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# 1

## Police Institutional Discourse

We as police officers are obliged to detail to you the observations which we have made and the facts that we have uncovered during the course of our investigation and we are obliged to put any allegations arising from that to you.

(Police officer speaking in an interview with a suspect, recorded in rural Victoria, Australia, 1994)

### 1.1 Introduction

The confession of a suspect obtained in a police evidentiary interview comprises the key piece of evidence in almost every criminal case in Australian courtrooms. It is crucial to the successful prosecution of a defendant that the confession is voluntary and not a product of threats or physical violence and that any written confession is a true and accurate record of the suspect's words during the interview. In Australia, as in many parts of the world using similar interview procedures, the introduction of tape-recorded police interviews has eliminated some of the more obvious problems associated with ensuring that all these criteria are met. Contested police statements alleging a confession by the suspect can now be checked against the audio tape of the interview, which is made in accordance with guidelines designed to maximise the integrity of the recording itself.

Despite these advances, the police interview process remains problematic for a number of reasons. For instance, it is not always clear when pressure is being brought to bear on the suspect to conform to a police version of events due to the subtlety of power play in discourse. British research in criminology has identified serious gaps in the understanding of the interview process by even experienced police officers (see for

instance Baldwin 1993), but such claims have not yet been substantiated by analyses of the actual language used to construct an interview.

Exposing assumptions and beliefs underlying the discursive practices of participants in the interview is an important process in understanding how apparently voluntary confessions can be influenced and guided by the police institution, represented by the interviewing officer. Prior studies have identified mythologies underlying various kinds of institutional discourse that can subvert the intentions of institutions in their interactions with the public. However, such an approach has not yet been taken in the analysis of police interview data, where it could prove crucial in providing an insight into the construction of the confession by the participants.

Nonetheless, linguistic research and opinion has made, and continues to make, a valuable contribution to legal proceedings and contested evidence. For example, in Australia there have been many cases where the validity of records of interview is disputed when the suspect is not a native speaker of English and an interpreter is not provided. The need for an expert opinion in these cases has introduced many linguists to the field of language and the law and there is now a growing body of research in this area commonly referred to as Forensic Linguistics.

As it currently stands, studies of language and the law generally, and police interviews in particular, are being approached from two ends of a spectrum. At one end, forensic linguistic research is driven by the need to respond to particular, problematic cases and these studies are supplemented by background research into police behaviour, often in disciplines other than linguistics. At the other end, there exist a number of studies which are primarily concerned with language use and discourse structure but which happen to draw on police interview data for their analyses. Between these bodies of research, there remains a gap. Research is needed which is not based on a specific court case but which seeks, through the expansion of the current understanding of police-suspect interviews, their structure and linguistic features, to provide a critical analysis of police behaviour in evidentiary interviews. Furthermore, such research should result in the provision of feedback to the relevant institutions and as such become part of the knowledge resources available to participants in these interactions, both lay and professional. Research which focuses on the analysis of legally undisputed or unproblematic interview data can highlight the linguistic features we might ordinarily expect to find, and how these construct or are constructed by the institutionality of police discursive practices in the interview.

Thus it is the need to draw the two ends of the research spectrum together with a comprehensive understanding of the beliefs that inform the discursive practices of participants in police interviews that drives the research presented in this book. More specifically, this book provides a detailed investigation of the role of police institutional discourse in the construction of a police-suspect interview, both in terms of the negotiation of power relations between participants and the successful fulfilment of institutional requirements.

In order to carry out this investigation, the analysis is divided into three stages, each stage providing a basis for subsequent analysis and all three building a framework for the critical examination of police discursive practices. Firstly, the analysis will provide a descriptive framework of police-suspect interviews based on linguistic devices and interactional features used in recordings of actual police interviews with suspects. Secondly, we will analyse this description of the interviews and reveal the discursive practices of participants as they negotiate the various functional requirements of the interviews. The final phase will aim to expose the process through which underlying beliefs of the police participants routinely affect the construction of the police interview both as an interaction in time and space and as a socially and culturally situated activity.

## **1.2 Approach to the analysis**

An important goal in writing this book is to present a framework for the detailed and systematic analysis of texts which can be used to support a critical sociolinguistic study of institutional discourse. For the first two parts of the research, analytical approaches are employed using participation frameworks as advanced by Erving Goffman, and Conversation Analysis, based on the work of Harvey Sacks and developed by Gail Jefferson, Emanuel Schegloff and others. The critical analysis that forms the core of the project is based on the investigation of mythologies in institutional discourse as proposed by Ruth Wodak within a Critical Discourse Analysis framework. The decision to combine tools from Interactional Sociolinguistics and Conversation Analysis to underpin a broader sociolinguistic investigation may be considered controversial, given the commitment of Conversation Analysts to studying the organisation of talk in interaction (see for instance Schegloff (1991)). However, I am convinced that the analysis of turn structure and topic management in the police-suspect interviews is powerfully revealing and essential to the critical inquiry into participants' orientations to their talk. I will revisit

these methodological issues in Chapter 2 where the analytic framework is described in greater detail.

In the remainder of this chapter, I will introduce some of the main features of police interview discourse and discuss the way in which it functions as part of the broader legal and judicial institution. Prior research in the area of institutional discourse more generally and language and the law specifically, as well as appropriate theoretical frameworks for the analysis of interview data will be the focus of the next chapter. The analysis of the discursive institutional structure of the interviews is the focus of Chapter 3, while in Chapter 4 the analysis is focused on the production of turns and turn sequences and the distribution of interactional resources. The findings presented in Chapters 4 and 5 provide the basis of the analysis in Chapter 6 where several key aspects of the interview are considered in relation to discursive behaviour that constitutes a police mythology about interviewing suspects. Chapter 7 draws together the findings of the various levels of analysis and discusses the features of police institutional interviews that result in apparently counterproductive police discursive practices. Concluding remarks are presented in section 7.5, together with a discussion of the implications of the findings for the police and legal institutions and some suggested directions of further research in this area.

### **1.3 The police interview as institutional discourse**

Although the police interview is a highly regulated form of discourse that is structured around legislative requirements, its 'institutionality' is constructed through the participants' interaction as they negotiate the organisational goals. That is, while aspects of a police interview, especially the beginning and end of the interview, are dictated by legislation and police regulations, the way in which each police interview is constructed as belonging to police institutional discourse is negotiated through the interactions. The differences in the way that men and women approach police work (McElhinny 1995) indicate that operating within the same set of legal requirements does not result in identical interactions. Nonetheless, adhering to the formal requirements of a police interview is bound to influence the resulting talk to some extent. Prior research into the impact of legal talk in a police interrogation has tended to focus on the role of cautions in protecting the suspect's rights (Ainsworth 1993; Shuy 1997; Cotterill 2000) and clearly the special properties of police cautions as 'a creative speech which brings into existence that which it

utters' (Bourdieu 1991: 42) are worth considering in a broader sense. Because of this power of certain legal language to 'create' what is stated, it is important to know when such language is being used in the interaction under investigation.

As in other nations and states where the law enforcement authority supports an adversarial justice system, in the state of Victoria, Australia, an investigation of interview procedures can be supported by reference to the Crimes Act (1958) which informs the Operating Procedures contained within the Victoria Police Manual. For instance, the Crimes Act (1958) S 464A (3) states that

Before any questioning (other than a request for the person's name and address) or investigation under sub-section (2) commences, an investigating official must inform the person in custody that he or she does not have to say or do anything but that anything the person does say or do may be given in evidence.

This is then represented in the Operating Procedures as follows:

Before any such questioning or investigation commences, inform the person that they:

...

– do not have to say or do anything but anything that they do say or do may be given in evidence.<sup>1</sup> (Victoria Police Manual (CD-ROM, version issued 11–07–03) s. 112–3, 4.2.1)

For the analyst, this provides the institutional background for the use of particular utterances as in the following extract from Interview 1<sup>2</sup>:

*Extract 1-1 INT1*

25. pio1<sup>3</sup>: °yeah°⇒ (0.6) before I do this I must inform you  
 26. that you are not obliged to say or do anything  
 27. but anything you say or do (0.3) may be given in evidence  
 28. do you understand that↑

This example demonstrates how legislation enacted in the Crimes Act, via police regulations articulated in the Police Manual directly influences the utterances produced by the police interviewer. There are several similar types of utterances in the data which can be traced back to the legislative requirements, such as utterances concerning the suspect's

contact with a friend or relative, and a solicitor, and the requirements concerning fingerprinting at the conclusion of the interview.

However, the same legal sources reveal less specific influences over the interactions in an interview. Perhaps the most critical of these is the legislation concerning the voluntary nature of any confession. The Crimes Act itself is relatively non-specific about this issue. S464J (b), for instance, makes reference to the existence of 'the onus on the prosecution to establish the voluntariness of an admission or confession made by a person suspected of having committed an offence'; however, a great deal more information about voluntary statements can be found in the case material, which forms a commentary to the Act, and in the Victoria Police Standing Orders, about which more will be said shortly.

The Crimes Act, for instance, in Section 568.50.8, cites *R v Bueti* (CCA(SA), 12 December 1997, unreported), stating that '[t]he onus is on the prosecution to show that any admissions made by the accused were made voluntarily. Voluntariness involves the exercise of free choice.' The point being made is that merely failing to give a caution in an interview may not, at the discretion of the trial judge, render the evidence obtained in the interview inadmissible. This position is further supported in Section 568.50.8, which comments on the guidelines intended to protect the rights of Aboriginal and non-English speaking suspects and concludes that '[t]he legal question will always be whether the confessional statement was voluntary in the sense in which that expression is used by the relevant authorities' (*Gudabi v R* (1984) 52 ALR 133 at 145).

The Victoria Police Standing Orders were current until the earlier 1990s when they were superseded by the Operating Procedures of the Victoria Police Manual. The Standing Orders tend more towards interpretation of regulations and substantive advice for officers than do the Operating Procedures and as such they provide a useful source of commentary on police behaviour. A 'sense' of the expression 'voluntary', as referred to above, is provided by Section 8.5 of the Standing Orders, where it is stated that a confession may be defined as 'voluntary, not in the sense that it is made spontaneously or that it was volunteered, but in the sense that it was made in the exercise of a free choice to speak or be silent.' Thus, the use of a caution by police officers to advise suspects of their right to remain silent is a step which in itself is intended to render any subsequent confession or admission voluntary. However, the Police Standing Orders in subsequent sections demonstrate that voluntariness is not endowed upon a confession that follows a caution as a matter of course. Indeed, police officers are instructed to avoid certain discursive practices that may jeopardise the voluntariness of any

confession or admission. For instance, Section 8.8(a) prohibits interviewing officers from any action which may 'endeavour to force any such person [i.e. an interviewee] into making any admission of guilt' and Section 8.8(g) states that 'where such person makes a confession [a member of the Force shall not] attempt, by further questioning, to break down answers<sup>4</sup> to which unfavourable replies have been received . . .'. In other words, although a confession may have been offered that would ordinarily be deemed voluntary by virtue of having been made by a suspect who is aware of his or her right to remain silent, the approach taken by the police officers in the elicitation of such a confession may still render the confession involuntary. Both the legislation and the Standing Orders recognise that, for suspects faced with coercive police behaviour in an interview, merely knowing that they can remain silent is not considered sufficient protection against forced confessions.

Furthermore, the two studies of cautions mentioned earlier (Ainsworth 1993; Shuy 1997) both find that in an inherently coercive situation, the use of a verbal caution can only go so far to protect the suspect's rights. Shuy (1997) outlines ten linguistic issues around the 'Miranda rights' (the right to remain silent and the right to an attorney) that he presents as possible topics for further research, among them the issue of coercion in a speech situation that has a question – answer structure. In a detailed study of police interrogations in the United States of America, Ainsworth (1993) finds that the linguistic tools required to successfully invoke the Miranda rights belong to a category of talk that Ainsworth labels 'assertive speech'. Drawing on linguistic research into features of 'powerless' speech and a 'female register' (primarily Lakoff 1975), she finds that women and ethnic minorities are disadvantaged by the requirement to use assertive speech in such situations and that their access to constitutional rights under Miranda is severely compromised as a result. The findings of her study can be generalised to the legal systems of Australia or Britain where a similar approach is taken to reading suspects their rights at the beginning of a police interview.

In relation to the suspect's right to remain silent, the Standing Orders reinforce at a general level the importance of adhering to institutional requirements and recognise the relationship between respecting the suspect's rights and conducting a successful interview:

Every member of the Force, therefore, when questioning any person, shall use his [sic] utmost endeavours to obtain the free and voluntary co-operation of that person, so that the discharge of the important responsibility cast upon him [sic] of crime prevention and detection

shall not be thwarted by a refusal, on the part of the person being interviewed to answer questions put to him [sic]. (Victoria Police Standing Orders, Section 8.3)

Thus, reference to these key institutional documents provides an understanding of the legal parameters within which the police interviews are produced. We have been able to identify in the Crimes Act and the Victoria Police Manual the origin for several utterances produced by police officers as well as a number of requirements pertaining to the voluntary nature of a confession obtained within a police interview. In particular, it is possible to establish that the suspect's access to silence as a response to a question must be actively maintained by the police interviewer in the course of the interview. It is not sufficient to provide the suspect with the standard caution prior to questioning if the suspect is later submitted to police coercion or force to obtain a confession. Furthermore, if a confession has been produced that is in some way 'unfavourable', the police interviewer is prohibited from attempting to 'break down the will' of the suspect and elicit changes to the confession by using continued questioning relating to the confession.

This examination of the legislative and institutional requirements reveals two key points relevant to this research. Firstly, it is evident that the judicial system recognises the potential for police interviewers to disregard the rights of the suspect through their conduct in the interview and that should this occur, the decision to include the interview recording as evidence will be made in court. That is, it is recognised that concerns about the behaviour of the police interviewer will be addressed at the time of the court case, not at the time of the interview.

Secondly, this section has highlighted an institutional awareness that, by failing to maintain the rights of the suspect, police interviewers risk the integrity and successful completion of their investigation. This includes, but is not limited to, the co-operation of the suspect and the acceptance of the interview as evidence in court. Thus, recognition of the potential for interviewing officers to engage in conduct which ultimately may be self-defeating is embedded in the legislation and institutional regulations that govern police discursive practices.

In relation to the first point above, the legislation acknowledges that expert opinions regarding police interviewing techniques may be included as part of the court proceedings. Accordingly, section 2.2.1 discusses the contributions of linguists working within the judicial system as expert witnesses or consultants to the defence council in cases that address concerns about police interview conduct.

Regarding the second point, we can identify at an institutional level a basis for concerns about police behaviour in interviews that may conflict with the efficient and successful execution of police duties. That is, the legislation itself recognises the potential for inconsistency between what the police officers believe may be helpful in an interview and what will actually further the goals of the interview. This police behaviour bears a strong resemblance to the promulgation of 'myths' by members of institutions identified by Wodak (1996a). The analysis of an institutionally based mythology about police discourse will be discussed further following a summary of research pertaining to police institutional discourse and police interviewing in section 2.2.2.

In summary, the legislation concerning police interviewing acknowledges that the inappropriate use of language by police interview participants has the potential to invalidate evidence. Instances of misconduct by police officers or a failure to correctly adhere to the legislative requirements of a police interview may be addressed in court, as mentioned above, and if such instances are concerned with the use of language, then it may be appropriate to involve a linguist as an expert witness. As mentioned, section 2.2.1 describes the work of such linguists, often referred to as 'Forensic Linguistics', and considers the relationship between this work and related research into language and the law produced within the broader linguistic community. Prior to this discussion of forensic linguistics, the following chapter will expand upon earlier descriptions of the analytic frameworks used in the study, including an introduction to the concepts of power, discourse and structure as they relate to the research.

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