Vincent and Perrin, 1999:294-303; Labov, 1972; Labov and Waletzky, 1967). One, for example, concluded his reformulation by saying *that's not my words that's the words of the previous Lord Chief Justice OK?* (S13). Officers were particularly critical of the institutional requirement to re-caution each time a new audio-cassette begins during ongoing interviews², given that breaks between cassettes may only last for seconds (AO48). They suggested that this kind of re-cautioning can have negative repercussions on:

- Rapport – disturbing *the way that you've ... started to interact with that person* (AO48);
- Delivery – becoming *a bit of a barrier* (AO45) which, in turn, leads to hurried cautioning;
- Affect – being both *excessive* and *oppressive* (AO48);
- Semantico-pragmatic interpretation – being *trotted out quite a lot ... to be on the safe side ... which trivialises* (AO45).

Failing to recognise the caution's framing function and the associated change in footing is institutionally noteworthy (cf. Eco, 1965). In the excerpt below, the officer reads from his pocket-book³. Such reading is common in interviews, enabling officers to move their unsanctioned recollections about situations before interview into the interview record. To authenticate this transition, officers typically ask detainees to confirm the record by signing the pocket-book in interview; detainees often decline. This is an oblique practice; if detainees

² Officers must audio- or video-record all interviews. Interview tapes typically last around 20-40 minutes so officers can be cautioning extremely frequently.

³ A pocket-book is a small notebook which each officer carries when on duty.

verbally recall mutual activities, their representations may compete with the semi-official, written pocket-book record and will not be reciprocally ratified, through signing. In this instance the officer opens the interview by referring to the detainee's arrest:

[reads aloud (transforming third-person to second person whilst reading)] I cautioned you and asked you "do you understand?" and you replied "no not really" and then you then laughed you giggled OK? [B2]

The officer's decision to put this exchange on-record illustrates just one way in which the legal system itself recognises cautioning exchanges as doing more than just cautioning. This decision indicates his awareness that, in this case, courtroom decision-makers will attend to the caution's significance in framing arrest and will give currency to responses to that framing⁴. Greeting the caution with laughter is likely to be seen as inappropriate due to an expectation that cautioning marks a change of state from not-under-arrest to under-arrest and that, accordingly, one should respond with gravitas. Laughter is sufficiently marked that it may become evidentially significant. Of course, the laughter potentially indicates one of at least three things. First, that the detainee has recognised her state-change but not respected its seriousness, laughing to indicate indifference. This is presumably the reading that the officer is proposing. Secondly, that she has recognised the state-change but responded inappropriately through nervousness, for example. Alternatively, that she has not recognised the state-change and therefore responded in a way which indicates only puzzlement or acknowledgement. In any case the caution's framing function is apparently deeply significant, and detainees who do not fully recognise it and the significance of the framed state (under arrest), or the framed activity (interview), provoke comment.

Conversely detainees who present the caution as only framing, only marking state change, also attract attention because this suggests that they may not attach full significance to interview as evidence-creation:

P do you have any idea (.) what it means?
 D what the caution?
 P yeh when I cautioned you then wha- er what's your understanding of what those words mean?
 D I've c- I've been cautioned [D3]

⁴ We cannot know why the officer draws attention to this response in this particular case, as it was an important condition of my access to these resources that I only listened to initial exchanges.

- P you may have heard it being said (.) lots of times but do you understand what it - what does it mean?
 D that I'm arrested?
 P you're arrested (.) OK it means a little bit more [B6]
- P first of all do you understand that caution
 D yes I do
 P and what do you understand by it
 D urm that I've been basically arrested for a controlled substance
 P right OK it also means [B13]

These detainees all explain the broad function of the caution, the first flags only the performativity of cautioning, whilst the others note only state-change.

14.2.2 Prospecting interview

“The meaning of an utterance is not a straightforward matter of external reference but depends on the local and broader discursive systems in which the utterance is embedded” (Wetherell and Potter, 1988:169). The discursive systems which operate in interview may be unfamiliar to novice detainees, so officers use interview preamble to provide some orientation. This may be fairly general:

- as we go along I'll probably be taking notes you know depending on what you tell me right so I'm not being rude if I'm not looking at you writing notes it's OK so just bear with me and we'll just get on with it [B4]

This officer prospects his own language practices, explaining how they might break with more familiar norms of talk. This practice of explicating potentially alien discursive systems became particularly animated, for many officers, around the right to silence. Officers attach wide-ranging semantic prosodies to silence, some presenting it as a *failure*, others as desirable and attainable through avoidance techniques like staring through a window (see Section 12.3). In explaining silence, officers prospect not their own practices, but those of detainees, again explaining how unfamiliar activities might proceed:

- 1 P let's take - break it down three bits you do not have to say anything what do you
 2 think that means?
 3 D don't ((say anything))
 4 P that's right
 → 5 you can sit here and you if I ask you any questions or something
 → 6 you can say to me "I don't want to answer that question"
 → 7 or you can say "no comment"
 → 8 or you can just not say anything
 9 it's your right to remain silent
 10 do you understand that bit?
 11 D yeh [D7]

The officer expands on the detainee's formulation (see Section 11.7) by exploring meaning in practice. He notes that he will ask questions irrespective of the detainee's intentions (line 5) but explodes silence by providing three examples of how the detainee can perform and achieve silence, two verbal (lines 6 and 7) and one non-verbal (line 8). This was a pervasive explanation practice also used by detainees:

if I don't say nowt- **if I don't say nowt** now and I go to- **if I go "no comment"**
 now ... but I don't have to say nowt if I don't want to [A29]

This detainee presents two ways of achieving silence, by not speaking or producing 'speaking silence' through answering only "no comment". Other officers pointed out that silence does not attract negative evaluation:

P you do not have to say anything you can sit there and say nothing (.) or
 D mm
 P OK **won't offend me alright** [A38]

These speakers, then, go well beyond the meaning of the caution, exploring how its meaning relates to speech situations.

Cautioning exchanges are often used to address other aspects of the discursive system of prospected interview interactions:

- 1 D [recontextualises]
 → 2 P (.) just in ke - sorry just quite catch what you said then
 → 3 P2 you've got quite a broad accent Fred if you can just eh- talk a bit slower for us
 4 please hhh uhm::
 5 D ((what I'm say- what I say)) said (.) [repeats] [S9]

The officers note the detainee's regional accent, through a side-sequence, ultimately suggesting that he adjusts his pace. Frequently officers and indeed detainees use interview

preamble to monitor form like this. Whilst one might criticise these officers for expecting the detainee to accommodate when he has more important things to attend to, all speakers' turns must be audible for interviews to proceed. The preamble can be seen as a good time to monitor volume, pitch and accent, whether through metalanguage or less explicitly, because such early intervention potentially minimises attention to form during the interview itself. These interventions may be risky, however:

- | | | | |
|-----|----|--|-------|
| 1 | D | [recontextualises] | |
| 2 | P | right that's- | |
| → 3 | P2 | could you just speak up a little //because// | |
| → 4 | D | // yeh // (.) //sorry// | |
| → 5 | P2 | //it's er// it's obviously (.) on tape | |
| | | OK (.) thank you | |
| 6 | P | right I'm quite happy that you understand that | [A42] |

Although turns 3-5 appear to be a side-sequence like the example above, they disrupt the ongoing talk, halting the main ostensible work of assuring comprehension. Attention to form in this case takes precedence over comprehension checking, delaying evaluation.

Officers might negotiate terms of address (Ervin-Tripp, 1969) during cautioning too:

- | | | |
|---|---|-------|
| P | [official wording] do you understand that so far Jason? | |
| D | yep | |
| P | yeh wha- what do you like to be called? | |
| D | ((mumbles approx 4 syllables)) Jay Jay | |
| P | Jay Jay? | |
| D | mmm | |
| P | OK erm do you understand th- the caution Jay Jay? | |
| D | yeh | |
| P | you do? = | |
| D | = mmm | [S15] |

This last form of intervention prospects the coming interaction by attending to identity issues for both the detainee, whose negative face has been threatened by the request for this kind of information but who has ultimately been attended to, and for the officer who has represented himself as interested in the detainee's comfort.

14.3 Scaffolding human affiliation

14.3.1 Learning to caution?

Whilst officer reformulations are inescapably spoken, they would inhabit the writing-like end of any speech-writing continuum (Stubbs, 1980), being rehearsed and prepared, produced relatively slowly and carefully and comprising particular content within a set message-producer-receiver relationship (Clark and Ivanic, 1997:94). The production context of officers' reformulations influences, and is influenced by, human affiliations, in that, by learning to caution and planning and executing particular instantiations of cautioning, officers orient to the myriad texts which surround their work. Officers expressed diverse ideas about, experiences of and attitudes towards devising and developing recontextualisations. The resulting spoken texts are:

- constituted by and constitutive of the institutional order;
- deeply intertextual with one another;
- adaptive, appropriating and disseminating discourses from outside the predictably influential institutional apparatus.

Officers' practices are influenced by institutionally sanctioned guidance and informal sharing of practice.

Two forms of institutionally sanctioned guidance are available: training and monitoring. Commonly officers could not recall having received any cautioning training. Those who did remember training typically felt that it focused on legal rather than interpersonal or linguistic matters⁵. Only AO02 described receiving formal instruction in *how to bring [the caution] across in your own words*. Many, who were already officers when the current wording was introduced, greeted it with unease and incomprehension (AO20)⁶, perhaps because of the lack of orientation. They described personal, rather than institutional responses to this. For example, some sought explanation from colleagues (AO15), while one worked on learning to apply the new legislation by *breaking it down and formulating an interpretation* (AO17), as

⁵ These officers described training which explored relevant legislation, the legal impact of failing to caution, and the caution's impact on evidence-collection. Possibly, all officers had received training in cautioning but had forgotten, particularly if training comprised written guidance. Such training might nonetheless have been influential.

⁶ Some non-operational officers who caution infrequently admitted that as a result they had resigned themselves to understanding little of the caution, remaining *switched off* from its meaning (AO38).

she would when reformulating. Officers who have only ever used this caution, having joined the police since its introduction, described learning it as a rite of passage, inevitably attaching particular significance to memorising the words. AO15 spoke for many, describing initially avoiding reformulating *because I'd learnt it and not really understood it myself*. For such officers memorising and reciting did “not involve taking meaning from the text” (Barton, 1994:65-66) and initial training was too hectic a time to absorb tuition in explaining. Officers described training as not necessarily instrumental to their own comprehension of the caution or their recontextualisation technique and inferior to experience because *out there* things are *never the same* (AO03). Thus cautioning exchanges were not only significant along the detainee-officer dimension, but also between officers – officers did not stop ‘learning to caution’ upon delivering their first recontextualisation, rather contact with colleagues underpinned continued learning. Continued learning is institutionally sanctioned to some extent. Force A formally monitors officers by requiring Sergeants to check interview tapes periodically (AO16). Although such monitoring primarily focuses on ethical or evidentiary matters, AO45, a supervising officer, described also using it to check recontextualisations, particularly when evaluating new officers. This ongoing institutional contact with officers’ practice tended to focus on monitoring, however, rather than feedback.

Thus officers’ feedback is predominantly informal. Officers described continually sharing practice, presenting their recontextualisations as an intertextual patchwork which they constantly look to improve (AO19) through observing, learning and reflecting. These officers, as stylistic agents, appropriated resources “from a broad sociolinguistic landscape, recombining the m to make a distinctive style” (Eckert, 1996:3, in Cameron, 2000:325). Some officers saw themselves as principally borrowing (*I interview along with a lot of different people ... somebody will explain the caution and I'll think “that bit's good I like that bit I'm going to use that”,* AO09), others as the source of good practice (*since they've been in some of my interviews everybody's doing it now,* AO12). For others, sharing was truly reciprocal. AO16⁷, for example, described convergence within an interview team *because people tend to work with each other and figure out “oh I'll do it like that”*. Similarly, AO19, who had recently returned from a placement, described more widespread dissemination and convergence:

⁷ This officer was a uniformed patrol officer, but had recently spent 3 years as an interview specialist.

eventually we all pick up similar explanations to some degree ... we're all perhaps explaining the caution in a similar manner because I've picked some up from a colleague when I came back and some have maybe picked things up from me

[AO19]

Such intra- and inter-team dissemination might eventually lead to homogenisation of recontextualisations until a normed explanation emerges, particularly in forces without a prominent standard paraphrase. Officers' comments suggest that this process may be underway, with trends emerging, but is certainly not yet complete. This is supported by the triangulation of data from different sources. Officers in research interviews describe using reformulation features which the interview-room data suggest typify their Force. AO09, interviewed in Force A, for example, described using delimiting metadiscourse (identifying tripartite structure) and evaluative metadiscourse (characterising parts of the caution as *straightforward and simple*), practices identified in Force A officers' work (see Section 10.4). However he presented these features as idiosyncratic, his *own way of explaining*, not force-wide practice. AO19, in contrast, presents tripartite metadiscourse as a collective norm:

perhaps every police officer's probably said the same we always explain the caution in interview now and we break it down into the three parts

[AO19]

These conflicting representations suggest that a bottom-up move towards team- or even force-wide homogeneity may be underway, although convergence is more obvious to some than others.

Formal and informal sharing seemed so central to reformulating that officers who were unaware of such intertextuality described discomfort with explaining:

you go for it but there's nobody dragging you back saying "oh you did that wrong" sometimes I've no doubt I've pitched things at certain levels and its been totally inappropriate but it's the best level that I've got

[AO24]

This officer's disquiet seems to stem from both perceived lack of "styling" (Cameron, 2000:236) of his recontextualisations and from his concern to deliver individual recontextualisations appropriately. He shares Shuy's belief in the need for some notion of the "range of permissible variations" between different formulations (1997:193). Officer practice and comment suggests that observing and responding to what comes out of cautioning exchanges may be more important than controlling what goes in.

In deciding how to reformulate, some officers respond to detainees, using detainees' reformulations (see Section 13.4) or their observations and knowledge of the detainee (Section 13.5). Others simply trot out the same words every time they explain (Section 10.5.1). Either way, they may inform their talk with observation of the cautioning world around them. This use of multiple resources in designing talk is common to other expert-lay talk too. Adelswärd and Sachs note that doctors, in communicating risk, draw on three sets of information: specific families' genetic analyses; epidemiological population studies and official statistical information (1998:203). Here, some officers combined resources while others relied predominantly on only one resource.

14.3.2 The caution as performance

Because of the caution's archival function (Gibbons, 1999:160; Cooke and Philip, 1998:25), being seen to have cautioned felicitously takes priority (Section 13.2). Ratified overhearers (Fairclough, 1992: 79-80) or auditors (Bell, 1997:246-247) potentially include detainees' legal representatives, supervisory officers and courtroom participants. Cameron describes the dilemma facing call-centre workers who, encountering a dual audience consisting of callers and overhearing managers, "prioritised the 'in-house' audience whose judgements on their performance had more direct and immediate consequences" (2000:326). In the case of officers explaining rights, meeting the requirements of the auditing audience (being seen to have attended to comprehension) is altogether more straightforward than meeting the needs of the immediate audience (ensuring comprehension) – it is easier to have performed rights-giving than to have accomplished it, in fact it may even be impossible to ensure that one has achieved comprehension. Awareness of the institutional salience of explaining the caution was very evident amongst officers, who described reformulating in response to a perceived need to be *more accountable all the time* (AO40) and because their recontextualisations could be *brought up in court* (AO16). Although officers who presented this perspective usually offered alternative conceptualisations too, here their motives for explaining are not philanthropic but driven by anticipated audit. Officers described cautioning thoroughly, having *been caught out [previously]* (AO12) or because detainees' claim non-comprehension when *trying to get out of things* (AO14), not, for example, because they found such cautioning to most successfully ensure comprehension.

Officers who took these positions assigned cautioning the capacity to demonstrate three things:

- **comprehension**

Officers strive towards observably performing, rather than genuinely achieving, comprehension; as AO25 observed, colleagues should *just make it very clear that [detainees] understand* in order to avoid courtroom challenges.

- **fair evidence collection**

Cautioning was integral to having been seen to have collected evidence fairly; as AO31 explained, *the interview would be worthless if [detainees] didn't really understand*. This led officers to recap its meaning mid-interview⁸, at points when detainees might later claim to have forgotten its significance, for example, if they present confession evidence (AO39). However, AO39 noted that revisiting the caution rarely influenced detainees, suggesting the recap is not simply humanitarian, and AO44 was quite precise about its signification:

we never interrupt anybody ... but if it was a particularly important question or something that you particularly wanted ... to have introduced as evidence ... it's just wise to make it as watertight as possible

[AO44]

Officers like this do not revisit the caution at key points (only) as a reminder to detainees, rather to demonstrate that those key points are safe, buttressing evidence as valid, reliable and just.

- **compassion in officers and the legal system**

Officers proposed that careful cautioning also casts them as responsible individuals, pursuing justice and equity:

if [detainees] turn round in court and say "well I didn't understand what he was on about" it's going to make ... everybody else aware you've read something that's long winded [AO35]

⁸ Some officers had never considered using the caution at any time when it is not prescribed. AO16 proclaimed that he *would never go through it again* after the preamble. However, for others, revisiting the caution during interview served a variety of functions – others are discussed later.

AO35 attends to the potential for overhearers to evaluate his treatment of detainees. AO41 indeed presented the entire interview preamble as *an endeavour on our part to **show** that we're being ultra fair*, rather than an endeavour to **be** ultra fair.

14.3.3 Orienting through cautioning?

Detainees were also finely tuned to the potential for cautioning exchanges to work hard. Although those who claim comprehension may be keen to prove their claim (see Chapter 13), there are many reasons to resist obsequiousness during police interviews. In doing so they exhibit an “active responsive attitude” towards meaning, taking a stance towards information, acting on, augmenting or applying it (Bakhtin, 1986:68). The extended cautioning procedure offers opportunities to signal non-compliance, on-record, before the interview proper has even begun, or to try out the interview setting (cf. Section 8.3.2). Consider how this detainee uses her recontextualisation turn:

- D well it thinks if I withhold information
 P yep?
 D uhr if there's something I do know that I don't
 really want to tell you (.) **but there is nothing** [A12]

Her brief recontextualisation suggests that she believes that the caution concerns choices about withholding information but she adds adverbial stance (Berman, Ragnarsdóttir and Strömqvist, 2002; Conrad and Biber, 2000), going well beyond the request to recontextualise. Detainees may recontextualise the caution incompletely because they simply do not understand or cannot remember it all, and this may have happened here. However this recontextualisation raises the possibility that selectivity may be motivated by attempts to contextualise subsequent contributions, as being from someone intending to be exhaustively honest. The formulation below is also incomplete:

- 1 D if I say anything it could be used against me or for me it depends doesn't it what I say
 2 P alright d'you understand what happens if you don't say anything?
 → 3 D (.) er (.) well I- **I want to talk** ((laughs)) yeh the- // they yeh yeh //
 4 P //I know you want to talk// alright
 well that's I- just in case it crops up through the interview [S16]

In this case, the officer spots the overly tight focus on prospected talk, yet the detainee resists his focus-expanding move (turn 2), instead presenting his intentions in relation to his original

focus, talk. Seemingly, by turn 3, the detainee has already heard and ‘understood’ the caution. By ‘understood’ here, I mean that he has planned his own course of action on the basis of whatever he takes the caution to mean or had previously selected a course of action and has, by this stage, worked out how the caution relates to that. This detainee has thus proceeded directly to stage 6 of the simple schema of comprehension presented in 13.2. Therefore, his partial recontextualisation may be complete in that it contains everything that he feels is relevant. Even when the officer reminds him that there is more to the caution (and implicitly that he might consider additional options) he remains within the limits he had articulated, accordingly transforming the officer’s question. This excerpt therefore restates the enticing possibility that detainees who only explain part of the caution do so not because they only understand that part, can only remember that part, or are only capable of explaining that part, but because they see only, or particularly, that part as relevant to them. Nonetheless, their evaluation of relevance may have been based on misunderstanding, making for circularity around this optimistic possibility.

The different orientations of this officer and detainee offer further insight. Throughout the cautioning exchange, the detainee prospects the upcoming interaction, whilst the officer orients to felicitous explanation. The detainee’s assertion, *I want to talk*, coupled with the officer’s overlapping acknowledgement, suggest that they have discussed the interview’s likely progress already⁹. The detainee invokes that shared knowledge to reject the officer’s suggested expansion. This interpersonal focus on the interaction makes institutionally driven expansion nonsensical. Once the shared knowledge that the detainee wants to talk has entered the cautioning exchange, the officer must legitimise continuing with the cautioning exchange which has been positioned as somewhat irrelevant, with or without the detainee.

Some detainees, asked to recontextualise, bypassed recontextualisation altogether, moving straight to stating intentions in the recontextualisation turn:

I’ll tell you the truth and nothing but the truth

[A18]

This detainee has appropriated another “frozen register” formulation, the oath used to preface evidence in courtrooms (Joos, 1967; Trosborg, 1995). These three detainees all prospected

⁹ Officer interviews and police station observation show that this is not at all unusual.

talk and compliance through the turn-at-talk they were given in the cautioning exchange.

Other detainees prospected silence:

just means I don't have to say anything you know what I
mean I've got my rights I'm not saying shit you know what I mean? [B19]

This detainee had replied *no comment* when asked whether he understood. Whilst he is willing to play along with the ostensible aim of his turn-at-talk recontextualisation, initially repeating the caution's first sentence, he also uses his turn to state his intentions for the rest of the interaction. The detainee below could be said to hijack the recontextualisation turn-at-talk even more dramatically:

D er (.) I'm not guilty but I'll get sewn up with it (.) that's: (.) // it's all //
P //basically//
D sealed isn't it
and (.) all the evidence is a mess and it's going to go to court- [S4]

His caution 'gloss' is shot through with what we might call a discourse of wrongful arrest. Stating innocence and using vocabulary like *sewn up*, *sealed* and *evidence is a mess* he uses the request for a recontextualisation to signal dissatisfaction with the legal process. These recontextualisations highlight the difficulty of assuming that own-words-explanations in any way relate to a flat, unproblematic concept of 'understanding', particularly in situations where provision of a recontextualisation might be intended to do more, or other, than simply signal understanding.

Some detainees were able to accomplish a similar commentary on cautioning procedure and to similarly prospect their interview conduct by opting out of the cautioning exchange altogether. Fairclough proposes that, for those who are less powerful, silence is a weapon which offers "a way of being non-committal about what more powerful participants say" (2001:113), presenting "'the language of silence' as a mode of intervention" (1992:206). McDermott similarly describes the potential for inarticulateness manifest in inappropriate, superficial and incoherent talk to enable expression outside the institutional framework, to subvert and critique institutional norms (1988:50-52). Several detainees refused to recontextualise when asked to do so, instead using their recontextualisation turn to mark non-participation in comprehension checking:

- P do you understand the caution?
 D yeh
 P yes could you just explain the caution what it means to you?
 → D no comment
 P no comment OK (.) what the caution generally means [B7]

Detainees who did this had apparently decided to give a ‘no comment interview’. In interview this is a powerful strategy as it reduces the pressure of incompleteness which accompanies silent responses to questions. Detainees who answer *no comment* during comprehension checking also employ a powerful strategy; they strictly prevent interviewing officers from cautioning felicitously and being seen to have done so. This strategy also affords the interviewee the opportunity to rehearse using *no comment* responses. Some detainees appeared familiar with this strategy. Others, however, seemed confused about responding to the caution:

- 1 P do you understand the caution?
 2 D yes
 3 P you do? (.) can you in your own words just explain to me what you
 4 believe it to mean?
 → 5 D [to solicitor] no comment yeah? [B18]
- P anything you do say may be given in evidence do you understand?
 S you may say “yes” to that ((5 syllables))
 D yes (.) yes yes [B10]

These detainees planned to give ‘no comment interviews’ on the advice of solicitors. However, both appear unsure about when ‘silent speaking’ should begin; therefore, when asked to explain the caution, each looks to their solicitor for guidance on whether this question forms part of the interview interaction. In the first instance, the detainee nominates the solicitor to help in this decision, in the second, the solicitor intervenes¹⁰. For these detainees, the boundary between pre-interview and interview is unclear. This suggests that detainees who respond to pre-interview activities, confirming comprehension and reformulating, may be similarly unsure of when interviewing begins – they may even believe that they have revoked their right to silence through those responses (Cotterill, 2000:19; Shuy, 197:189). This could be an unavoidable shortcoming of explaining and exploring the caution during interviews rather than during a clearly delineated speech event.

¹⁰ The solicitor in the second excerpt, B10, also provides guidance on both whether to speak and what to say, implicitly assessing the detainee’s comprehension on the officer’s and detainee’s behalf.

Detainees' non-participation was, on occasions, derailed by officers who were able to "force participants out of silence and into a response by asking *do you understand?*" (Fairclough, 2001:113) as "they ultimately have the power to sideline the expression, subversion and critique as institutional practices rain down" (McDermott, 1988:50-52). In interview B18, above, for example, the subsequent turns reveal that the officer responded to the detainees' question before the solicitor had had time to advise his client:

- | | | |
|---|---|---|
| 3 | P | ... just explain to me what you believe it to mean? |
| 4 | D | [to solicitor] no comment yeah? |
| 5 | P | well you know all I'm trying to do is= |
| 6 | S | = explain it to- explain it to him now officer |
| | | //it's on the tape isn't it?// |
| 7 | P | // right // what it's telling you here it's telling you |
| | | [B18] |

The detainee's non-committal response to the reformulation request (lines 3-4) is greeted by the officer with an appeal to procedure and its institutional authority. The officer problematises the detainee's non-compliance by beginning to cast the comprehension-check routine as for the detainee's benefit. However, before he can complete his turn, the solicitor intervenes. His intervention initially appears to support the officer in acknowledging that comprehension checking is necessary, however his dismissive "it's on the tape isn't it?" repositions cautioning once more as not being for the detainee, but for the overhearing court.

In some instances, contact between institutional procedural pressure and attempts by detainees to subvert procedure results in very obvious conflict. In the following example, it is the detainee's 'helper', his appropriate adult, who resists the officer's attempt to caution, exploiting the cautioning exchange to insert his own perspective which should, in the normal course of events, not be explicit in the interview. The excerpt below is indicative of a cautioning exchange which extended over 40 turns:

- 1 P for example if you wanted to say well it was so and so that did it it wou- do you understand
and they might (.) it's a //matter for the court//
- 2 AA // what he's trying to // say is he's trying to put the blame on you
- 3 AA saying you nicked // it (.) but you don't ((know who's)) // nicked it
- 4 P //they might they might blame you for//
- 5 P something or draw an inference (.) // do you understand that //
- 6 AA (((can we get on with the))// interview ...
- 7 P sorry?
- 8 AA can we get on with this urm questions
- 9 P yeh it's important though I need to (((please)))//
- 10 AA //yeh he un//derstands all this because
- 11 P well no that's- I need to hear that from him
- 12 AA say it Fred
- 13 P I need to know that you understand this
- 14 D yeh
- 15 P OK and anything you do say as I say (.) may be given in evidence that means // the tapes//
- 16 AA //I'm starting//
- 17 AA in a minute [D23]

Here, the officer's and appropriate adult's discourses are incompatible, the officer seeks to pursue and be seen to pursue procedure, the appropriate adult recasts the officer's turns as hostile provocation. Usually, in such confrontations between an institutional official speaking "with a technical vocabulary grounded in professional expertise" and an "ordinary" person speaking "in a common vernacular grounded in personal expertise", "the technical prevails over the vernacular" (Mehan, 1993:264; see also Bruner, 1986; 1990). Here the commitment of each participant to their communicative practice to some extent decontextualises the other's words, rendering those words defunct (cf. Wodak and Iedema, 1999). The appropriate adult's discourse of resistance to authority cannot, in the interview setting, be recontextualised to be meaningful (Scheuer, 2001:234). Instead his linking of what the officer might seek to do during interview with what the officer is doing through cautioning, offers a subjective lifeworld perspective which cannot be applied in this institutional setting. This becomes most pronounced when the police officer invokes institutionality, seeking to legitimise cautioning as important (turn 9) and simultaneously the appropriate adult calls on his lifeworld practices of speaking for his ward (turn 10) and demanding cooperation from the teenager (turn 12), both practices which are incomprehensible in the felicitous cautioning exchange. The officer's power lies in "the continuous reassertion of the status of [his] discourse as "true", objective, neutral or normal and [the displacement of] other emergent discourses" (Wright, 1994:25, in:

Iedema and Wodak, 1999:12), whilst the appropriate adult's power lies in dominating the floor, ultimately preventing a recognisable cautioning exchange from occurring.

14.3.4 The caution as diversion

Some officers described re-cautioning during interview, predominantly to prod detainees towards honesty or talk, but with two useful side-effects, first *throwing* detainees, secondly *buying a bit of time for yourself ... if you need to gather your train of thought ... if you're losing your way* (AO15). In this representation, the caution helps to assert and maintain control:

it's so easy to give a "no comment" interview and they gain confidence from it and the confidence should be on my side ... I [re-caution] to draw back in and "I'm in charge and it's you that's in trouble and I want you to think about what you're saying" [AO24]

AO24 explained that this worked occasionally, putting him *back in control*. Other officers exploit cautioning during interview preamble:

now and again ... you try and catch them out ... you say "can you explain that to me?" and they've got the story prepared but then they're thrown ... and they think "uh-oh hang on a minute what's that then?" [AO15]

His comprehension check is a deliberate challenge to maintain focus despite deflection from the anticipated interaction. AO18 uses the same question to wrong-foot solicitors. He gleefully described how, having established that a solicitor has explained the caution to the detainee in front of him, he would then seek a detainee-recontextualisation:

[the solicitor] may have gone over it a couple of times explained it but to actually repeat the knowledge is very difficult for [detainees] and they stumble and mumble and the solicitor gets embarrassed and it's all on tape [AO18]

This officer clearly recognises the difficulty of demonstrating understanding through talk, but uses this recognition decidedly unexpectedly.

Detainees too occasionally exploit the very requirement that the caution has been fully understood. AO22 anecdotally described a detainee who repeatedly claimed incomprehension of the caution during interview preamble. Eventually the interview had to be suspended, until

a passing officer revealed that he had interviewed the detainee *about thirty times*, saying “*he does understand the caution he’s messing you about*”. This detainee used his knowledge of police procedure to reclaim power, challenging officers to recontextualise in a way which would solve his claimed comprehension difficulties. Such uncooperative behaviour (House, 2003:21) or “parasitic misunderstandings” in which a speaker “makes use of a particular misunderstanding manifestation format in order to gain points at the cost of his fellow conversationalist” (Hinnenkamp, 2003:74) or where ambiguity is intentionally exploited (Goffman, 1981:10-11) is particularly effective in interactions which may eventually reach an overhearing audience.

PART C: WRITING IT RIGHT

CHAPTER 15: REFORMULATION REVERSED

15.1 Introduction

The demands of text transformation change radically when officers pass information from the public to the institution, rather than vice versa. The case-study examined here illustrates how, through statement-taking, a witness's version is transformed from their first verbal account into the final written text penned by their interviewer¹, how “ordinary events of life” are “converted into legally valid evidence” (Bazerman, 1997:44). This builds a theoretical picture of what witness statements are and how they are produced.

It is often assumed by lay people, and asserted by police, that witness statements are verbatim records of witnesses' words. Heaton-Armstrong describes this as a “fiction” (1995:138), and field observation confirms that much more goes on during witness statement-taking besides, and instead of, dictation. As one officer explained:

I was always taught to present the statement in a readable fashion ... a lot of the witnesses they're rushing things out and blurting things out and you would try and paraphrase it a lot of times but ... by so doing you're naturally introducing your own perception of things [AO46]

Labov and Fanshel define an interview as “a speech event in which one person, A, extracts information from another person, B, which was contained in B's biography” (1977:30). This certainly happens in witness interviews; however, it is by no means the only thing that happens. Witness ‘interviews’ are not simply about extracting information, but also about working with that information, transforming it, in order to jointly author a written text. The witness interview is therefore more than, or different from, Labov and Fanshel's interview; as a speech event, it consists of multiple tasks - telling, listening, writing, formulating, analysing - and has multiple goals - the extraction, communication and use of emotional and factual information. The situation is further complicated by the fact that these tasks may be collapsed, the witness may simultaneously inform and make authorial decisions, whilst the interviewer may simultaneously extract and record information and may, in recording, be doing several things which are much less neutral than *record* suggests.

¹ This work is part of a wider study on witness statement-taking which examines 20 statements, taken in different circumstances and by different configurations of participants, and investigates continuity and change in the statement genre and in statement-taking practice.

15.2 Witness statement taking

Taking statements is a demanding task. This has prompted the development of various training regimes (Fisher and Geiselman 1992; Clifford and George, 1996:232; Shepherd, 1988) and the adoption, in England and Wales, of an instructive written guide and week-long course, aimed at improving officers' interviewing skills. The role of the interviewer is presented, in these materials, as centring on verbal skills, particularly elicitation and attention to interactional structure (National Crime Faculty, 1998:25-71). Writing skills, such as transcribing a jointly authored text or recording speech, are neglected. The speaking-writing imbalance is being addressed in training for senior investigative officers. Here the importance of the witness's contribution is stressed, "verbatim accounts" and use of witness's "own words where possible" are encouraged (Kearns, 2000:pc). Such training might mark a transition from viewing statement-taking sessions as a means to an end to viewing them as important in their own right.

Further downstream in the criminal justice system, witness statements are represented as offering a complete, true record of sensory input to a particular individual (the witness) at a specific time or times (during an event defined as a crime or other related events). The written statement comes to 'stand in' for the witness, to speak when they are not present throughout investigations (Milne and Shaw, 1999:128). At trial, the statement becomes "a narrative from which ... witnesses can refresh their memories" and even "a text against which their consistency can be checked" (Heaton-Armstrong and Wolchover, 1992:162). For example, in the "typical courtroom scenario" a witness is asked whether they signed a declaration that their statement was true and correct and is then asked "to explain the inconsistency between oral evidence and statement" (Heaton-Armstrong, 1995:137). Ignoring the circularity of these processes, this illustrates the potency of the written text. By affording text such primacy, the criminal justice system comments on the witness, the statement and the relationship between both and the legal world. The witness becomes "an object ... represented in text" and only accessible through "textual representations of his interactions" (Mehan, 1993:260).

Furthermore, "the appearance of meaning as a text, that is, in permanent material form, detaches meaning from the lived processes of its transitory construction, made and remade at each moment of people's talk" (Smith, 1990:210-211). Statements must, in detaching meaning, do so wisely so that when they are used they represent the witness, accurately speaking on their behalf.

Witness statements are taken in specific contexts; for example within particular power relations, and using specific processes of production, such as cognitive interviewing. When statements are used, however, these contexts and processes are rarely mentioned – for example, juries are not typically urged to consider what questions might have been asked during text construction. Disquiet about, and abuse of, statement taking and statement use led the Anglo-Welsh legal system to introduce audio- and video-recording of interviews with suspects and child witnesses/victims between 1986 and 1991 (Baldwin and Bedward, 1991:671; PACE, 1984). This has proved to be a valuable and successful safeguard for both police and suspects (Heaton-Armstrong and Wolchover, 1992:160). Nonetheless, statements with witnesses other than children are still rarely recorded. Procedure here, too, may change in due course: concern about the standards of witness statements has led to experimental audio-recording initiatives throughout Britain (Milne and Shaw, 1999:130) and recommendations that all witness statement taking be audio-recorded (National Crime Faculty, 1998:160). Specifically, The Lawrence Inquiry highlighted the risk that interviewers may disregard facts which appeared unimportant during initial interviews, but eventually emerged as crucial (Macpherson, Cook, Sentamu, and Stone, 1999: para 13.14; see also Sarangi, 1998a:307). ‘The Guinness Advice’ similarly recommends that documents created during investigations, such as interview notes and draft statements, should be preserved (The Director of Public Prosecutions, 1992: paragraph 8). Such criticism is slowly shifting investigative focus away from the statement as authoritative text and onto the interview and related texts as record. This has prompted the development of a special class of witness, the significant witness, who is always to be recorded and interviewed by a specially trained officer.

15.3 Data overview

The two texts used here were created in an English police force in 2000:

- 1 an audio-recording of a single statement-taking session, in which a witness recounts his understanding of events surrounding a suspicious death;
- 2 a hand-written statement, composed during the statement-taking session.

The criminal investigation treated the death as a possible murder, so each witness was interviewed as a significant witness. The data show what would have been lost without audio-recording. The audio-recording analysed here is a copy of the police recording, the official record (see Section 9.5.1).

The events described in the session and in the resulting statement occurred over two days during which the witness, victim and others met at various locations, walking from place to place. Key participants are introduced in Figure 15.1. Figure 15.2 also provides orientation, labelling two meetings described by the witness, and summarising the location, participants and events involved with each².

Name	Personal details
Curtis	The witness. Under 20 years old.
Kevin/Kegs	A possible assailant. From this statement it appears that he may be a likely suspect with a primary role in the suspected murder. Under 20 years old.
Terry/Tez	A possible assailant. From this statement it appears that he may be a likely suspect with a secondary role in the suspected murder. Under 20 years old.
'The man'	The victim.
Jerry/Jez	A possible accomplice. The witness, victim, possible assailants and others spent time at Jerry's flat before the suspected murder. The statements suggest that Jerry was not at the suspected murder scene. Estimated by this witness to be in his 50s.
'The girls'	A group of teenagers who had been invited to the suspected murder scene by the witness and apparently left shortly before the crime was committed.

Figure 15.1 – Central characters whose actions are presented in the statement

² “Meeting” is a convenient label (the word is not used by the interviewee or interviewer). The meetings were informal and certainly not business meetings, their content and timing were, apparently, unplanned. The participants did not meet at them, mostly they arrived at and departed collectively or at least with one or two other participants.

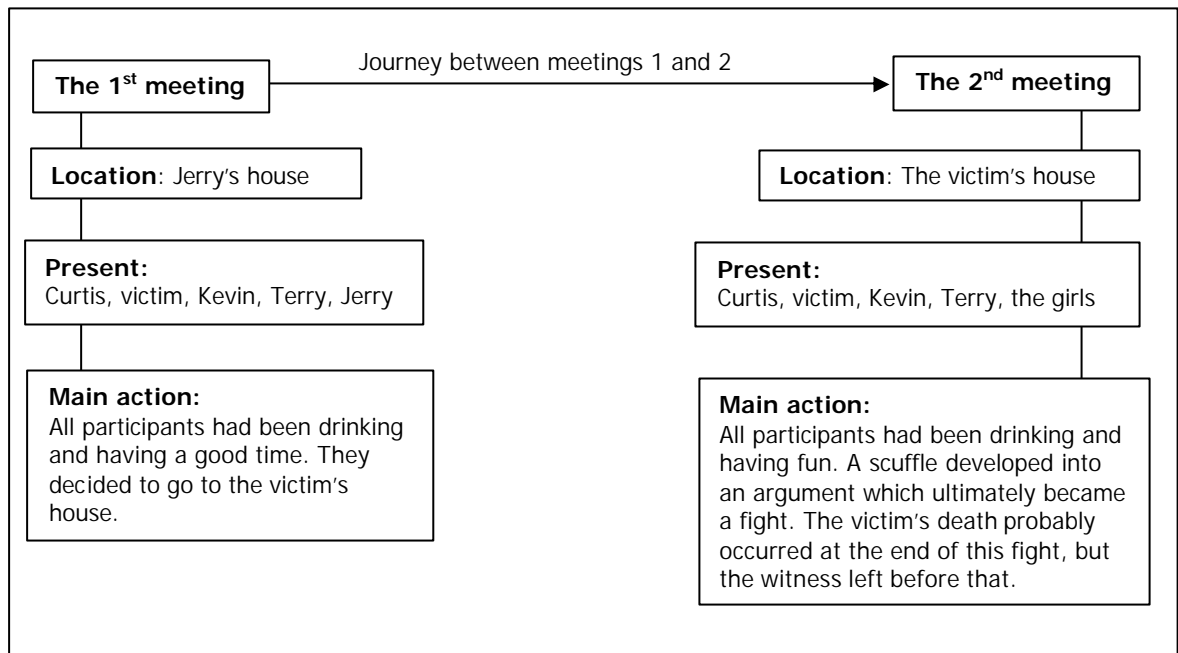


Figure 15.2 – Synopsis of the initial stages of the crime, as presented by this witness

15.4 Structure and composition of the session

“Interviews often appear to meander in terms of talking turn, structure and topic progression” (Shepherd, 1999:139). As one officer explained, this can present serious problems:

taking witness statements you'll find its sometimes very difficult with some people for them to get what's happened in the right order and you'll take the statement you'll read two or three other people's and you'll say "hang on she said this happened before that" ... and yet when you go back and say "well are you sure it happened like that?" "oh yeah" so straight away you've got conflict in your statements

[AO42]

This was certainly true of this session; initially, it appears a topical jumble. On closer examination, however, something relatively systematic emerged. Heaton-Armstrong ruminates that perhaps “statement recording interviews are preceded by a preliminary chat, or several chats, during which a police officer may endeavour to marshall [*sic*] a disorganised narrative into more coherent form” (1995:138). This interview includes these very “chats” and, unsurprisingly to police officers, the statement-taking session divides into four extended formulations, tellings or versions, through which the interviewer and witness repeatedly readdress and re-work the crime narrative. Each reworking is easily identifiable as each is surrounded and demarcated by orientational talk. For example a request for an account

precedes the first version and the following, from the interviewer, appeared between versions 3 and 4:

we've just gone through one tape (.) where I've recorded down everything you've told me ... in the form of notes hhh I'm going to now (.) write that out into statement form (.) and at the end I'll invite you to sign it

The four re-workings have some key differences. Each reworking:

- narrativises, with more or fewer interruptions and wider or narrower scope (e.g. some versions narrate events up to the day of statement-taking and others only those on the day of the suspected murder);
- proceeds rather differently, in some the witness talks most and the interviewer rarely interrupts, others are dominated by interviewer questions;
- is functionally different from the others, in some narrative elicitation is prioritised, others centre on joint text production and result in a written text (notes or the final statement).

This 'versioning' was realised in the structure outlined in Figure 15.3³ which illustrates that each version uses written texts differently. In some versions the written text helps to structure the verbal interaction and in others the creation of the written text almost becomes a participant, taking turns in talk (Komter, 2001).

³ Versions presented by the witness during statement-taking are almost certainly not the only versions the witness has produced or will produce (Heaton-Armstrong and Wolchover, 1992:165; Norrick, 1998: 78-83).

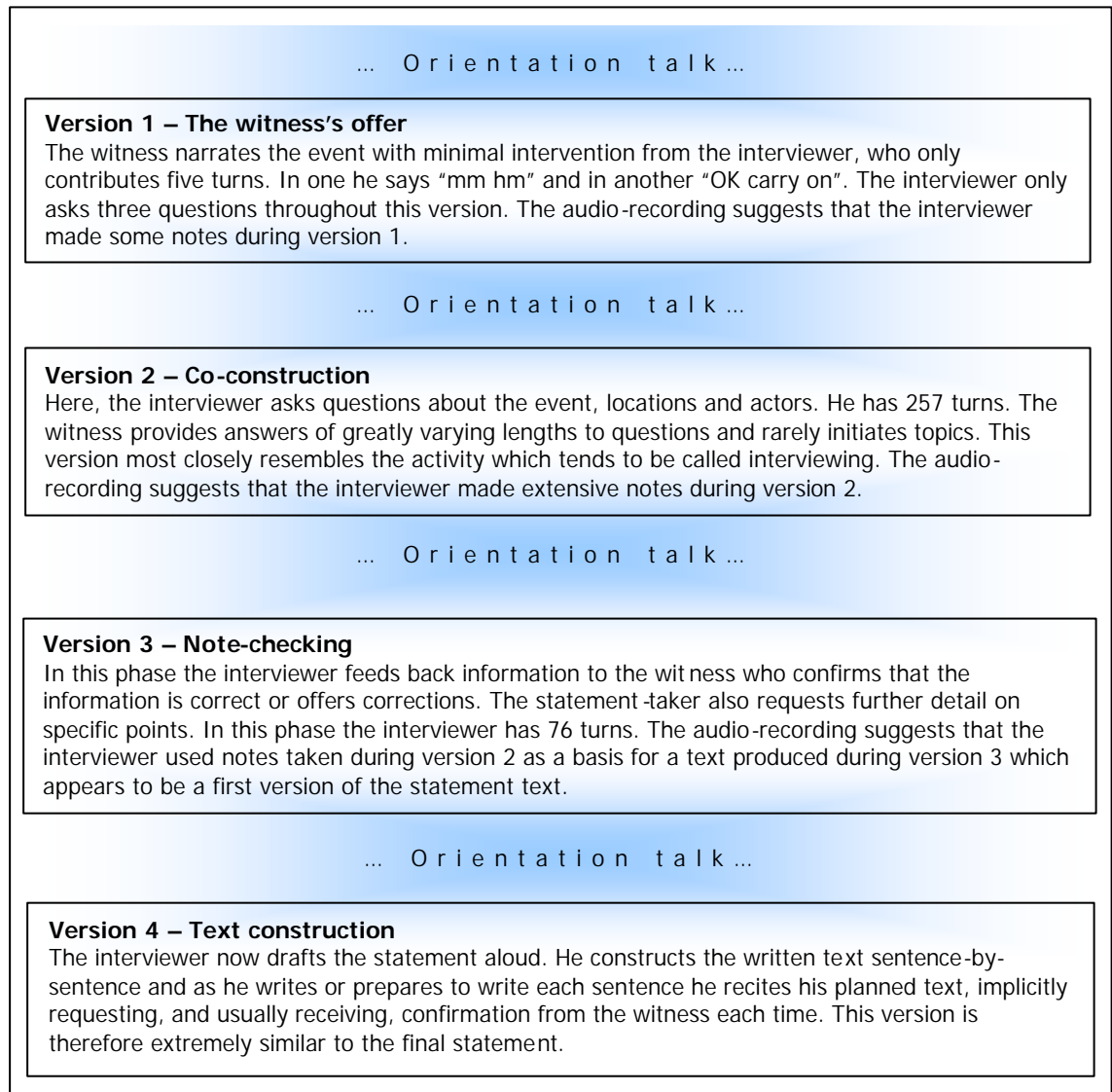


Figure 15.3 – The structure of this statement

15.5 Temporal reference

Tracing the progress of a number of themes through the statement-taking session addresses the question: Are the witness's words and ideas incorporated into the statement, if so, to what extent, how and why? The themes traced all concern temporal reference, a topic around which “precision is vital to the functioning of the law” (Eades, 1994:247; see also Labov and Harris, 1994:284). Indeed, according to simple statistical analysis, 6% of the final statement here concerns time, through six references (highlighted in Figure 15.4):

i	On the 5 th [month name] 2000 at about 3pm I was a friends house called Jerry ...
ii	At about 6pm or earlier we left Jerry house leaving Jerry behind. ...
iii	We went directly to this mans house which is on X Rd almost opposite Y Rd. On the left. At this time, I'm not sure what time it was , but I can say that I had not seen this man before ...
iv	Everything was OK at first the man was asking if I was OK and we were all laughing and joking About ½ hour later Kevin and Terry and the man were messing around they began to
v	push each other for about 3 minutes I was looking back and forward while talking to the girls and I heard them begin to argue I don't know what about but it was loud, I said don't start arguing in the mans house and they calmed down, the man continued to argue a bit saying "you bastards I'll knock you out" he was saying that to Kevin [surname].
vi	This went on for 10 minutes. Suddenly the man flipped he got up and grabbed Kevin around the throat

Figure 15.4 – Excerpts from the final statement⁴

Of these six references, four are preceded by the uncertainty marker “about” (numbers i, ii, iv and v) and one (number iii) could be described as temporal anti-information because it conveys what the witness does not know, not what he knows⁵.

Four questions underpin the investigation of how this temporal information has entered the final statement:

- 1 How are the timings themselves arrived at, for example, why 3pm not 3.30pm?
The most obvious explanation is that the witness suggested these times during the session.
- 2 Why use the four approximations, mentioned above, flagged by “about”. If the witness was sufficiently aware of time to refer to it why did he not do so definitively?
- 3 How are the points at which and about which temporal reference is provided, arrived at? For example, when discussing the fight, why is the duration of “pushing” supplied but not the duration of “messing around”?

⁴ Whenever the statement or part of the statement is reproduced, errors, omissions and crossings-out are as in the original. Capitalisations have been corrected to ease reading.

⁵ “at first” which follows temporal reference iii is also a reference to time but it is used here to describe the sequence of events, not their time or duration, although it clearly implicitly connects with temporal reference iii.

- 4 Why is the anti-information, in reference iii, included? How does its rather marked formulation arise?

The witness's first version might be expected to answer some of these questions:

Version 1, excerpt 1

started having a laugh and that (.) having some more drink you know (.) and everything just s- started turning around

Version 1, excerpt 2

then they (.) went in the house (.) started having some drink and th- (.) then um he looked round and saw saw the ur st- the man and Kegs messing about (.) pushing each other (.) and then (.) the man the ur the man must have got fed up of it

It is immediately obvious that, although the witness is describing the events which are presented in the final statement (Figure 15.4), this first account is managed rather differently. There is no reference to time here at all, in fact, the witness barely mentions arriving at the locations. If the reference to time which appears in the final statement is not in the witness's initial narration, where do they come from? The answer lies in the intervening versions, 2 and 3. I will therefore examine the origins of the 6 references to time in those versions, one by one.

15.6 The progress of temporal information through the session

15.6.1 Time i: Arriving at Jerry's

To recap, the final statement described arriving at Jerry's:

On the 5th [month name] 2000 **at about 3pm** I was a [sic] friends house called Jerry

Prior to the written production of these words, they were mentioned verbally during the statement-taking session:

From version 2:

- | | | | |
|---|---|---|--|
| | 1 | P | you was drinking spirits? |
| | 2 | W | yeah |
| → | 3 | P | (2.0) OK and at- what time did you go there? |
| | 4 | W | that was about phhh not quite sure on the time but it was quite early (.) when I went to the house |
| | 5 | P | quite early (.) how //is- how early?// |
| | 6 | W | // say about // (.) say about phhh probably after 3 |
| | 7 | P | after 3pm yeh? |
| | 8 | W | yeah |

The officer initiates discussion of timing, in turn 3. Immediately, the witness marks uncertainty, hedging with *about*, *not quite sure* and *quite early*. In turn 5, the interviewer notes the uncertain formulation by repeating it and seeking clarification. The witness apparently provides that clarification in that his reply introduces a time, but he again hedges, with *probably*, indeed the time that he introduces is non-specific, *after 3*. In line 8, the interviewer repeats the most detailed formulation which the witness provided and it appears that the witness and officer have agreed on a time of arrival. Later in the same version, however, the pair return to this issue, as if it had been resolved very differently:

Later in version 2:

- | | | | |
|--|---|---|---|
| | 1 | P | OK when you say hh you got you at at 2 o'clock you were with Jez and you left Jez's after about |
| | 2 | W | (.) I'm not really //sure on the times // |
| | 3 | P | //say about two hours// |

Here the notion that the witness was with Jez, at his house at 2pm is introduced. The witness had not mentioned 2pm during the interview, in relation to any topic; 2pm is introduced by the interviewer (turn 1). However, when the witness speaks in line 3, he does not comment on the change from 3pm, his proposal, to 2pm, the interviewer's alteration, and instead uses the reference to time to highlight his uncertainty about "the times" in general. The interviewer interrupts the witness's generalised protestation and continues to pursue the task he began in line 1, proposing a version of events which was not introduced by the witness.

Version 3 sees the next reference to arrival at Jerry's. Here, the interviewer proposes to recap all of the witness's contributions. He begins, in turn 1, with reference to 3pm, the time the witness proposed, earlier:

From version 3:

- | | | |
|---|---|---|
| 1 | P | just- just to run through (.) everything that you've told me (.) alright (.) about 3 o'clock on Wednesday is that right |
| 2 | W | yeh yeh |
| 3 | P | (3.4) you were with a friend called Jez who lives off X Road |

The interviewer ultimately begins the statement's crime narrative with this formulation. This prioritises temporal reference over the details of participants or location, which the witness's version foregrounded. The interviewer selects "about 3 o'clock" as the time when the witness was with Jez; neither participant reintroduces 2pm.

15.6.2 Time ii: Leaving Jerry's

Next, I will examine how the following entered the statement:

At about 6pm or earlier we left Jerry [*sic*] house leaving Jerry behind.

The first relevant interview excerpt is from version 2:

- | | | |
|---|---|--|
| 1 | P | so you were all there (.) at what time did you leave |
| 2 | W | we left about (.) we was there for about (.) say about 3 hours I think I'm not sure (.) bout 3 hours 2 hours |
| 3 | P | until about 6 o'clock do you think |
| 4 | W | yeah around 6 // o'clock yeh // |
| 5 | P | (((would that be// alright))) |
| 6 | W | yeh |

In turn 1, the interviewer seeks temporal information about leaving Jerry's house. The witness's answer does not provide that information, perhaps due to the confusion identified in the last sub-section about when he had arrived there. In any case, the witness draws, instead, on a reflexive strategy which might refresh his memory, attempting to reconstruct events at the house. This inventive strategy is recommended by cognitive interview training (Fisher and Geiselman, 1992) and, as Section 15.5.4 will show, is also used by the interviewer. The interviewer then readdresses his original question (turn 3) by converting the duration provided by the witness into time, based on the 3pm arrival time discussed above. Again, the interviewee exhibits uncertainty and the two negotiate a mutually satisfactory conclusion, with the interviewer asking *do you think* (turn 3) and *would that be alright* (turn 5). They return to this later in the same version:

- 1 P you were with Jez Terry Kevin and another guy that you can't
remember his name =
- 2 W = yeh
- 3 P (4.5) OK (.) so you all left about 6 o'clock and you went to this guy's house
- 4 W yeh (.) I'm not sure if it was about 6 it's probably ups- earlier about more earlier than that
(.) //not I'm not sure of the time//
- 5 P // earlier than that you think //
- 6 W we ((went through until))
- 7 P (.) OK (.) how many of you went

Here, the interviewer re-presents the time discussed in the previous excerpt, along with details of participants and locations. Again, the witness responds by dedicating a whole turn (4) to expressing uncertainty and discomfort with the earlier decision to include 6pm. In return, the officer interrupts (turn 5), perhaps supportively, but then moves on to a different topic without resolving timing (turn 7), without attempting to negotiate an agreed time or to help the witness to remember the time. It appears in the next excerpt, however, from version 3 that the interviewer has noted the witness's concern about the 6pm estimate, pursuing the idea of "6 o'clock or earlier":

- 1 P you were all there the mood was great yeh
- 2 W ye//h //
- 3 P //an//d you left there (.) about 6 o'clock or earlier
- 4 W yeh
- 5 P and then you went to the man's house

This is the formulation which appears in the statement, but its process of production throws its usefulness as evidence and a potential investigative foothold into doubt.

15.6.3 Time iii: Arriving and remaining at the victim's house

Next, we move to the proposed arrival time at the subsequent location, meeting 2. This is presented in the final statement as:

We went directly to this mans house which is on X Rd almost opposite Y Rd. On the left. **At this time, I'm not sure what time it was**, but I can say that I had ~~not~~ seen this man before

The witness has talked fluently about the route between the two meetings and incidents *en route* and specifies that the group's travel was *direct*, yet despite specifying the time that he

left meeting 1, he does not even estimate a time for arrival at meeting 2. Indeed the omission of this detail is marked.

This excerpt has an extremely dialogic feel. If the crossed-out *not* was part of a disputed statement, it would almost certainly have caught the attention of analysts seeking dialogue disguised as monologue. Rightly so, as it indeed resulted from considerable discussion after the interviewer initially misconstrued the witness's previous relationship with the victim. Similarly, the anti-information "I'm not sure what time it was" looks suspiciously like the answer to a question and the "but" and its conjoined clause as a mitigating conversational turn. Investigating the origins of this strange temporal formulation therefore permits consideration of the signification of text which appears to be dialogic (Owen 2000; Coulthard, 2000).

From version 2:

- | | | |
|---|---|--|
| 1 | P | what time do you think you got to the man's house |
| 2 | W | ur phhh (.) I'm not sure |
| 3 | P | not sure |
| 4 | W | it was in between about 3 3 o'clock 3 3 about 3 to 4 o'clock something like that |
| 5 | P | about 3 to 4 |
| 6 | W | yeh |

In the excerpt from version 3, at the end of the previous sub-section, the interviewer and witness agreed on *about 6 o'clock or earlier* as suitable to express the likely time that the group left meeting 1 yet here, in version 2, which of course occurred in the session before version 3 the witness proposes a time 2 or 3 hours earlier than that as being the likely arrival time at meeting 2. As the group could not have arrived at the second location before they had left the first, the statement might have been very different had this been pursued. Furthermore, if the witness proposed a time for arrival at meeting 2 (3 to 4 o'clock which he says twice in the excerpt above) why is this not incorporated in the statement given that the times he proposed elsewhere, perhaps with less conviction, were incorporated? This is answered by the next excerpt, from version 3:

- | | | |
|---|---|---|
| 1 | P | yeh (.) everyone was cheerful when we walked down the road and the girls were about 16 years old (.) we went directly to the man's house (.) you're not sure of the time (.) but you'd describe the house as being al- a little bit opposite |
| 2 | W | yeah |

By the time version 3 is underway, the officer has lost the time-estimates which were volunteered in version 2. They have been replaced with his assertion, “you’re not sure of the time” which enters the statement, with a pronoun change.

15.6.4 Time iv: At the victim’s house, before “messaging about”

The witness presents a decidedly jumbled sequence of events as having ensued at the suspected murder scene. The officer’s response supports Heaton-Armstrong’s inkling that officers marshal disorganised narratives (1995:138) although here it appears that the marshalling is accomplished collaboratively. During the session, the interviewer and witness delineate a sequence for the events at meeting 2, teasing out their chronology and interrelationship:

- Before the fight
- The fight:
 - Phase 1 – Messing about / around
 - Phase 2 – Pushing
 - Phase 3 – Arguing
 - Phase 4 – The change
 - Phase 5 – The attempted strangulation
 - Phase 6 – After the attempted strangulation
- Leaving meeting 2

A vital part of negotiating this sequence involved discussing the duration of these phases. Duration and timing of events at the suspected murder scene enter the statement three times: first, in describing the length of time the group was at the man’s house before the aggressive activity which the witness calls *messaging about* began; secondly, specifying a duration for an activity which the witness calls *pushing*, and thirdly, specifying a duration for an argument. I will look first at the beginning of the second meeting, the things that happened before *messaging about*. In the final statement, this is referred to as follows:

Everything was OK at first ... **About ½ hour later** Kevin and Terry and the man were messing around

When the interviewer first queries the time spent at the man's house, before *messing around* began, the following exchange ensues:

From version 2:

- | | | |
|----|---|---|
| 1 | W | I'm not really sure on the time ((too tough)) |
| 2 | P | (4.5) would you say it was evening time |
| 3 | W | it was about evening time yeh |
| 4 | P | do you was there a TV on was there anything on the //television // |
| 5 | W | //nah there// weren't no there weren't
no TV on |
| 6 | P | there weren't |
| 7 | W | no |
| 8 | P | OK ///((inaud. 3 syllables))// |
| 9 | W | // there was a telly in // there though but there weren't no TV on there |
| 10 | P | OK but there wasn't anything to (.) do you wear a watch or anything like that |
| 11 | W | nah |
| 12 | P | was there anything on that really could assist you with the time or |
| 13 | W | nah I weren't just look- I weren't even look- I weren't looking round just talking to the girls
and that |

Earlier, we saw the witness trying to recreate events in order to remember precise times. Here, the officer suggests alternative remembering strategies:

- using consensual definitions, in this case, of *evening time* (turn 2);
- using information about surroundings and incidental information, television (turn 4) and a watch (turn 10).

Finally, the interviewer appeals to the witness to attempt to stimulate his own memory (turn 12), using discourse technologies “which involve ... the simulation for strategic and instrumental purposes of interpersonal meanings and discursive practices” (Fairclough, 1992:215-6). The interviewer simulates supportive concern, presenting himself as someone who would help the witness to remember. However, the witness does not seem to buy into this simulation: rather than using the remembering strategies which the officer suggests, he side-steps them, becoming defensively distracted by details of a television at the suspected murder scene and restating his own role in proceedings rather than attending to time estimates. In version 3, the interviewer returns to this unresolved matter:

From version 3:

- | | | |
|---|---|--|
| 1 | P | how long were you there for before they started messing around |
| 2 | W | say about (4.3) good half hour a good half an hour |
| 3 | P | (3.8) OK they'd started messing around |

Here, the witness's response is strikingly different from that in version 2. Rather than resisting the question, the witness immediately proposes an approximate duration (turn 2). This second request for information, and the obliging response, occurred some way into the session and, whilst it is impossible to say why the witness's stance changed so dramatically, the change certainly demonstrates the extent to which similar questions at different stages of an interaction can elicit wildly altered responses.

This highlights shortcomings of the accepted, first-person reporting style of witness statements. The interviewer scribes on the witness's behalf and does not mediate or evaluate their words in a way that is visible on the text's surface. Officers decide inclusion, exclusion and formulation on the basis of the witness's words, so their evaluation is part of text-production processes, not part of the text itself. In the statement examined here, the two sets of exchanges reproduced above, one in which the witness was completely unable to recall the duration of 'messaging about' and one in which he easily supplied a duration, became:

Everything was OK at first ... **About ½ hour later** Kevin and Terry and the man were messing around

How different this summary would have been if it had been accompanied by details of its origins, or if it had been narrated in the third person, with some recognition of the dialogue which spawned it. Use of a reporting style which acknowledges the textual processes of witness statement production would enable interviewers to step outside their position as mouthpiece and act as scribe, more realistically. It would also allow completeness; degrees of commitment could be noted and evaluated. Here, for example, the witness sounds relatively certain of the *good half hour*. This certainty is manifest in reiteration (line 2), yet it is absent from the statement where it is replaced by uncertainty, through *about* which has been widely used elsewhere in this statement. If the officer, or indeed the witness, had been provided with a voice of their own in statement-writing, they could have conveyed commitment if either had felt it was important.

15.6.5 Time v: Duration of *pushing*

The duration of “pushing” was specified in the final statement:

they began to push each other **for about 3 minutes** I was looking back and forward while talking to the girls

From version 2:

- | | | |
|---|---|---|
| 1 | W | Kegs was pushing the m- the man and I was pushing Terry and just st - going on like that |
| 2 | P | (.) how long did that go on for |
| 3 | W | say about phhh bout 3 minutes |
| 4 | P | what were you doing while this was going on |
| 5 | W | I was just looking back and forward to see (.) if they ((were)) going to start fighting (2.5) I was talking to the girls at the same time |

From version 3:

- | | | |
|---|---|---|
| 1 | P | (.) Kegs was pushing t he man and the man was pushing (.) Terry and this went on for about 3 minutes [sniffs] you were looking backwards and forwards and talking to the girls hhh when they began to argue could you hear what they were arguing about = |
| 2 | W | = nah I weren't really (.) listening |

Again, we see expression of some uncertainty when the witness first suggests “3 minutes” as the possible duration of pushing (turn 3 version 2). As in some of the previous examples, this time estimate is taken through to the final statement via version 3 with uncertainty maintained using “about”. Interestingly, the witness declares involvement in this phase of fighting (turn 1, version 2), lack of interest in the fight (turn 2, version 3) and involvement in a different activity, talking (turn 5, version 2). Contradictions in these assertions are not investigated. Furthermore if the witness was involved in various activities while the crime was going on, that may have implications for his ability to accurately assess the passing of time, not to mention implications about his involvement in the crime, but this is disregarded from the final statement.

15.6.6 Time vi: Duration of *arguing*

In version 3, the following exchange takes place:

- | | | |
|---|---|---|
| 1 | P | was he still in the chair at this time |
| 2 | W | (.) yeh |
| 3 | P | yeh (.) and you say he was proper drunk |
| 4 | W | yeh |
| 5 | P | (.) OK (.) y- you said some was it how long (.) before the man flipped |
| 6 | W | say about phhh (.) not quite sure because they was quite- arguing for quite a long time |
| 7 | P | (10.2) OK and suddenly the man flips |

In turn 5, the interviewer asks how long the victim and alleged assailant were arguing before ‘phase 4’, the change of mood, occurred. At this stage, the witness is unable to supply a time and instead suggests that the argument went on for “quite a long time”. Unsurprisingly, this is not incorporated in the statement. However, in version 4, when the statement-taker drafts the final text of the statement aloud, they return to discussion of the duration of this phase:

From version 4:

- | | | |
|---|---|--|
| 1 | P | is that when he was shouting (.) urm (.) “you bastards I’ll knock you out” |
| 2 | W | yeh |
| 3 | P | (9.2) who was he saying that to |
| 4 | W | to Kegs |
| 5 | P | (11.8) he said that to Kevin (2.9) this went on for how long |
| 6 | W | about not actsh- not actually sure how long it went (.) on for |
| 7 | P | how long do you think |
| 8 | W | say about (.) say about 10 minutes |
| 9 | P | (4.2) this went on for about 10 minutes (.) suddenly the man flip- flipped |

In turn 6, the witness maintains uncertainty on timings, but the question reformulation in turn 8 extracts the opinion *about 10 minutes*. This is incorporated into the final statement differently from any of the other time references:

From the final statement:

the man continued to argue a bit saying “you bastards I’ll knock you out” he was saying that to Kevin [surname].

This went on for 10 minutes. Suddenly the man flipped

Here the interviewer does not record the witness’s uncertainty about timing at all. He has removed the hedge *about* despite its use by the witness and its provision as an opinion in response to *how long do you think?*

15.7 Interference or translation?

Those who recontextualise “have many opportunities to select, endorse and/or re-perspectivise suitable parts and aspects (i.e., suitable for particular purposes), edit these parts in new ways and combinations” and to subdue or silence voices which have, or could have been, heard (Linell, 1998:151). It has been claimed that information from witnesses is distorted by interviewer involvement, interview technique and the spoken-written conversion (Heaton-Armstrong and Wolchover, 1992:160 and 163, Shepherd and Milne, 1999:131).

Recontextualisation certainly occurs, but it is not necessarily undesirable. Figure 15.5 presents three different stances on witness statements' function, compilation and organisation.

Advocates of each stance might claim:

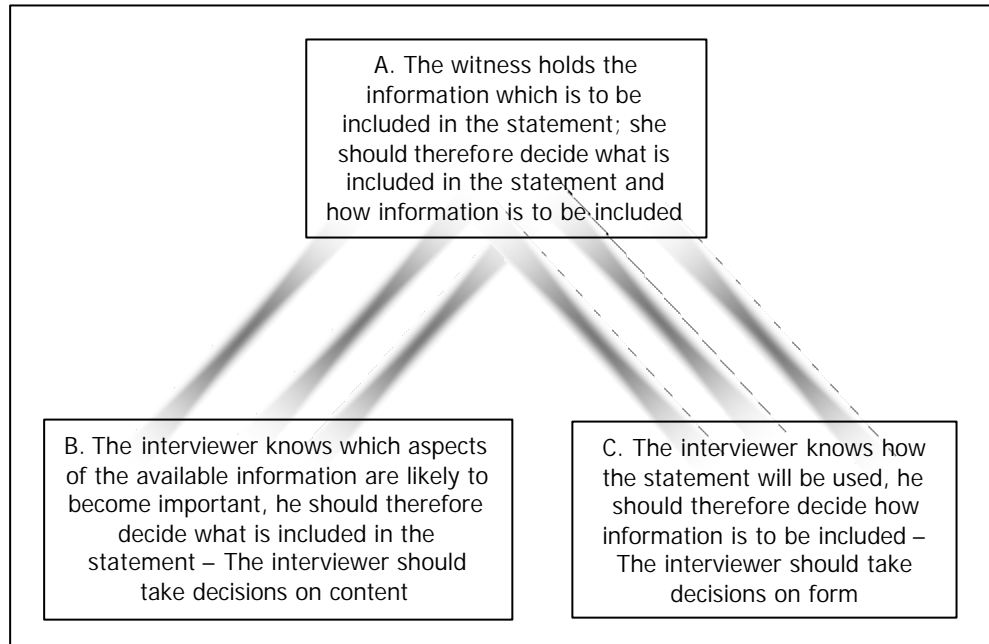


Figure 15.5 – Possible stances towards the position of witnesses and interviewers

I will now expand on these basic stances and possible compromises between them. Each position assumes a cooperative witness who has relevant information to convey.

A. A witness is, by definition, the only possible information source on their perspective. Their statement should encapsulate whatever they presented in their first crime narration, nothing more or less, in their own words. It is akin to a deposition.

B. A witness is unaware of the investigative significance of their perspective. The statement should therefore centre on the witness's account, but transform the impressionistic into something which informs the investigation, complementing other evidence by attending to disputed facts for example. This may appear to suggest that police should manipulate statements or witnesses themselves. However, it should instead ensure that all key evidential points are discussed in interview, whether they are introduced by the witness or not. This may enable witnesses to recall details that they may otherwise have overlooked.

C. A witness is unaware of generic requirements of statement taking (particularly structure and level of detail). The statement should, therefore, be based on the witness's account but translated from witness-speak into something more accessible to the legal system. This does not mean that the witness's formulations are flawed in themselves, rather that the textual processes which the statement will subsequently undergo (summarising, placing into a sequence alongside other statements and so on) require a particular format. Police officers are familiar with this format through training and experience, and should convert the witness's formulation accordingly.

A combination of A, B and C would suggest that the witness's whole account should enter the statement without additions but should be mediated by the officers' knowledge of the norms of the form and content of statements and their relevance in any particular case. Producing a maximally useful statement depends on uniting the witness's information with the interviewer's text-production knowledge, and on both parties responding to the question 'what is important?' by communicating about what their different forms of expertise suggest should be included. A different combination of A, B and C would suggest that the statement is not intended to represent the witness. In the statement-taking session, all aspects of the witness's crime experience should be discussed. Then, points which the witness and/or interviewer hold to be important should be included in the statement. However, the statement should be recognised as a summary, not a record, and it could be supported through reference to a fuller deposition, if necessary.

At present, jurors and other lay people may have the impression that witness statements are artefacts produced under the conditions of scenario A above, purely the words of the witness. If one of the other scenarios is more accurate, or a combination of the three as is suggested by the analysis above, this should be explicit. Furthermore, if one of the alternative positions would provide a more ethical, realistic approach to statement taking than scenario A, then this should be acknowledged. Interviewers must balance the need to "do justice to the suspect's version of events" with the production of a document that can "accommodate the demands of its future users in the criminal law process" (Komter, 2001:389). There seems to be no reason why this balancing should not be demystified.

15.8 Close

It may be that precise timings were unimportant to the investigation described here. However if they were important, for example, helping to merge several witnesses' testimony, or to locate other potential witnesses, the audio-recording would become invaluable. It would enable an investigative team to replicate this investigation, tracing the development of salient facts through the session, and to identify incongruities or apparent trivialities which might turn out to be pivotal. It is rather idealistic to expect interviewers to ask pertinent questions, note answers, identify contradictions, resolve inconsistencies, construct a text and attend to interpersonal aspects of interview situations simultaneously. Furthermore it is entirely unreasonable to expect a written text to represent a series of spoken interactions. Perhaps inevitably, some parts of witnesses' accounts will "get lost" (Gibbons, 1995:175). By locating paradoxes which were not explored during interview and noting information which is recorded on tape, but not paper, this analysis shows that an audio-recording is a totally different sort of investigative tool from a witness statement.

A tremendous amount of interactional energy is expended in producing witness statements. Both witnesses and interviewers undertake statement production inventively, for example devising strategies to aid the witness's memory. Yet information, particularly degrees of commitment, may be 'lost' from those texts and apparently contradictory claims may be overlooked. These insights might contribute to the technologisation of interviewing or to critical reflection on interviewing as technology. Any statement-taking session risks creating an incorrect or incomplete record. The only way to guard against this completely is to make, and use audio-recordings of witness statement-taking sessions. Yet by analogy with the audio- and video-recording of suspects' statements, the additional clarity must be balanced against demands on time and resources. If poorly managed, such changes might simply create an illusion of improved practice.

CHAPTER 16: CONCLUSION

In this thesis, explanation has been treated not as a skill but as a technology, a way of making and re-making meaning, identity and social participation. The thesis describes three main findings. First, that police officers who must transform texts as part of their working lives do so inventively and with great diversity. Secondly, that there is an intimate relationship between the situation of production of a recontextualisation and the recontextualisation itself. Finally, that recontextualisations and the speech situations they produce will sometimes be taken up in unpredictable ways.

The work prompts two forms of conclusion. First, a descriptive conclusion may be drawn, which summarises what the work has found about the lived reality of transformation in police work. Secondly, what I will call an interventionist conclusion may also be drawn. This describes how the work might be taken up by the institutions and individuals it describes.

16.1 Description

16.1.1 Part A: The *Notice to detained persons*

The notices of rights used in England and Wales vary across time and from police force to police force. The system of administering rights in England and Wales is, in at least some respects, superior to that which is used elsewhere, not least in that there is a system. On the other hand, the particular written text which is responsible for rights administration is rather flawed. It contains linguistic features, such as passives and nominalisations, which would be condemned by language guidelines and research; and linguistic features, such as strange sequential arrangements and the jumbling of unrelated material, which are simply odd.

Rewriters who responded to the text addressed many of these linguistic problems when re-drafting it. This was of course to be expected, but the innovative ways in which they approached and altered perceived problems, and the similarities and differences between their

responses was not. Moreover in responding to the written rights text the authors, to varying degrees, sought to respond to the lifeworld of the detainee. They appropriated the recontextualisation turn to make their text more relevant to detainees and to the contexts of administration of rights than the source text. In some cases this involved something quite simple, like register shift, but in others authors sought to introduce the textual world from the detainee's perspective.

Whilst the re-writing and re-perspectivising undertaken by revisers says much about language, it says little about the place of language in detention. Presumably a legal system which distributes written rights notices intends those notices to be read, or to be seen to have been read. However, many people in detention did not read the rights notices they had been given, or read them only in part. Some, particularly novice detainees, rejected them because they were overwhelmed by the situation which confronted them, others because they could not conceive of the texts' purpose, or could not incorporate reading into detention. A final group, composed predominantly of regular detainees, used marked rejection of the rights texts to orient to detention, showing antipathy for detention by showing antipathy for interest in detention.

This suggests that rights texts and their formulation may have no influence on detention. For the many detainees who reject rights information, other sources stand in. Non-reading detainees described calling on information gathered during detention, particularly at the custody desk but also during informal conversations and during previous detention. Those who did not read also described drawing rights information from other sources such as television and social contacts. Yet this did not suggest that the written texts were useless. Conversely, even for these non-readers the texts drew attention to their content and encouraged participation in other rights-giving activities.

The study did not only discover total rejection of the texts. They were read in part by some, who either sought answers to particular questions or only had enough concentration to handle small sections of text. Others read the text in full but even they did not necessarily respond predictably to what they had read. Some did not believe the information they encountered, or assigned it a significance which it did not have. Some seized upon the information for

purposes other than finding out about rights, particularly self-presenting through an orientation to rights.

16.1.2 Part B: The caution

The current police caution has attracted criticism for being ill-formed and ill-conceived. Some commentators believe that it infringes civil liberties, on both grounds. Many police officers are doubtful of the caution's effectiveness in conveying information or administering justice. Nonetheless, they must recite and if necessary explain the caution repeatedly throughout detainees' custody, a situation which is somewhat different from that elsewhere and from that in the history of the Anglo-Welsh legal system. Difficulties surround the caution from the outset – even its name is problematic, inadequately conveying pragmatic intent and lacking denotation for some detainees. The label is also used to denote other police-lay contact, which causes confusion. Officers were very aware of the difficulty of the wording and of absorbing and acting upon it in the fast give-and-take of detention. Many saw it as simply token. Yet they went to great lengths to explain the wording and had evolved a sophisticated exchange structure for doing so. Additionally they filled the wording with meaning, elaborating and specifying in order to translate the formulation's generality to the specific situation before the detainee.

The caution's sentence-sequence could be said to be confusing and somewhat leading, appearing to recommend talk. Officers changed this sequence when they explained the caution and the sequences that they chose, not to mention the way in which they presented those sequences, varied between police forces. Officers in one force included in this study preferred maintaining and metalinguistically marking the original sequence. Officers in another preferred to resequence, seemingly under the influence of an official paraphrase, and officers in a third were rather idiosyncratic, omitting semantic components of the official wording or presenting some components repeatedly.

The caution's middle sentence has attracted particular criticism, most pervasively for its formulation and due to its complex and contradictory content. Accordingly, it was investigated in detail here. In explaining this part of the caution, officers' practices tended

towards convergence. Many officers altered the sentence's clause structure, adopting an *if-then* structure, rather than the *then-if* structure of the original. Detainees, in explaining the caution, tended towards this structure too, suggesting that it might have some merits. Officers explaining this part of the caution dedicated vast amounts of time and energy to recontextualising inferences, their sources and outcomes. Their explanations exhibited great diversity: some could be seen as encouraging either silence or talk and others offered an incomplete picture. This section of the caution's wording will inevitably present problems for officers as it has not been modified in response to changes in legislation and case law. These are changes with which it is unreasonable to expect officers to keep pace.

The final three Chapters on the caution illustrate how, in cautioning, all is not what it seems. In working with words and syntax throughout the caution, officers do not just 'explain'. Instead they seek to: simplify; reassure; provide detail; reperspectivise (for example, suggesting a particular reading of silence); encourage silence (at arrest); encourage talk (in interview) and bring personal relevance.

The cautioning exchange structure incorporates opportunities to 'check comprehension' by asking detainees to say or demonstrate how comprehension is going. Yet this check functioned poorly as a check of comprehension; this is clear from both simple statistical analysis and the examination of naturally occurring discourse. Through the check, face might be threatened, and officers' mitigation strategies for having to check comprehension were revealing. For some officers, however, the check was a genuine opportunity to attend to detainees and co-construct understanding with them. The contrast between the practices of different officers was particularly striking here. I propose that this is because responding to detainees' reformulations is likely to be very difficult, requiring careful attention and significant metalinguistic ability. As a result, some officers reject the comprehension-check but innovatively devise other ways of assessing detainees' likely comprehension, without having been institutionally encouraged to do so.

Finally the whole cautioning exchange can take on an existence which is neither institutionally sanctioned nor recognised. The exchange can scaffold the performance of social interactions. It can fulfil various functions around framing as participants respond to one another's footings and establish communicative norms for the prospected interview. The

exchange can also scaffold human affiliation: through cautioning officers learn to caution, informally disseminate practice and show that they are ‘good cops’. For detainees too, the cautioning exchange offers an opportunity to show how they plan to go on in interview, prospecting cooperation or resistance. In some instances the resulting clash of discourses derailed cautioning altogether.

16.1.3 Part C: Witness statement-taking

The case study of a witness interview in part C showed that when officers must transform the words of lay-people to a ‘novice’ institution, rather than vice versa, similar issues came into play. Officers may re-word, re-perspectivise, they may even make additions and omissions. Lay people may be as restricted in responding to this when giving up text for transformation as they are when they are receiving transformed text.

16.2 Intervention

A number of ‘practical’ recommendations proceed from these data. Some are grounded in the analysis. For example: written rights notices are usefully complemented by speech; the caution’s clause structure is different from that preferred by speakers and might be altered accordingly; witness statements involve systematic change and might be repositioned more honestly. Others are simple observations which anyone might make on entering a police environment regularly (cf. Clare, Gudjonsson and Harari, 1998:328). For example, detainees might benefit from better access to the intertextual chains which surround rights notices (particularly the *Codes of practice*), officers might benefit from training in cautioning and witnesses might need more detailed orientation to interview settings before interviews begin than they receive at present.

Several researchers have pointed out that there is an obligation to genuinely apply language research and that “researchers should pay considerably more attention to the practical use of their work over and above the amassing of research findings and the furtherance of careers” (Potter and Wetherell, 1987:174). This is particularly important in settings like those

examined in this thesis, which “are closely connected to the exercise of power and to the construction of social difference” (Heller, 1999:260, see also Gunnarsson, 1997:285; Eades, 2003:206). Indeed, for the linguist, being asked for an opinion on language issues might be inevitable, so “it is probably best to have some critical distance on what we do, and on whose interests are served by our actions and the knowledge we produce” (Heller, 1999:261). Some language researchers take an active stance, disseminating their findings by translating them into something meaningful outside the world of research (Roberts, 2002; Channell, 1997; 2000; Gibbons, 2001a; 2003). Indeed even if we think that our applied research projects have no influence on the social world, we may be wrong. Research may change the outlook of those who are researched, potentially dramatically (Coupland and Coupland, 1998:185).

Nonetheless intervention in the agencies or forms of life which one investigates is actively discouraged by some (Fairclough, 1992) while others recommend extreme caution (Labov, 1988:160). Such intervention might be unsuccessful and fail to find anything generalisable (Barton 1994:24). Also intervention might be misappropriated. Eades has demonstrated how her own work, intended as a positive contribution to the Australian legal system, became part of political and institutional contest and conflict rather than necessarily or exclusively a solution (2003:213-217). The changes which our research or observations suggest might be impossible to implement. Kurzon, for example, raises the possibility of radical changes to the legal system which would incorporate “a series of checks and balances”, allowing detainees to change their minds about confession evidence (2000:248). Combined with such implementation problems, “findings” from other disciplines “are not very usable by the law” due to different discourse systems and communities operating in each discipline (White, 1990:13). In the settings examined here, the rapidly changing legal frameworks around investigation and detention might render research difficult to incorporate.

Komter identifies two possible stances to investigating interactions between detainees and police: first, ‘criticism’, an evaluative stance (see for example, McConville, Sanders and Leng, 1991; Leo, 1992); secondly, ‘ethnomethodological indifference’, traceable to Garfinkel and Sacks (1970). Komter observes that this indifference stems “not from a position of moral cowardice, but from a deep uncertainty surrounding whether judgements about ‘right’ and ‘wrong’ are quite so simple” as an uncomplicated critical stance implies (2001). Certainly any intervention must be sophisticated, “connecting language both to the social contexts of culture

and power and to the assumptions and expectations which individuals project into language use” (Roberts, Davies and Jupp, 1992:6).

This research has made recommendations in two reports to the Home Office and in an ongoing consultation process with them. Some of this was apparently taken up in the revised *PACE Codes of practice*, but other areas of the findings have been ignored (summaries are attached in Appendix 24). It remains to be seen whether the work can itself be recontextualised to become useful for officers or detainees, but this research showed that some members of both groups are keen to engage.

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RECONTEXTUALISATION IN THE POLICE STATION

by

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APPENDICES BOOKLET

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Documents included in these appendices are in their original format. They have not been re-sized or otherwise modified. This is intended to show the source texts without contamination. As a result, some of the texts here are double-sided. Only front-facing pages have been numbered, for ease of reference.

APPENDIX 1: CRITERIA FOR ASSESSING PARAPHRASES OF THE CAUTION

Clare, Gudjonsson and Harari (1998) developed criteria for judging whether paraphrases are 'correct' or 'incorrect' by consulting legal sources such as guidance in the National Crime Faculty training manual (1996:68-9). They refined the criteria by discussing particular formulations with a solicitor and police officer repeatedly. Fenner, Gudjonsson and Clare (2002:88) too used the resulting criteria.

The first sentence was scored as correct if the participant recognised that suspects have the right to silence (e.g. 'you don't have to say anything', 'you do not have to answer police questions'). The second sentence was scored as correct if there was some acknowledgement of its basic meaning. Whilst the actual wording is 'harm your defence', any account was allowed which implied that the court might look on the accused person less favourably. However, the sentence was scored as incorrect if the participant implied that [the] mere fact of silence might be viewed negatively. The third sentence was scored as correct if the participant's response acknowledged that the court might be made aware of the suspect's answers to police questions.

(Fenner, Gudjonsson and Clare, 2002:88).

APPENDIX 2: INTERVIEW SCRIPTS

The appendix contains the interview schedules used in this study for interviews with:

- Officers;
- Detainees.

Interview schedule – Officers

A The *Notice to detained persons* and *Notice of entitlements*

We'll start with the notice to detained persons and notice of entitlements and then work onto the caution later.

1. Do you think the notice to detained persons and notice of entitlements are helpful
 - (a) to detained persons?
 - (b) to the police?
2. Why/why not?
3. Do you think detained persons actually read the notice to detained person and notice of entitlements?
4. If not, why not?, If so, why?
5. Do detained persons ever ask you questions about the things outlined in the notice to detained person and notice of entitlements?
6. If so, what types of things do detained persons ask?
7. Do you ever talk to detained persons about the notice to detained persons? [e.g. if they ask you questions? or to explain?]
8. If so, What kinds of answers do you find yourself able to give?
9. Do you think the notice to detained persons encourages detained persons to do anything or not do anything?
10. Do you think the notice of entitlements encourages detained persons to do anything or not do anything?
11. Could rights and entitlements be put across in a better way?
12. How? [e.g. By explaining them rather than having them in writing?]
13. Is there anything which you find particularly good about the notices which are actually used? [e.g. They save time in having to explain things? They discourage people from doing certain things or encourage them to do other things?]
14. Is there anything you find particularly bad about them? [e.g. They are unclear? They waste time? x, y or z is particularly difficult to understand from the forms?]
15. How could the notice to detained persons or notice of entitlements be improved? [e.g. By changing the order of the information, taking some thing(s) out, adding something(s), changing the title etc]
16. Do you think the notice to detained persons and notice of entitlements are too long or too short?
17. Why?
18. Do you know the difference between rights and entitlements?

B The caution

I'd like to ask you some questions about the caution in particular now. In these questions I'll ask about your general thoughts on the caution, then we'll look at the information in the caution separately from the way that information is communicated. So, we'll look at the caution in general, its meaning and words.

General questions

19. How do you think the current caution compares with the old caution?
20. [What is good about the caution?]
21. [What is bad about the caution?]

The official wording of the caution

22. Do you think that the current caution has too many or too few words?
23. Do you think it's well written?
24. Are there any words or phrases in the caution which:
 - (a) you think are strange?
 - (b) you find awkward to explain?
 - (c) you don't think detained persons understand?
 - (d) you think detained persons are likely to misunderstand and get the wrong end of the stick from?
25. Are there any ideas or concepts in the caution which:
 - (a) you think are strange?
 - (b) you find awkward to explain?
 - (c) you don't think detained persons understand?
 - (d) you think detained persons are likely to misunderstand and get the wrong end of the stick from?
26. Do you think the wording of the caution is effective in getting across what it's intended to? [Why/Why not?]
27. How could the standard wording be improved?

28. The caution is obviously issued at arrest, interview and charge. What would you think about not using identical wording in each of these situations? [e.g. a shorter caution on arrest and more detailed caution at interview and charge] Do you think the standard wording of the caution should be the same each time it's used?

Delivering and explaining the caution

29. Do you tend to read the caution or recite it from memory?
30. After you've said the official wording of the caution during an interview, do you tend to explain it in your own words?
31. Why? [Prompt question: How do you decide that the caution needs explaining?]
32. When you explain the caution do you always do it in the same way? [Or do you vary the explanation depending on who you're talking to?] [e.g. according to the number of times they've been arrested before]
33. Why do you vary/not vary your explanation?
34. How do you decide when your explanation of the caution is complete?
35. How do you know whether the detained person understands the caution?
36. Does anyone ever admit that they don't understand the caution?
37. Which aspect or part of the caution do you think is most difficult to understand?
38. What could be done about this?
39. Which part or aspect of the caution do you find most difficult to explain?
40. Do you think it's a good thing that you are permitted to explain the caution in your own words?
41. Has a detained person ever asked you about the caution when you have not been explaining it?
42. Have you ever encountered a situation where you felt that someone genuinely didn't understand the words of the caution at all for some reason?
43. If so: What do you do in that situation?

The caution – Use during interviews

44. Obviously you say the caution at the beginning of an interview. Do you tend to say it, explain it or refer to it during an interview?
45. Which do you do (say it, explain it or refer to it)?
46. Why?
47. What effect does it tend to have?

What is the caution?

48. Do you think the caution is a warning, advice, information or something else?
49. What do you think detained persons think it is?
50. What do you see the main purpose of the caution as being?
51. Which aspect or part of the caution do you think is most important?
52. How could cautioning be improved?

C Delivering other rights

I'd now like to look at other things which you say immediately before an interview with a detained person begins.

53. Do you think Detained persons know why you ask all the questions and make all the statements that you do before an interview begins?
54. What do you think is the most important thing you have to say or do during the introduction to an interview?
55. Do you do anything to make this seem more important to the other people in the room including the detained person?
56. How do you decide on an order for the things which need to be said before an interview starts?
57. Do you ever use a different sequence? [Why?]

D Final questions

58. If you could have some training in the notice to detained persons, notice of entitlements and delivery of the caution and other rights or if training was to be provided for others what would it include?
59. Have you ever had a job within the police force which is particularly relevant to this investigation? [e.g. In custody block?]
60. If so: Do you have any final comments based on that experience?
61. Anything else to add?

Interview schedule – Detainees

My name's Frances. Thank you very much for agreeing to have a quick chat with me. This will only take a short time.

When anyone arrives at the police station after they've been arrested, the law says that the police have to give them some information. In the past it has seemed that the police aren't getting that information across very well so they are now trying out some new ways of explaining things.

I'm not anything to do with the police, I work at a university, but I am interested in finding out which way of telling people things when they arrive at the police station works best.

I'd be really pleased if you could answer these questions as well as you can because this will help me to see whether the new information is going to be helpful to people who are arrested.

Some of the questions might make you think that I'm testing you so try to remember that I'm actually testing how well the information was explained. If you don't know the answers to any of the questions just say so. If the answers seem obvious just let me know.

Introductory questions

First I'd like to ask you a couple of questions about yourself. The answers won't be used to try to work out who you are, just to make the later answers more useful:

1. Have you always lived in England?
2. Is English the first language you learned/the main language you use?
3. Have you ever been arrested before? [If so, before 1986 (i.e. pre-pace), between 1986 and April 1995 (i.e. pre CJA) or since April 1995?]

Questions at the custody desk

When you arrived at the police station you were asked some questions at the desk.

4. Do you know why you were asked those questions? [Remember to look at questions about help and safety separately from those about rights]
5. Did you understand the questions?
6. Did the custody officer who asked the questions seem to know what you meant when you answered the questions?
7. Did you give an honest answer to all of the questions? [Were you embarrassed about answering any of the questions?]
8. Did anything happen to you because of your answers to those questions?
9. Did you want to ask any questions at the custody desk? Did you have chance to do that?

General impression of the information

When you first came to the police station you were offered some papers which looked like this [show papers].

Looking first at the whole set of papers:

10. What did you do with the papers when you were offered them? (Prompt question: Did you keep them, give them back to the person who gave them to you or throw them away?)
11. Why did you keep them or not keep them?
12. Do you know what the information is for?
13. Do you know who the information is from?
14. Did you read any of the papers? If 'yes' go to *, if 'no' go to **

*** For people who read the information**

15. Why did you read the papers?
16. Which page(s) did you read? [Remember to give time to look at each page to jog memory]
17. Did you decide to do anything as a result of reading the information that you might not have done if you hadn't read it? (Prompt questions: Did you ask for anything? Did you ask about anything? What? When? Why?)
18. Was there anything you decided not to do as a result of reading the information? (Prompt questions: Did you decide not to ask for anything? Did you ask about anything? What? When? Why?)
19. Was there anything which seemed strange about the papers or which didn't seem to make sense?

**** For people who didn't read the information**

20. Why didn't you read the information? [e.g. Couldn't read it, Didn't think it was relevant, Already know it, Didn't have time, if 'Couldn't be bothered' check why?]
21. Would you mind looking through it now and answering a few more questions? [If not, only ask questions about custody desk and general background]

I now want to check how much of the information makes sense

22. The information tells you about your rights. How many rights do you have when you are at the police station?
23. The information also tells you about things you are entitled to. Do you know what the difference is between things you have a right to and things you are entitled to?
24. Did any of the information surprise you?
25. Was there anything which you expected to see in the information which was missing?
26. Did you see anything repeated in the information? Did you notice the same information in different places? Do the pages have anything to do with each other?
27. Do you know what the law society is?
28. Do you know what Legal Aid is?

Speaking to a solicitor

I'd now like you to think about what you read on the papers and try to answer the following questions:

29. If you wanted to speak to a solicitor how would you arrange it?
30. When can you speak to a solicitor? [Prompt questions: Are there any times of day that you can't speak to one? Is there any stage during your time at the police station that you can't speak to one?]
31. Is there any time that you wouldn't be allowed to speak to a solicitor?
32. Do you have to pay to speak to a solicitor?
33. Do you need to know a solicitor if you want to speak to one? [What happens if you don't know one?]
34. If you asked to speak to a solicitor but the police started to ask you questions before you had spoken to the solicitor would they be doing something wrong?
35. Where can you speak to a solicitor?
36. Can you speak to a solicitor without any one else being there?
37. After you have spoken to the solicitor will the solicitor tell anyone else what you have said?
38. If you said that you didn't want to speak to a solicitor when you first arrived at the police station, would you be able to speak to one if you changed your mind later?
39. Did the information give you the impression that it's a good idea to speak to a solicitor or a bad idea? Why?
40. Did the information give you the impression that the police would like you to speak to a solicitor or not?
41. Do you know what a solicitor would do for you if you asked for one? [If they did ask for one, ask whether they knew what s/he would do in advance?]

Speaking to someone outside the police station

42. So, you can speak to police officers and solicitors while you are in custody, can you speak to anyone else on the telephone while you are in custody? [Prompt: how about on the telephone?]
43. Can you send a message to anyone? [Prompt: how about on the telephone?]
44. Who can you get a message to?
45. How many people can you get a message to?
46. What happens if the person you want to pass a message to does not answer their 'phone?

47. When can you get a message to someone? [Prompt questions: Are there any times of day that you can't speak to someone? Is there any stage during your time at the police station that you can't speak to someone?]
48. If you said that you didn't want to speak to anyone when you first arrived at the police station, would you be able to speak to someone if you changed your mind later?

Codes of Practice

49. Do you know what the Codes of Practice are?
50. If I said they were a book would that ring a bell? Do you know what might be in the book?
51. Do you know why you might want to read them?
52. When can you read them?
53. How would you know where to look in the Codes of practice for the information you want?

The Custody Record

54. Do you know what the Custody record is?
55. You have a right which is connected to the Custody record. Do you know what that right is?
56. When can you ask for a copy of the Custody record?
57. Why would you want a copy of the Custody record?

The Caution

58. If the police ask me questions do I have to answer their questions even if I don't want to?
59. If I say something to the police and my case goes to court what can the police do with what I've said to them? [If they just say 'use as evidence' ask what that means]
60. Is it true that I only need to get a solicitor if I've done the crime I'm being asked about?
61. If I say anything to the police do I have to tell them the truth?
62. If the police have arrested me, they are then going to ask me some questions about the crime they think I've done. If I told the police something at the police station about the crime and then later on told them something different would that be a problem for me? What might it mean for me? What would a court think about the fact that I'd changed my story?
63. Again in the same situation, if the police asked me questions about a crime and I didn't tell the police anything at the police station and then later on I came up with a story about the crime would that be a problem for me? What might it mean for me? What would a court think about the fact that I'd only agreed to talk about what had happened at court?

Entitlements

Let's look through this final page which is about things you are entitled to. Looking at each of these headings, I wonder if you could just talk me through each one, just telling me what the paper says about each heading.

64. Do you know how long the police can keep you here?

Background

65. Did you know anything about what you are allowed to have when you are being held in the police station, before you were arrested? [Prompt question: Did you know anything about your rights at the police station before you were arrested?]
66. Did you know anything about what the police have to give you when you are being held in the police station, before you were arrested?
67. How did you know?
68. Was anything different from what you expected?

Other conversations about rights in the police station

69. Have you been able to ask anyone about your rights and the things on these papers while you have been here? [If so (a), if not, (b)]
 - a. Did the answers you got help you?
 - b. Have you wanted to ask any questions?

APPENDIX 3: THE CURRENT *NOTICE TO DETAINED PERSONS*

APPENDIX 4: THE CURRENT *NOTICE OF ENTITLEMENTS*

APPENDIX 5: Alternative forces' versions of the *Notice to detained persons*

This appendix contains the versions of the *Notice* used by the police forces listed below

- a) Kent County Constabulary;
- b) West Midlands Police;
- c) Greater Manchester Police;
- d) Thames Valley Police;
- e) Cleveland Police;
- f) Derbyshire Police;
- g) South Yorkshire Police.

APPENDIX 6: ADDITIONAL INFORMATION SUPPLIED ON RIGHTS NOTICES ACROSS POLICE FORCES

Wales

Police Force Name	Sequence	Additional material
North Wales Police	1	Force name Reference number Revision date (April 1995) Information for persons attending voluntarily The whole <i>Notice</i> is presented in both Welsh and English on the same document
Dyfed-Powys Police	1	Reference number Information for persons attending voluntarily The whole <i>Notice</i> is presented in both Welsh and English on the same document
South Wales Police	NA	NA
Gwent Constabulary	1	Force name Reference number Revision date (January 1999) Information for persons attending voluntarily

England

The Midlands

Police Force Name	Sequence	Additional material
West Mercia Constabulary	1	Force name Force crest Force motto <i>In partnership with the community</i> Reference number Revision date (February 1998)
Staffordshire Constabulary	2	Force name Reference number Revision date (March 1997) © <i>Staffordshire Police H.Q. Print Unit . 6\FO\149</i> Information for persons attending voluntarily
West Midlands Police	Rewritten	Folded leaflet format Instructions to Custody Sergeant removed <i>More information</i> clause removed Information for persons attending voluntarily
Warwickshire Constabulary	1	Reference number Information for persons attending voluntarily
Leicestershire Constabulary	1	Force name Reference number Information about <i>DNA Profiling</i> Information about <i>Fingerprints/Photograph</i> Information for persons attending voluntarily

Police Force Name	Sequence	Additional material
Northamptonshire Police	2	Force crest Revision date (October 1997) Reference number Information for persons attending voluntarily

The North West

Police Force Name	Sequence	Additional material
Cumbria Constabulary	1	Force name Reference number Information for persons attending voluntarily Information for <i>appropriate adults present at interview</i> ('C' 11.16)
Lancashire Constabulary	NA	
Merseyside Constabulary	1	Force name Reference number Revision date – "Date of amendment" (March 1999) Information about Merseyside Drug information office Information about the "exchange" of information with "other agencies" under the Data Protection Act 1998
Greater Manchester Police	1	Force name Revised title <i>Notice to detained person of rights and entitlements</i> Additional subheading <i>Rights</i> Information on <i>Personal/Medical matters</i> Reference number Revision date (November 1997)
Cheshire Constabulary	1	Title added <i>Detained persons – Page 1 Annex A</i> Reference numbers at beginning and end of document Force crest Information for persons attending voluntarily Information about the paper <i>This paper is made with woodpulp from sustainable forests</i> Revision date? (March 1995)
Northumbria Police	2	Force crest Force name Reference number Revision date? (February 1996) Information for persons attending voluntarily
Durham City Police	1 With added point	What appears to be a fourth right has been added to the rights summary – this is not really a right at all, but gives information about a drugs referral scheme – Includes directions to the custody sergeant Force name Reference number Revision date? (August 2001) "If you have a drugs problem..."

Police Force Name	Sequence	Additional material
Cleveland Police	1	Force name Reference number Revision date? (May 1999) Information for persons attending voluntarily
North Yorkshire Police	2	Force name Reference number Information for persons attending voluntarily
West Yorkshire Police	2	Force name Reference number Revision date?(10 th April 1995) Information for persons attending voluntarily
South Yorkshire Police	2	Force name Reference number Revision date "Date of amendment" (August 2002) Leads straight into the <i>Notice of entitlements</i> <i>Notice of entitlements</i> is followed by information about "Drug/Alcohol/Substance Abuse" No cross-references to the <i>Codes</i> in either <i>Notice</i>
Humberside Police	1	Force name Reference number Date(April 1995) Administered with the <i>Notice of entitlements</i> and a separate notice from <i>Compass</i> a group who support those arrested for <i>drug related offences</i>

London

Police Force Name	Sequence	Additional material
City of London Police	2	Force name Force crest 2 reference numbers Information for persons attending voluntarily
Metropolitan Police	1	Information for persons attending voluntarily Page numbers

The South East

Police Force Name	Sequence	Additional material
Thames Valley Police	1	Force name Reference number Revision date? (March 1995) The parts to be read out by the Custody Sergeant are also reproduced on the reverse of the <i>Notice</i> There have been handwritten additions to the main part of this <i>Notice</i>

Police Force Name	Sequence	Additional material
Bedfordshire Police	1	Force crest Force name Reference number Revision date (March 1995)
Hertfordshire Constabulary	1	Reference number Revision date (March 1995) Information for persons attending voluntarily
Essex Police	1	Force crest Reference number Revision date (November 2001) Information for persons attending voluntarily Chart to be used for monitoring ethnicity
Kent County Constabulary	Rewritten	Road Traffic Act information inserted with rights summary <i>More information</i> clause removed Force crest Force name Two reference numbers Revision date (November 1996) Information for persons attending voluntarily
Sussex Police	1	Force name Reference number Revision date (April 1995) Information for persons attending voluntarily
Surrey Police	1	Reference number Revision date (April 1995) Information for persons attending voluntarily
Hampshire Police	1	Force crest Reference number Revision date (October 1997) Information for persons attending voluntarily

The East

Police Force Name	Sequence	Additional material
Derbyshire Constabulary	2	Force name Reference number Revision date (March 1995) Information for persons attending voluntarily
Nottinghamshire Constabulary	2	Force name Force crest (logo) Reference number Revision date (May 2000) Information about video and audio recording in the custody area
Lincolnshire Police	1	Force name Reference number Revision date (April 1995)

Police Force Name	Sequence	Additional material
Cambridgeshire Constabulary	1	Additional title <i>Detained persons page 1</i> Reference number Revision date (April 1995) Information for persons attending voluntarily
Norfolk Constabulary	1	Force name Reference number Revision date (April 1995) Information for persons attending voluntarily
Suffolk Constabulary	1	Force name Crimestoppers telephone number Information for persons attending voluntarily Information about the lay visiting scheme Drink-drive procedure cannot be delayed


The South West

Police Force Name	Sequence	Additional material
Devon & Cornwall Constabulary	1	Force name Reference number Revision date (June 2002)
Avon and Somerset Constabulary	1	Force name Reference number Revision date? (April 1995) Information for persons attending voluntarily
Dorset Police	2	Reference number Revision date (April 1995) Information for persons attending voluntarily
Wiltshire Police	1	Force name Reference number Revision date (April 1995) Information for persons attending voluntarily
Gloucestershire Police	2	Force name Reference number Revision date (April 1995) Information for persons attending voluntarily

Sequence 1

- A Title
- B Instructions to custody sergeant
- C **Summary of three rights – Solicitor, Have someone told, Codes of practice**
- D **Caution preceded by if- clause**
- E **More information clause**
- F & G Details of four rights, typically displayed in two sections

Sequence 2

- A Title
- B Instruction to custody sergeant
-  D **Caution preceded by if- clause**
- C **Summary of three rights – Solicitor, Have someone told, Codes of practice**
- E **More information clause**
- F & G Details of four rights, typically displayed in two sections

APPENDIX 7: THE OFFICER REVISION

APPENDIX 8: THE ENTERPRISE INFORMATION DESIGN UNIT REVISIONS

This appendix contains the versions of the *Notice* produced by the following authors, in the order below:

- a) EIDU1;
- b) EIDU2;
- c) EIDU3;
- d) EIDU4;
- e) EIDU5.

APPENDIX 9: THE HOME OFFICE REVISION

APPENDIX 10: USING READABILITY SCORES AS A WRITING AID

Readability formulae

There are more than 200 readability formulae in existence (Klare, 1985), including, perhaps the most well-known: Flesch (1943, revised 1948); Dale-Chall (1948); Fry (a graph, not formula) (1965; 1968) and Gunning's Fog index (1952; 1968). Originating in the 1920s, the formulae are "equations which state that readability is a function of some other variables" (Powell, 1981:43), typically words, syllables or sentences. Although established amongst educators¹, the formulae were only applied to adults' texts in the 1970s (Redish, 1981:47) but are now well-worn by librarians, psychologists, business writers, news-producers and governments (Fry, 1987; Tekfi, 1987). Advocates describe formulae as offering "a quick and easy way to predict readability" (Meyer, Marsiske and Willis, 1993:237), critics caution that "there can be no lazy equation of good writing with certain kinds of patterning" (Hoey, 1988:69). Criticism is so ingrained that, writing as long ago as 1989, Perfetti enjoins "there is nothing new in readability bashing" (1989:644). Specific criticisms claim that the formulae neglect to consider:

- **Text** – context, textual relations, discourse-level features (Davison and Green, 1988; Sydes and Hartley, 1997; Hartley, 1981:18; Bailin and Grafstein, 2001), concept difficulty, abstractness, organisation, coherence, sequence, format (Koenke, 1987:673), cohesion, complexity, rhetorical structure (Bruce, Rubin and Starr, 1981:50);
- **Readers** – readers' interest, experience, knowledge, motivation, interaction with texts (Rush, 1985:273-4; Clare and Gudjonsson, 1992; Gilliland, 1972), goals (Frase, 1981:49); affective responses (de Jong and Schellens, 2001:62), values and dialect (Bruce, Rubin and Starr, 1981:50);
- **Situation** – likely document use (de Jong and Schellens, 2001:62, Redish, 1981:48); available reading time or inference embedding (Lange, 1982:859; Bruce, Rubin and Starr, 1981:50).

Criticisms focus on the scores' validity and reliability. Validity is questioned because the scores scrutinise "lower-level text characteristics" (de Jong and Schellens, 2001:62) and therefore ignore order and even sense at the level of the:

¹ Much applied literature on readability has a pedagogic focus, aiming to help teachers to assess the degree to which pupils have understood a text and, through extrapolation, the likelihood that they will understand other texts deemed similar.

- **word** – formulae do not reflect that “[s]ome long words, because of their frequent use are quite familiar (e.g. communication)” (Hartley, 1981:18), even “[s]crambling words ... does not affect” the scores (Frase, 1981:49) (see also Kintsch and Vipond, 1979);
- **sentence** – scores assume that texts are “composed of well-formed, grammatical sentences” (Redish, 1981:47), not acknowledging that “[s]ome short sentences are difficult to understand (e.g. God is grace)” (Hartley, 1981:18) and presupposing “that sentence length *always* contributes to complexity” erroneously (Davison and Kantor, 1982:206) (see also Frase, 1981:49)
- **document** – organisation is ignored (Redish, 1981:48) as are unexpressed items or possible inferences (Davison and Kantor, 1982:206)
- **context** – the context and manner of delivery are ignored (Bruce, Rubin and Starr, 1981:50).

Accordingly, critics claim that the formulae are invalid, measuring the wrong things (Frase, 1981:49; Redish, 1981:48), oversimplifying (de Jong and Schellens, 2001:62) and lacking sensitivity (Redish, 1981:47). Perhaps formulae cannot possibly be universally valid, needing to vary with population and time of assessment (Bruce, Rubin and Starr, 1981:50).

Unreliability claims suggest that the formulae’s flawed method and “shaky” statistical bases (Bruce, Rubin and Starr, 1981:50) deliver ineffective evaluations (Noe and Standal, 1984).

A “pretheoretical”, overly practical focus (Perfetti, 1989:643) leads even Charrow and Charrow’s (1979) work to be dismissed as “not based on any theory of text comprehension or on a very searching analysis of [texts’] societal function” (Gunnarsson, 1997:291). Specific relevant theory has been neglected (Bruce, Rubin and Starr, 1981:50), for example, the formulae’s predilection for short sentences ignores Kintsch and van Dijk (1978)’s work on recall in relation to “the number, complexity, and organisation of ideas in a passage” (Redish, 1981:47). The formulae’s implication that writers should “prepare all material, regardless of intended audience, as if it is to be read by people with extremely limited vocabularies and reading abilities” ignores audience research (Plung, 1981:53). Against the flow, Frase asserts that one positive aspect of readability scores is reliability because “[o]ur skill at counting characters, syllables, words and sentences is good” (1981:49), yet Owen warns that, whilst counting such items might seem simple, even identifying them is problematic, rendering formulae which rely on such counting unreliable (1994:280-282).

The Formulae and rights information

Flesch has been applied to the *Notice to detained persons* and caution (Gudjonsson, 1990, 1991; Clare and Gudjonsson, 1991, 1992; Gudjonsson, Clare and Cross, 1992). Gudjonsson claims that the formula is “particularly useful in a legal setting for assessing the readability of letters, outlines of procedures and other material” (1990:24) although does not explain why. Flesch’s use in examining the *Notice* and caution is indeed problematic as the formula is not designed to assess spoken texts (Clare and Gudjonsson, 1992), short texts (Owen, 1994:283-4) non-prose (Redish, 1981:47) or texts not composed of sentences (Meyer, Marsiske and Willis, 1993).

Powell criticises those who take readability formulae to offer exact, definitive diagnoses (1981:44), yet, perhaps the formulae’s most interesting misappropriation is by writers who use them to guide writing, inappropriate because “the features that are counted in a readability formula are only an *index* of the problems people have with the text, *not an explanation*” (Redish, 1981:48), readability scores can only “record the symptoms of overly complex prose” (Williams, 1986:169). Therefore, although they might function as “a useful tool in the writer’s bag” they should, at most, supplement other tools (Powell, 1981:43-44). Even formula advocates (Cullinan and Fitzgerald, 1984; Koenke, 1987) and authors (Redish, 1981:48) discourage using scores in composition. Gunning himself notes:

“Like all good inventions, readability yardsticks can cause harm in misuse. They are handy statistical tools to measure complexity in prose. They are useful to determine whether writing is gauged to its audience. *But they are not formulae for writing*”.

(1968:31)

This thesis examines the work of a police officer who rewrote the *Notice*. He initially used readability tests in just this way, as he explained at our first meeting:

1	I'd actually put ... trying to simplify it ... "if you want a	He sought to reduce Flesch and Fog scores by removing <i>solicitor</i> and using rankshifted embedding with numbers
2	solicitor ... the solicitor can do the following things for you"	
3	[simulates reading a list] "1 2 3 4 5 6"	
4	and the [head-teacher] told me said "if you list it like that by	He was advised against his chosen formulation by an authority he trusted
5	the time they get to 4 they'll be saying "does- what? who	
6	does what? who does that?" so you do have to actually say	
7	"a solicitor can do this" "a solicitor can do that" "ask for a	
8	solicitor if this ha-" "ask for a solicitor""	
9	and every time I put "solicitor" in the syllables went up and	His efforts to follow advice on formulation increased the document's Flesch scores, despite those efforts appearing prudent
10	(.) it made it more complicated	
11	and that's what the glimmerings for me then of realising that	His experience led him to become sceptical about readability scores
12	the Flesch reading wasn't the be-all-and-end-all [Frances:	
13	yeh?] that you could you could get .2 lower and actually	
14	make it harder to follow	

Some authors have reacted against conventional formulae by devising very different tests.

Whilst quantification remains, it is typically only a "first step" (Frase, 1981:49) for this new generation who also scrutinise "subjective factors" (Davison and Kantor, 1982:190) such as discourse structure, levels of embedding (Meyer, Marsiske and Willis, 1993:238), type-token ratios, noun-to-verb ratios, and "indexes of the distance between repeated words", measuring multiple variables in an attempt to represent the complexity of written communication (Frase, 1981:49).

APPENDIX 11: THE INFORMATION DESIGNERS' BRIEF

Devising the task

The police officer, who had written his text before the Enterprise Information Design produced their documents, advised on simulating the writing task:

- J I would I would say set set a thing on the length of it
F right
J because of . the fact that it's for . immediate impact rather than later perusal [interruption]
F um yes um so keep it short um and are there any other rules that I'd need to tell them for things like . making sure that they're within the legal the legal side of it [inaud.] =
J = yeh I mean I think it's it's it's ((important)) they know where they're starting from and if they have a copy of this this if you like this is accepted as being legal
F yeh
J at the moment now alright some of it I think you also have to sh- show them the the Codes of practice because it just says access to toilet and washing facilities it's you know and then Code C8 4 actually defines it a little bit more you know just to say well access to toilet- . didn't . told you nothing and bear in mind most people won't look at that it told them nothing so I felt they needed to explain it more so I think you've got to give them the legal . framework under which it operates at the moment
F mm and do you think it's worth going back any further than the Codes of practice to ur
J pre-PACE?
F no to whichever act it was that's informed I guess PACE itself
J well really that that was the first time in in 861 mean we we have stuff like this come through in 85 because we had a three-month trial of it . working to PACE but I mean before that . hhh um it was very . sort of rare for people to have solicitors I don't know if they knew about solicitors you know there was very little in the way of information
F and did you go back and look at PACE when you were actually doing that that that exercise of rewriting did you go back and look at the act itself or just =
J = yeah well I only for a little bit of it . mostly I did rely on the Codes of practice because that that is the one- it it actually says in all it says in PACE is um . Codes of practice will be issued in respect of the detention the detention and treatment of prisoners because that means then hhh they can rewrite it . with the Home Office minister saying I've made this regulation whereas if they said whatever they said in the Police and Criminal Evidence Act . if they want to alter that they've got to go back through parliament yeh so it's just a sort of regulation thing where he says . here's the new Codes of practice and he signs it and it comes into effect so so PACE itself has very little to do with . the re the re writing of the Codes of practice

The task was a simulation, in a real situation, IDU writers might consider the document design task rather differently before beginning. They explained that they might, for example, devise a list of questions, areas for clarification and sites of potential problem and ambiguity and present these to the commissioning organisation or individual for clarification. This might result in extensive discussion. In some cases, the organisations or individuals who had requested the re-design would possibly be unable to conceive of the nature of the problem which IDU staff had identified until the document had been partially designed or at least attempted.

The brief is provided overleaf.

The Notice to Detained Persons and Notice of Entitlements

Introductory information for session on 30 August 2000

Frances Rock ()

This document tells you what to prepare for a session which will take place at the Information Design Unit. The session has two main purposes: (a) it will act as a training session for you, particularly giving you the opportunity to discuss issues which you think are important in document (re)design and (b) it will give me an opportunity to collect some data as part of my PhD research if you are happy for me to do so, in the form of your redrafted documents, associated notes and discussions. I am predominantly interested in language and the way language is used in these documents although obviously strictly non-linguistic features such as layout may be intrinsically linked to language here. I look forward to looking at your contribution, good luck!

Documents provided

The Notice to Detained Persons and Notice of Entitlements are given to every person who is arrested in England and Wales when they are taken to a police station. The notices are intended to inform readers about what they must have and what they can have while they are in police custody and after their release.

The Police and Criminal Evidence Act (PACE) Codes of practice are available in each police station. They were designed to regulate the roles and responsibilities of police officers, they are also available to detained persons. Code C has a particular relationship with the Notice to Detained Persons and Notice of Entitlements. Code C's full title is *PACE Code of practice for the detention, treatment and questioning of persons by police officers* and as the name suggests, it tells police officers how they must treat individuals they detain. The Notice to Detained Persons and Notice of Entitlements are based on information contained within Code C and in places they refer directly to Code C.

The task

I have divided the task below into two 'parts' for ease of reference, but you will need to think about both parts, A and B, simultaneously.

The task – Part A

Your task is to rewrite the 'Notice to Detained Persons' in order to make them more readily understandable and helpful to those who have to use them. You may change ANYTHING about the documents in line with Code C. You may add information from Code C or remove information. The only condition is that the documents you produce must contain all relevant information about rights and entitlements during police detention and afterwards. In reality you will probably need to use the existing notices as a basis and refer to the Code for more detail because as your redesigned document would need to be approved by legal advisors it must contain certain information.

You should aim to minimise use of paper in your re-write but you may use more than the three sides of A4 currently used and may use any layout and wording which you think is appropriate. Do not use more than 3 sheets of A4 or their equivalent, these can be double-sided.

The people who will need to understand and use your document will have recently been arrested. They may be nervous even frightened, confused, hasty and distracted. On the other hand, they may have been arrested before and therefore potentially blasé and disinterested in the information. Potential readers will have various levels of reading proficiency and comprehension. They will also have varied attitudes to the police and to the situation in which they find themselves.

The Task – Part B

Whilst you are creating your revised document please think about the following things and make notes on your responses. These will be discussed in detail during the session and, if you are in agreement, I will collect them for my research:

The Documents

- (1) What are the problems with, or shortcomings of, the current Notice to Detained Persons and Notice of Entitlements? You might like to think of both superficial and underlying sources of difficulty in the text. (please list and/or comment on as many as you identify)?
- (2) How are you addressing each of these problems in your rewrite?
- (3) Are there any problems which you are unable to address? Why?
- (4) What else are you aiming to achieve through your rewrite?

The rewriting task

- (5) How are you going about this rewriting task, from beginning to end?
- (6) What questions do you ask yourself as part of this rewriting?
- (7) How do you use the supplied documentation within this task?
- (8) What are your main aims when rewriting these documents?
- (9) How do you know when your rewriting task is complete?
- (10) Could you have achieved the rewrite more successfully if you had been given more information or resources? What?
- (11) What is the most difficult aspect of this particular rewriting task?
- (12) What is most straightforward about this rewriting task?
- (13) What other comments do you have about this rewriting task?

APPENDIX 12: DEMOGRAPHIC INFORMATION ABOUT THE DETAINEES INTERVIEWED

Sex

Of the 52 detainees interviewed:

87% were male (45)
13% were female (7)

This is comparable with a national average for the years 2000-1 (the equivalent time-span to that of this study), 2001-2 and 2002-3 (the most recent figures). The figures for each of these years were:

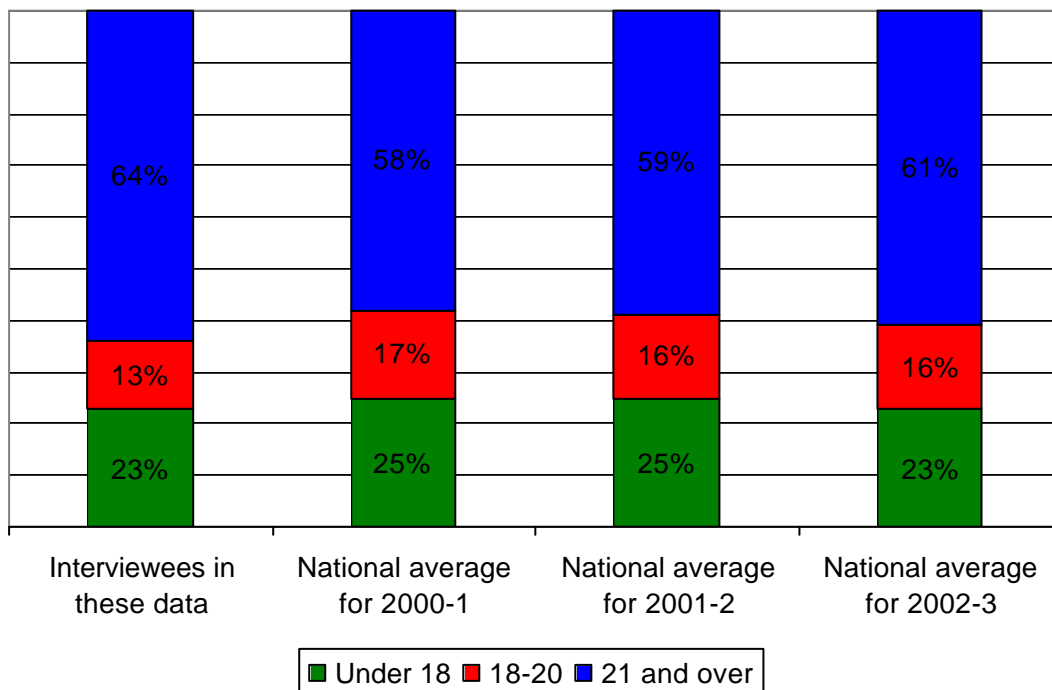
84% male
16% female

Age

Of the 52 detainees interviewed:

64% were aged 21 and over (33)
Of which:
31% were aged 21-30 years (16)
25% were aged 31-40 years (13)
8% were aged over 40 years (4)
13% were aged 18-20 years (7)
23% were aged under 18 (12)
(i.e. they would certainly need an appropriate adult)

This is comparable with a national average for the years 2000-1 (the equivalent time-span to that of this study), 2001-2 and 2002-3:



The national arrest statistics used here are from: Ayres and colleagues (2001) and Ayres, Perry and Hayward (2002) and Ayres, Murray and Fiti (2003).

APPENDIX 13: WHAT MAKES DIFFICULT TEXTS DIFFICULT?

Potential trouble source	Features which should be avoided or considered	Noted and discussed by authors including
Syntactic constructions	Nominalizations	Halliday (1994:342-367) Gibbons (personal communication) Danet (1990:538f) Levi (1994:16-18) Kurzon, 1996:8f Plain Language Commission (PLC) (2001) Baynham (1995:188-9) Finn (1995:242f))
	Passivisations	
	Whiz-deletions	
	Complement deletions	
	Long sentences	
	Prepositional phrases	
	Modals (compare those which express uncertainty to others)	
	Single negatives	
	Multiple negatives	
	Embedding	
	Misplaced phrases	
	Word lists	
	Conditionals	
	Anaphora with unclear antecedents	
	Use of specific, problematic anaphora (replacing these may also be troublesome)	
	Lack of cohesion devices (Halliday and Hasan, 1976)	
Vocabulary	Poor selection of tense and mood (Makaya and Bloor, 1987)	
	Failure to use personal pronouns	
	Grammatical metaphor (including nominalizations, densely packed information)	
	Words with multiple meanings	Plain English Campaign (PEC) (1993:26) Groff (1983:396f) Danet (1990:538f) Levi (1994:16-18) Owen (1996) PLC (2001)
	Unfamiliar / uncommon words	
	Failure to define potentially unfamiliar words, e.g. specialised words	
	Words used in an unusual way	
	Arcane words	
	Jargon or other words which require 'translation'	
	Words from a different language	
	Word length – Polysyllabic words	
	Overly vague or precise words	
	Abbreviations / Acronyms	
	Words of Latin or French origin	
Semantics	Semantic redundancy - Synonymy	Eckkrammer (2001)
Discourse structure	Lack of initial orientation through title	Danet (1990:538f) Bean and Patthey-Chavez (1994:207) Levi (1994:16-18) Stratman and Dahl (1996:217f) Shuy (1997:177f) PLC (2001)
	Lack of initial orientation through opening overview	
	Lack of orientation throughout	
	Lack of clarity in headings	
	Lack of clarity about actions to be taken	
	Abstract and implicit information	
	Omission of information	
	Chaotic structure	
	Lack of intertextual orientation	
	Unhelpful intertextual or intratextual reference	
	Unhelpful topic sequencing	
	No elaboration or emphasis of key points	
Expository devices	Repetition (Bean and Patthey-Chavez, 1994:207)	
	Lack of explanation	Stratman and Dahl (1996:217f)
	Lack of example	
	No use of scenarios	

Medium/mode	Unhelpful language use in terms of medium/mode of administration of information (e.g. a written text which will actually be spoken)	
Register	Inappropriate degree of formality	
	Use of register which is overly characteristic of written language	
The reader	Failing to consider readers' needs	Guthrie and Wigfield (2000:403), Wilson and Anderson (1986:31f) cf schema theory, Diehl and Mikulecky (1981:5f), Graesser and Kreuz (1993), Rickheit, Schnotz and Strohnert, H. (1985)
	Failing to consider readers' prior knowledge	
	Failing to consider readers' motivations	
	Failing to consider readers' role in the text	
	Failing to consider readers' need for engagement	
	Failing to consider readers' prior knowledge	
	Failing to consider the (different) ways that (different) readers will use texts	
	Failing to consider readers' relationship to the text (Baynham, 1995:189)	
The writer/provider	Failing to consider text comprehension processes such as inference generation	Williams (1986)
	Failing to make clear who the information is from	
	Failing to consider the presence of implicit/explicit ideological positions (Baynham, 1995:189)	
	Using texts as 'display' e.g. of complex register knowledge	
	Failing to help the person who provides the information	
Timing	Failing to administer a text at the right time	
Readability	Low readability scores	
Completeness	Missing information	
Purpose	Failure to acknowledge the rhetorical purpose of the document	PEC(1993:27) PLC(2001)
	Failure to specify the purpose early and clearly	
	Is the information relevant	

Orasanu and Penney (1986: 4-6) and Carpenter and Just (1986:11-29) and Gibbons (2003:162-199) offer useful overviews here. Summaries such as Hartley (1982:17f), *Felker et al* (1981) and Turk and Kirkman (1989:77) also take in such considerations as layout, typography (highlighting, bold face, capitalisation and underlining), bullets and numbering, footnotes, graphs, tables and illustrations, spacing, indentation, margins, symbols which may be used, to foreground hierarchical arrangements, for example.

**APPENDIX 14: THE *NOTICE TO DETAINED PERSONS*
ANNOTATED TO INDICATE DIFFICULT FEATURES**

NOTICE TO DETAINED PERSONS [Introduces the document by prospecting readership rather than content] [Uses regular plural inflection, rather than the irregular 'people'] [*Notice* does not indicate illocution]

The section in capital letters **is to be read** [passivisation] to the detained person [odd noun phrase – why not 1st person pronominal reference *you?*] by the **Custody Officer** [jargon] **before** [rankshifted subordinate clause] giving the notice to the detained person.

YOU HAVE THE RIGHT TO [This must be read by being attached to the *to* + infinitive clauses below – each clause below looks more like a directive at first glance]:

- 1 SPEAK TO AN INDEPENDENT **SOLICITOR** [jargon] FREE OF CHARGE
- 2 **HAVE SOMEONE TOLD** [passivisation] **THAT** [Subordination] YOU HAVE **BEEN ARRESTED** [passivisation] [Open to garden-path interpretations from readers who believe that they *have the right to have* something rather than *to have* something happen – by analogy with the surrounding points]
- 3 CONSULT THE **CODES OF PRACTICE** [Jargon] **COVERING** [defining or restrictive relative clause which is not introduced with the relative pronoun *which*] POLICE POWERS AND PROCEDURES [Long noun phrase]

[What does the numbering suggest? Sequence? Dependency? Importance?]

YOU MAY [Ambiguous modal verb – may of permission or possibility?] DO ANY OF THESE THINGS NOW, BUT IF YOU DO NOT, YOU MAY STILL **DO SO** [Ellipsis] AT ANY OTHER TIME WHILST [(you are) = *whiz* deletion] DETAINED [passivisation] [agent deletion] AT THE POLICE STATION.

If [adverbial conditional *if* clause – misleading as the detainee does not have to say anything irrespective of whether they are asked questions] you are asked questions about a suspected offence [Grammatical metaphor the verb *suspect* has become an adjective. Suspected offence = a specific offence which we (the investigative team, but not the custody staff) suspect you have committed] ... [Caution]

More ['poor' cohesive tie – as this immediately follows the caution, it suggests that more information about the caution will be given – yet the anaphora actually refers back to the capitalised section] information **is given** [passivisation] [agent deletion] below:

You can speak to a solicitor at the police station at any time, day or night. It [extraposition – using *It* to move the following section to the front of the sentence – *It* denotes *speaking to a solicitor*] will cost you nothing [Negation – why not '*It is free*'?].

Access [nominalisation] to **legal advice** [Jargon – term used interchangeably with *solicitor*] [nominalisation] [long noun phrase *access to legal advice*] can only **be delayed** [passivisation and agent deletion – delayed by us] in certain **exceptional** [grammatical metaphor – except – preposition, exception = noun, exceptional = adjective]

circumstances [vague – requires insider knowledge] (see Annex B of Code of Practice C)
[confusing cross-reference which demands a particular literacy].

If [subordination] you do not know a solicitor, or you cannot contact your own solicitor
[Coordination], ask for the duty solicitor. He or she is nothing to do with the police. Or you can ask
to see a list of local solicitors [Coordination – where does this begin?].

You can talk to **the solicitor** [change of article – previous paragraph used *a solicitor* – could
be an elliptical form of *the solicitor you choose*] in private on the telephone and
[coordination] the solicitor may come to see you at the police station.

If [subordinate clause – present conditional (i.e. *if* + clause (present simple), main clause
(present simple) (Leech, Cruickshank and Ivanic, 2001:206)] the police want to question you,
you can ask for the solicitor to be there. **If** [subordinate clause] there is a delay [to ...?], ask the
police to contact the solicitor again [here *delay* relates to the solicitor's arrival – *delay* is
something outside the control of anyone in the custody suit]. Normally the police must not
question you **until** [subordination] you have spoken to the solicitor [complex negation here –
normally ... not ... until]. However, there are certain circumstances in which the police may
question you without a solicitor being present (see paragraph 6.6 of Code of Practice C).

If [subordinate clause – *If* + clause (present simple), main clause present simple
imperative (Leech, Cruickshank and Ivanic, 2001:208)] you want to see a solicitor, tell the
Custody Officer at once. You can ask for legal **advice** [nominalisation] at any time during your
detention [nominalisation]. Even **if** [subordinate clause] you tell the police you do not want a
solicitor at first, you can change your mind at any time.

Your right to legal **advice** [nominalisation] does not entitle you to delay [here *detainees* are
potentially delaying] procedures under the **Road Traffic Act 1988** [jargon] which require the
provision [nominalisation] of breath, blood or urine **specimens** [jargon].

The right to have someone informed of your detention

You may on **request** [nominalisation] have one person [who is = *whiz deletion*] known to you
[odd formulation – connotes lack of familiarity – idiomatic?] [relative clause], or who is
likely to take an interest in your welfare [relative clause], informed [passivisation] at public
expense [not detainee-centred] as soon as practicable [adverbial clause] of your whereabouts
[Grammatical metaphor – *where you are* becomes *your whereabouts*][Long sentence –
extensive subordination – we can strip it down to: *You may have one person informed of
your whereabouts* which itself contains subordination cf. *you may have x* See below, for
an unpacking of this sentence]. **If** [subordinate clause] the person you name [long noun
phrase containing anaphora] **cannot be contacted** [passivisation] [agent deletion] you may
choose up to two alternatives. If they too cannot **be contacted** [passivisation] [agent deletion]
the Custody Officer has discretion to allow further attempts until the information **has been
conveyed** [passivisation] [agent deletion]. The right can only **be delayed** [passivisation – in
this case *delay* is by the police again – may cause confusion about the kind of speech act

being undertaken here – offering detainees the chance to delay or warning that the police can delay] [agent deletion] in exceptional circumstances (see **Annex** [Lexical item which may be unfamiliar] B of Code of Practice C).

[poor information sequencing – this section does not mention that this right can be invoked at any time]

[odd discourse sequence – no cross-reference is made to the entitlement to pass a message to someone which is presented in the *Notice of entitlements*]

The right to consult the Codes of Practice

The Codes of Practice will **be made available**[passivisation] [agent deletion] to you **on request** [Nominalisation]. These Codes govern police procedures [odd sequence – gloss of the *Codes* is only presented in this second sentence – they were also glossed in more detail in the first sentence]. ***The right to consult the Codes of Practice** [long noun phrase] does not entitle you to delay **unreasonably** any **necessary** [vague – calls for specialist knowledge] **investigative and administrative action** [nominalisation] [jargon], neither does it allow **procedures** [nominalisation] **under the Road Traffic Act 1988** [jargon – how is this different from an *investigative action* of the earlier noun phrase? How does this help the detainee – will they have access to this text? – Calls into question the function of the text – is it to give detainees information or to legitimate police activities?] requiring provision of breath, blood or urine specimens [jargon] [long noun phrase! Begins at *procedures*] to **be delayed** [passivisation] [agent deletion – this time the deleted agent is the reader, not the police as in earlier cases]. [starting at the * 72% of the words in this paragraph prohibit rather than providing] [apparently contradicts the earlier assertion that YOU MAY DO ANY OF THESE THINGS NOW, BUT IF YOU DO NOT, YOU MAY STILL DO SO AT ANY OTHER TIME WHILST DETAINED AT THE POLICE STATION]

The right to a copy of the Custody Record [Custody record turns out to be an unfortunate noun phrase because detainees confuse it with *Criminal record*]

A record of your detention will **be kept** [passivisation] by the Custody Officer. When you leave police detention or are taken before a court, you or **your** legal representative or **the appropriate adult** [odd combination of *your* possessive pronoun and *the* determiner] [the technical term *appropriate adult* has not been explained yet] **shall** [Tiersma identifies *shall* as having an “archaic and legalistic feel to it” which he evaluates negatively] **be supplied** [passivisation] [agent deletion] **on request** [nominalisation] with a copy of the Custody record as soon as practicable [adverbial clause] [Lots of subordination and coordination - *you shall be supplied with a copy of the Custody record*]. This entitlement [nominalisation] lasts for 12 months after your release from police detention [nominalization]. [Macro-structure – lack of initial orientation through opening overview – only three rights were introduced earlier, rather than four here] [Failure to consider timing – this text is administered at the beginning of detention yet this paragraph concerns a right which cannot be taken up until detention is over]

APPENDIX 15: CHANGES AND ADDITIONS TO THE SECTION ON THE RIGHT TO A SOLICITOR

The section of the original *Notice to detained persons* which explains the right to legal advice is divided into units below, each roughly contains a proposition or noteworthy item:

Unit no.	Text of original notice	Summary of each unit	Summary of each paragraph
0	FREE LEGAL ADVICE	Summary (Incorporates propositions 1 and 4)	Title
1	You can speak to a solicitor	Restatement of 'basic' right	Paragraph 1 The right to speak to a solicitor – when, where and how much
2	at the police station	Location	
3	at any time, day or night.	Time – Around clock	
4	It will cost you nothing.	Cost	
5	[Your] Access to legal advice can only be delayed [by the police]	Police can delay access to solicitor	Paragraph 2 The police can delay access to a solicitor
6	in certain exceptional circumstances	Reasons for delay	
7	(see Annex B of Code of Practice C).	Reference	
8	If you do not know a solicitor,	Reasons for asking for duty solicitor/list of solicitors	Paragraph 3 How to find a solicitor if you do not know one
9	or		
10	you cannot contact your own solicitor,	There is a duty solicitor – you can ask for them	
11	ask for the duty solicitor.		
12	He or she is nothing to do with the police.	Solicitor unconnected to police	
13	Or	Conjunction – use of or	
14	you can ask to see a list of local solicitors.	There is a list of local solicitors – you can ask to see it	
15	You can talk to the solicitor in private on the telephone	Consultation in private whilst on the telephone	Paragraph 4 What a solicitor will do before interview – when, where and how you can talk to one
16	and	Conjunction use of and -	
17	the solicitor may come to see you at the police station.	Solicitor might visit the police station	
18	If the police want to question you, you can ask for the solicitor to be there.	The solicitor's role during interview	Paragraph 5 (1) What a solicitor will do during interview (2) What to do if a solicitor fails to arrive at the police station (3) The police might ask questions without a solicitor being present
19	If there is a delay,	Delay – Solicitor delayed?	
20	ask the police to contact the solicitor again.	You can ask for the solicitor to be contacted several times	
21	Normally the police must not question you until you have spoken to the solicitor.	There are 'normal' rules/procedures which police must follow. You must have access to a solicitor before interview if you wish.	
22	However, there are certain circumstances in which	Reasons for denying access to a solicitor	
23	the police may question you without a solicitor being present	Police can deny access to solicitor	
24	(see paragraph 6.6 of Code of Practice C).	Reference	
25	If you want to see a solicitor, tell the Custody Officer at once.	You can ask to speak to a solicitor + time – you must do so immediately	Paragraph 6 How to arrange to speak to a solicitor The right to speak to a solicitor can be invoked at any time during detention even if initially declined
26	You can ask for legal advice at any time during your detention.	Restatement of basic right + You can change your mind 1 + Time- throughout detention	
27	Even if you tell the police you do not want a solicitor at first, you can change your mind at any time.	You can change your mind 2 + Time- throughout non-specified time	
28	Your right to legal advice does not entitle you to delay procedures under the Road Traffic Act 1988 which require the provision of breath, blood or urine specimens.	Delay – Detainees cannot cause Reference	Paragraph 7 Delay– detainees cannot delay procedures whilst waiting for or speaking to a solicitor

The chart below uses this division into units to create a visual representation of each rewriters' response to this section. Below each authors' name are two columns which represent propositional content of each authors' reworked text in relation to the original Of these two columns, the one on the right, for each author, shows the original paragraph number of each proposition they have included in each of their paragraphs, so we see that EIDU3, EIDU1, EIDU5 and EIDU4 have all begun their first paragraph with a unit which has some equivalence with one from paragraph 1 of the original notice

and that, in fact, EIDU5's paragraph 1 only contains units which were also included in paragraph 1 of the original. The column on the left of each authors' entry adds detail, showing the original position of each proposition which each author presents. So, we see that EIDU3, EIDU1, and EIDU4 began their rewritten first paragraph with the first proposition of the original notice while EIDU5 began with the fourth proposition of the original notice:

	NDP		John		EIDU3		EIDU2		EIDU1		EIDU5		EIDU4	
Title	0	T	New	New	4	1	New	New	1	1	No title		1	1
					1	1	1	1					15	4
							(15)	(4)					16	4
							4	1					17	4
Para. 1	1	1	25	6	1	1	New	New	1	1	4	1	8	3
	2	1	New	New	1&5	1&2			2	1	1	1	9	3
	3	1			3	1			3	1	2	1	10	3
	4	1			4	1			4	1	3	1	11	3
Paragraph 2					27	6			27	6			12	3
	5	2	8	3	6&22	2&5	1	1	8	3	25	6	28	6
	6	2	9	3	5	2	15	4	9	3	27	6		
	7	2	10	3	New	New	16	4	10	3				
Paragraph 3			11	3	23	5	17	4	11	3				
			11	3	7&24	2&5	4	1	13	3				
			12	3			New	New	14	3				
									12	3				
Paragraph 4									New	New				
									15	4				
									16	4				
									17	4				
Paragraph 5	8	3	1	1	17	4	21	5	18	5	5	2	18	5
	9	3	3	1	16	4	18	5	21	5	6	2		
	10	3	2	1	15	4	28	7	6&22	2&5	7	2		
	11	3	4	1					5&22	2&5				
Paragraph 6	12	3							New	New				
	13	3							7&24	2&5				
	14	3												
	15	4	15	4	25	6	New	New			8	3	21	5
Paragraph 7	16	4	17	4							9	3	19	5
	17	4									10	3	20	5
											11	3		
											13	3		
Paragraph 8	18	5	21	5	8	3	New	New			15	4	8	3
	19	5	18	5	9	3					16	4	9	3
	20	5			10	3					17	4	10	3
	21	5			11	3							11	3
Paragraph 9	22	5			13	3							12	3
	23	5			14	3								
	24	5			12	3								
	25	6	19	5	18	5	New	New			18	5	28	6
Paragraph 10	26	6	New	New	New	New					19	5		
	27	6	New	New	21	5					20	5		
			20	5	19	5					21	5		
					20	5					22	5		
Paragraph 11											23	5		
											24	5		
Paragraph 12	28	7	5?	2	28	7	8	3			28	7		
			6?	2			11	3						
			7?	2			13	3						
			New	New			14	3						
Paragraph 13							New	New						
							New	New						
							12	3						
Paragraph 14			22?	5										
			23?	5										
			24?	5										
			24?	5										

APPENDIX 16: PR1 – THE OFFICER’S PRESCRIBED CUSTODY DESK PROCEDURE

APPENDIX 17: THE OFFICER'S ELECTRONIC VERSIONS OF THE *NOTICES*

The next page holds two CDs:

- One version runs without intervention and reads the text aloud (if used on a computer with speakers);
- The other version is designed so that readers can navigate through pages as they wish.

The content of these CDs and their covers are included with thanks to John Price. This content and presentation is entirely his work.

APPENDIX 18: HOW TO EXPLAIN THE 2003 CAUTION RESTRICTIONS TO DETAINEES

C2 *The following is suggested as a framework to help explain changes in the position on drawing adverse inferences if the restriction on drawing adverse inferences from silence:*

(a) *begins to apply:*

'The caution you were previously given no longer applies. This is because after that caution:

(i) *you asked to speak to a solicitor but have not yet been allowed an opportunity to speak to a solicitor.' See paragraph 1(a); or*

(ii) *you have been charged with/informed you may be prosecuted.' See paragraph 1(b).*

'This means that from now on, adverse inferences cannot be drawn at court and your defence will not be harmed just because you choose to say nothing. Please listen carefully to the caution I am about to give you because it will apply from now on. You will see that it does not say anything about your defence being harmed.'

(b) *ceases to apply before or at the time the person is charged or informed they may be prosecuted, see paragraph 1(a);*

'The caution you were previously given no longer applies. This is because after that caution you have been allowed an opportunity to speak to a solicitor. Please listen carefully to the caution I am about to give you because it will apply from now on. It explains how your defence at court may be affected if you choose to say nothing.'

APPENDIX 19: WORDINGS OF PREVIOUS POLICE CAUTIONS

Prior to 1984, cautioning was governed by Judges' Rules, first devised in 1912. Under Judges' rules, three cautions operated, used in different circumstances. The short form read (Police Mutual Assurance Society, 1976, 2):

You are not obliged to say anything unless you wish to do so, but what you say may be put into writing and given in evidence.

This caution was slightly altered following the implementation of the Police and Criminal Evidence Act (PACE) 1984, becoming:

You do not have to say anything unless you wish to do so but what you say may be given in evidence.

Several officers who I interviewed in 2000 still look back to the Judges' rules wording disdainfully, noting that detainees would ask "*what's 'obliged'?*" struggling with this word's distance from *the real world* (AO39). For AO48, intertextuality between the previous caution and some officers' current practice could limit comprehension, because *some police officers still throw 'obliged' in and you know I think that's confusing*. The current caution reads:

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.

As Cotterill has noted, this differs from the previous wording through (1) the addition of what she calls a but clause, in fact a separate sentence beginning with *but* functioning effectively as a conjoined clause (2) lexical substitution and insertion of emphatic *do* replacing *what* you say with ***anything*** you do say (2000:6). In addition to the changes noted by Cotterill, the notion that silence is the detainee's choice has been downgraded through removal of the words *unless you wish to do so*.

APPENDIX 20: CAUTION WORDINGS IN VARIOUS PARTS OF THE WORLD

Scotland:

“When a person is arrested in Scotland the arresting officer should caution the person using the words;

You are not obliged to say anything but anything you do say will be noted and used in evidence.

“You are going to be asked questions about (brief description of the alleged offence). You are not bound to answer but, if you do, your answer will be noted and may be used in evidence. Do you understand?” (await reply)

The arresting officer will then note any reply made in his notebook and ask the person to sign his book to verify the statement or note the fact that the person has refused to sign.” (Malone, 2003)

The Netherlands:

Here, suspects are cautioned before they are heard by police, investigating judges or trial judges whenever they are about to be heard. The caution simply states the *nemo tenetur* principle and usually runs along the lines of *you are not required to answer questions*. Accordingly, “police records always start with a text something like this: “After I had told the suspect that he was not obliged to answer and about what I wished to hear him, he stated to me the following: I know that I am not obliged to answer” (Komter, 2002).

Miranda Warning (The USA):

No wording is fixed, the court’s judgement in *Miranda v. Arizona* stated only: “...*The person in custody must, prior to interrogation, be clearly informed that he has the right to remain silent, and that anything he says will be used against him in court; he must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation, and that, if he is indigent, a lawyer will be appointed to represent him.*” (Miranda v Arizona [1966]).

Northern Ireland:

You do not have to say anything, but I must caution you that if you do not mention when questioned something which you later rely on in court, it may harm your defence. If you do say anything it may be given in evidence.

This caution is specified in Code C of the PACE Codes for Northern Ireland (Article 60 and 65). It is subject to (Criminal Evidence (Northern Ireland) Order 1988, Article 3).

Australia:

I am going to ask you certain questions. You are not obliged to say anything unless you wish to do so, but whatever you say or do may be used in evidence. Do you understand that?

Law Reform Commission, Australia (2001)

APPENDIX 21: DEMOGRAPHIC INFORMATION ON OFFICERS INTERVIEWED

APPENDIX 22: FORCE B OFFICIAL PARAPHRASE

APPENDIX 23: FORCE A OFFICIAL PARAPHRASE

APPENDIX 24: TWO REPORTS TO THE HOME OFFICE

Preliminary report on investigations into the Notice to Detained Persons, Notice of Entitlements, caution and associated procedures

**by
Frances Rock**



THE UNIVERSITY
OF BIRMINGHAM



September 2001

Summary

The review of the PACE Codes of Practice and the revisions of associated documentation offers an ideal opportunity to make 2 types of improvements:

- Improvements based on comments on experiences of the workings of the current Codes of Practice and related documentation and procedure from police officers and others who work to them or are affected by them;
- Improvements based on observations and research of the current Codes of Practice and related documentation and procedure by outsiders such as academics and document designers who may bring particular types of insight.

These improvements may benefit police who must work within the dictates of the Codes of Practice, detainees who may have been disadvantaged by the current procedures and systems and indeed the justice and smooth-running of the criminal justice system as a whole.

This report overviews work to-date on a project which is assessing the communication of rights and entitlements during police detention. The work focuses on assessment of new rights documentation proposed by John Price of West Mercia Constabulary and the procedure surrounding the current police caution.

**Response to Public Consultation on revisions to:
Police and Criminal Evidence Act 1984 – Code C
Code of Practice for the detention, treatment and questioning of
persons by police officers**

From
Frances Rock



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Introduction to these comments

For the past four years I have been doing academic research into language use in police custody, I have focussed on the way information about rights is communicated, particularly through the *Notice to Detained Persons*, the *Notice of Entitlements* and the police caution. As part of this ongoing study, I have worked with John Price (formerly of West Mercia Constabulary) and John Unwin (of The Home Office) on a revised *Notice to Detained Persons* and *Notice of Entitlements* and with 6 police forces around England and Wales. The comments below are based on this extensive work which has incorporated the examination of interviews with police officers and detainees and of audio-recordings of police cautioning detainees during interviews.

I have included and separated comments which relate to:

- points which are in the current Code C and remain in the revised document
- points which have arisen as a result of the revision.

I have made some general language-related comments, but my main recommendations are highlighted in bold.