Elisabeth Carter

Analysing Police Interviews

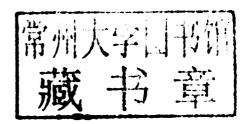## Laughter, Confessions and the Tape

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continuum

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Chapter 1

Overview

This book explores the interaction between officers and suspects in the police interview. The police interview has become a mainstay of popular culture through television programmes such as *The Bill* and *A Touch of Frost*, but there are few academic explorations that look at the reality of interaction in this setting. Here the detail of the interview is explored using real cases and the methodology of conversation analysis (CA) to reveal the reality of police interviews in action. Each analytic chapter will investigate a different area – laughter, the effect of the tape, and the confession. These areas will reveal hidden layers of communication in the line-by-line, in-depth investigations of real police interviews, and the delicate co-construction and negotiation involved in their success.

A selection of extracts from a corpus of 150 police interviews from the UK are used as empirical evidence which show how the officer and the suspect navigate and negotiate in this specialist setting and how they form and shape their identities as officer and suspect. The aim is to provide innovative insights into the police interview by exploring the interactional phenomena, illustrating how they present, and offering a range of specialist hidden tools that can be operated by officers and suspects in a range of ways specifically aligned to the strategic requirements of their roles. For example, utterances that are of no benefit to the suspect during the interview can be used by officers to secure the admissibility of the interview as evidence, claims to knowledge that contradict the suspect's version of events can yield a confession, and laughter can be used by officers to circumvent the rules of police interviewing without reprimand, or by suspects to reinforce their story or to challenge an officer's version of events. Broader insights into the myths and practices surrounding the police interview are revealed by juxtaposing them with common myths of police interviewing that prevail by being passed down from senior to junior officer, presented in media representations of policing, or described as good techniques in interrogation manuals and research.

Despite being a central component of the police role, much research into policing and the criminal justice system focuses on aspects other than the police interview. Where research does focus on police interviewing, it tends to focus on the confession. Interest in this subject is bolstered by media representations of policing and the public perception of, and fascination with, this aspect of the interview. However, these explorations rarely use police interviews as data, and detailed line-by-line analysis of the structure of confession elicitation is relatively scarce. As a result, research in areas considered 'less interesting' or central to the police interview remain under-represented. This then perpetuates the popularity of more commonly explored areas by keeping those other elements of the police interview either out, or to the fringes of, the public, practitioner and academic realms. Here the focus is on these details of the interview by exploring both conventional and unconventional areas of police interview interaction on a further level. This means the research presented here can address current gaps in knowledge, both theoretical and practical, and through the conversation analytic approach, provide real insights into the very constitution of this talk and potential benefits to existing training and techniques.

The introductory chapters provide a brief overview of the range of literature surrounding policing and the sociology of the police, and touch on the communicative patterns of the phenomena under investigation in ordinary interaction and in other contexts. This is not designed to be exhaustive; rather, it's an overview of the field within which this research is situated. (Readers seeking a more comprehensive review of the literature in these fields are directed to specialist volumes dedicated to that purpose.) Various sources are considered to identify and frame the under-explored and unexplored areas of the police interview; academic research, policing and law enforcement training manuals and handbooks, the Police and Criminal Evidence Act (1984, hereafter the PACE Act 1984 or the Act 1984) and fictional representations of policing. The myths of the police interview are examined, and how they are spread through both officer training and fictional representations of the police. The introduction to CA and its practical applications are then illustrated, and the access of and approach to the data used are discussed. The roots of CA are outlined alongside its basis in broader sociological traditions. It details conversation analytic techniques, the transcription process and the potential difficulties associated with this type of approach. Both introductory chapters provide the framework by which the order and sequential nature of officers' and suspects' navigation of interaction are later explored.

The first analytic part (Chapters 4 and 5) investigates the uses of laughter, and explores how it can be used as a tool by the officer and the suspect in the interactionally restricted setting of the police interview. Understandings of laughter in both ordinary conversation and in other institutional contexts are drawn on to frame the analysis of laughter in the police interview. Although the presence of laughter in this heavily constrained institutional environment may seem unexpected, its systematic and structured accomplishment of a variety of actions in other settings is shown to be mirrored in police interview interaction.

Part Two (Chapters 6 and 7) investigates how the tape recording of the police interview can affect the shape of officers' talk. The effect of overhearers of talk in other institutional settings has been well documented; it often shows in the participants making alterations to their talk in order to orientate to subsequent listeners or those who cannot contribute to the interaction. Such orientation by police officers in recognition of their talk being 'overheard' by the recording device in the interview is not as well documented. Research in other institutional contexts is used in establishing how the effect of the silent participant may manifest in the police interview. The police interview data reveals the practicalities of how the structure of officers' talk in the interview is designed to maintain a communicative channel with the later overhearers of that interaction, and the difficulties that can occur in doing so.

Finally, Part Three (Chapters 8 and 9) reveals the reality of police interview confessions alongside the myths and mystique that prevail about how they are drawn from suspects. This is one of the more popular topics one would expect to encounter in discussions of the police interview. If general perceptions, criminological assertions and fictional representations were to be believed, no police interview would be complete without a confession. Part Three exposes the reality behind some of those myths, revealing quite a different relationship between officer and suspect from what is traditionally understood through media representations of confession elicitation. It unravels the structure of the elicitation of confessions in line-by-line analyses of the interaction immediately prior to a confession, and provides insights into the officers' and suspects' construction and negotiation of their production. The concluding chapter draws the findings together, discusses the academic implications and practical applications of the analytic findings to policy and interview practice, and suggests some potential future directions and explorations for the data and analytic techniques.

Chapter 2

An Introduction to Police Interview Research, Policing and Recorded Evidence

A wealth of police interview research focuses on the officer in the police interview and on aspects that satisfy the perceived agenda of the officer. This is illustrated by the serious analytic attention given to techniques for the elicitation of confessions and methods by which officers can detect a suspect's deception, discussed further in Chapters 8 and 9. However, the research presented in this book examines the interaction and roles of both the suspect and the officer and provides an insight into their joint construction of the police interview.

The analyses explore ways that both the suspect and the officer negotiate their roles and the contextually defined constraints of their interaction, revealing and discussing the self-imposed and other-imposed constraints of their respective positions. This investigation strives to be uninfluenced by police requirements, interview myths or judgements of truth or deceptiveness. It aims to provide, and be led by, detailed, data-driven empirical insights into the police interview that contribute to knowledge by addressing current gaps in the literature and the contrasting accounts of the police interview. It is designed to explore the real-time interaction in the police interview, making the reality of this exchange, commonly closed to all but police personnel, accessible.

The police interview can be seen as the institutional and interactional manifestation of the social 'battle' between the police and suspects; the social and perhaps moral barrier between the participants could be likened to 'set pieces of social control, which are almost by definition wrapped in symbols and ritual' (Holdaway and Rock 1998: 156). A large and rapidly growing body of literature focusing on the criminal justice system varies from the analysis of police emergency calls (Sharrock and Turner 1978) to the interaction in courtrooms (Drew 1992), offenders' neutralization of crimes (Sykes and Matza 1957), policing (Reiner 2010) and the criminal justice system in general. The police interview itself has been approached

from a variety of perspectives such as interview techniques (Baldwin 1993; Moston and Engelberg 1993; Heydon 2005; Kidwell and González Martínez 2010), defining and describing question types in police interviews (Oxburgh *et al.* 2010) and officer interview training (Memon *et al.* 1995; Powell 2002).

As noted by Davis *et al.* (2005), much research in this field has relied on laboratory-generated rather than empirical data – for example, conducting interviews with suspects about their experience after they have been interviewed by the police (Sykes and Matza 1957), interviewing officers regarding their own performance (Kebbell and Wagstaff 1996), or in experiments to examine the propensity for interviewees to produce false confessions (Kassin and Kiechel 1996; Bain and Baxter 2000; Horselenberg *et al.* 2006). Redlich *et al.* (2008) used university undergraduates to assess the credibility and suggestibility of child victims and suspects through reading transcripts of police interviews. Although laboratory-based research provides a valuable resource for examining aspects of the police interview that practicalities render inaccessible (such as the production of false confessions), it still cannot replicate the communicative environment, real crimes, intrinsic responsibility of the officer, and the high stakes of the police interview setting. The research in this book explores the real-time processes of the police interview-in-action through the use of empirical data and CA to examine the participants' underlying communicative orientations, restrictions and capabilities.

Despite the growing number of empirical investigations into the police interview, it still remains comparatively rare in both conversation analytic research and in research into the criminal justice system. This is probably associated with the difficulty in gaining access to police interview tapes, compounded by the detailed and particular methodological requirements of CA. The following chapter provides an introduction to CA and its procedures, together with a more detailed discussion of CA and an account of the practical and methodological challenges encountered during the course of this research.

Policing and Recorded Evidence

The tape recording of police interviews was standardized in the UK in 1992, enabling members of the criminal justice system to hear the interaction that had taken place, rather than having to rely on the transcript of interaction written by an officer during the interview. This turn from

using written records to tape recording practices meant that the real-time interaction in interviews has only relatively recently been made accessible to those outside the criminal justice system. The tape recording of police interviews created an unprecedented transparency of the interaction as it enables the listener of the tape access to the talk-in-action as it unfolded, as if a 'silent participant' in that interview.

On an operational level, the introduction of tape recording 'meant that any flaws in techniques or procedures could no longer be ignored or concealed' (Moston and Engelberg 1993: 223). This is reflected in the reduction of known cases of miscarriages of justice since its introduction, although further technological advances beyond tape recording, such as video recording technology, make little additional difference (Baldwin 1992b). Prior to the change in legislation, written records could result in errors in representing what occurred in the interview, due to (among other difficulties) the inability to accurately represent tone of voice (Mirfield 1985). It follows that using recording equipment in police interviews signals both the additional protection of suspects' rights, and also the protection of the officer against claims of manipulation or misrepresentation. 'The new technology ... helps police in gathering evidence at the same time as it *adds to* the protection of the rights of the accused' (Law Reform Commission of Canada 1988, emphasis added).

This technological advancement may have other implications. Discussed in more detail in Part Two, the participants' orientation to the presence of the tape as a silent participant to that interaction can alter its very shape in the way the officer communicates with the suspect. The investigation into the detail of the police interview this book provides takes into account and explores both the legally and interactionally defined boundaries of that talk. The interactional boundaries are fluid and negotiated through the course of the talk-in-action; their characteristics, construction and maintenance by the participants is revealed in the analytic chapters that follow. However, the legal boundaries, in the form of the PACE Act 1984, differ from those interactional boundaries as they are legally enforceable, non-negotiable and set prior to the interview.

The PACE Act 1984 is the legislative framework in England and Wales which documents the powers of the police and other authorized officers (such as enforcement officers of local government), and outlines the protocols that govern their conduct. The Act was created to standardize police practices and balance the concerns of the officer with the needs of the suspect. It was developed to inform and protect the rights of the public in their contact with the police and authorized officers, and provide

officers with a statement of the requirements and regulations of their role. Currently the Act comprises eight codes of practice, lettered from A to H, each relating to a different aspect of the criminal justice process. The most recent addition is code H, introduced in 2006, which relates to the detention, treatment and questioning of suspects arrested under Section 41 of The Terrorism Act 2000 (the PACE Act 1984, 2006 edition, Code H Section 1, paragraph 1.1). The codes relevant to the research in this book are code C, which deals with the 'detention, treatment and questioning of persons by police officers' (PACE Act 1984, 2006 edition: vi) and Code E, which is the 'code of practice on audio recording interviews with suspects' (the PACE Act 1984, 2006 edition: xi). The most recent version of Code E came into effect in April 2010.

The PACE Act 1984 has undergone many revisions (most recently in 2005, 2006, 2008 and 2010) and modifications in line with legislative changes, such as the Police Reform Act 2002. The introduction of the Serious Organised Crime and Police Act 2005 altered the police powers of arrest, and changes to the suspects' right to silence meant that inferences could now be drawn from a suspect's silence in the interview (Criminal Justice and Public Order Act 1994, section 34). Despite the many changes and additions subsequent to its inception, the central premise of the Act (1984) has remained to 'provide a clear statement of the rights of the individual and the powers of the police' (the PACE Act 1984, 2006 edition: iv).

While not an investigation into the powers of the police or their ability to adhere to the protocols of the Act (1984), the research in this book uses the legislative framework of the Act as a frame of reference for particular behaviours in the police interview. For example, the officers' orientation to the silent participant examined in Chapters 6 and 7 may be linked to enacting protocols required by the Act. Similarly, the management of episodes of laughter examined in Chapters 4 and 5, and the types of techniques used by officers in drawing confessions from suspects explored in Chapters 8 and 9 will inevitably rely on, or be shaped by, these protocols and requirements. It is in this way the analyses also provide insights into the workings of these legislative mechanisms in action, their efficacy and the participants' management of their requirements.

Police Sociology and Criminology

By investigating the police interview, an integral component of the police investigative process and the criminal justice system, this research is firmly

based in part of a tradition that explores policing and police work. It has been approached from various angles, many based on type of crime – for example, cyber crime (Jewkes 2003; Jaishankar 2007), white collar crime (Sutherland 1949) and terrorism (Matassa and Newburn 2003). Research also concentrates on the wider structure of the police (Clark and Sykes 1974), politics (Reiner 2000), corruption (Maguire 2003) and policing and the media (Reiner 2003). A considerable body of literature has also been published on areas such as police and gender, an overview of which is provided by Heidensohn (2002, 2003). Insights include the importance of gender on the institution (Martin 1980; Westmarland 2001), the threat female officers pose to the masculinity, aggression and physical strength deemed central to the police role (Walklate 1995), and an insider's perspective of sexual discrimination (Halford 1993). The history, corruption and ethical improprieties of the police and institutional changes and solutions (Reiner 1992; Maguire 2003) demonstrate how the shifting climate of policing can bring solutions to past problems. For example, introducing the tape recording of police interviews worked towards reducing the presence of oppressive police interview questioning practices.

Reiner (1992, 2000) and Newburn (2003b) provide comprehensive accounts of the changing sociological and political climate and trends of police research from the 1960s. Clark and Sykes (1974) focused on the structure of policing as part of the institutional makeup of the criminal justice system, rather than on particular aspects of that structure, such as the police interview. Using data from calls to the police, Shearing (1998) studied policing from 'outside the police' in order to challenge the existing paradigm of viewing police work through the institution, which he criticized as sidelining police practices (Holdaway and Rock 1998). However, in examining policing as an activity of other agencies, areas of police work such as the police interview, itself arguably at the core of the police role, remain under-investigated. This focus on alternative, extra-constabulary policing still prevails. Newburn's (2003a) volume reflects the 'fragmented and plural nature' (Newburn 2003b: 5) of contemporary policing, indeed its 'intention ... to cover all the major aspects of policing' (Newburn 2003b: 6) illustrates criminology's focus on types of crimes (with chapters on cyber crime, drug crime and terrorism) and processes (such as undercover policing) rather than overarching and non-crime specific police practices such as police interviewing. This book does not focus on the type of crime of the suspect, as methodologically it holds little importance in the roles of, regulations imposed upon and the fundamental maintenance