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Silence: civil right or social privilege? A discourse analytic response to a legal problem.

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Abstract

According to an understanding of casual conversation articulated by various theories of discourse analysis including Conversation Analysis (Sacks, Schegloff, & Jefferson, 1974), pragmatics (Levinson, 1983) and politeness theory (Brown & Levinson, 1987), it is extremely unlikely that **silence** would ever be regarded as an appropriate response to a question or accusation. Yet, in the specialised institutional setting of a police interview, it is expected by the legislators in many jurisdictions that ordinary people will be able to access this interactional resource unproblematically, and presumably without any assumption of listener prejudice.

An analysis of the interactional strategies of police interview participants in 13 police interviews recorded in Victoria, Australia demonstrates that the contributions of the suspect are highly constrained in a number of ways, including allowable turn types and the management of topic initiations. If assumptions about ‘preferred responses’ based on

ordinary conversation are used to interpret non-response in this particular institutional setting, then these interactionally restricted contributions, which will be presented as evidence, may be susceptible to adverse inference in a way that is unlikely to be addressed by the judicial system. This paper concludes that by applying principles of pragmatics, and in particular the use of preference, it is possible to present a case against the erosion of the defendant's right to silence.

1 Introduction

When discussing differences in patterns of conversational behaviour across cultures or the sexes, it is not uncommon for linguists to label silence, as a response, a 'turn-taking violation'. To offer silence as a response to a question by another speaker, or even to delay one's turn at talk, is to challenge the structural integrity of that fundamental element of conversation, the adjacency pair. And while such a challenge may prove no obstacle to the social relationship between two close companions, it is a much riskier strategy for a suspect to adopt during a police interrogation when a speaker is being held legally accountable for their every contribution. Under these circumstances, it is clear that silence will have a heightened pragmatic significance. Yet it is precisely these circumstances under which suspects are expected to set aside normal pragmatic concerns about silence and access this powerful conversational resource in order to protect themselves against intimidation, false confession or self-incrimination.

The obvious discord between ordinary and institutional discourse practices in a police interview raises questions about the extent to which the 'right to silence' is genuinely accessible to all suspects. This issue has not gone unnoticed by the linguistic community and Ainsworth (1993), for example, demonstrates that women and suspects of ethnically diverse backgrounds may not have the linguistic or pragmatic resources to adequately invoke their 'Miranda' rights (as the rights to silence and to legal representation are known in the United States of America). This paper will develop this issue further by taking a discourse analytic perspective that focuses on *preference* as it is articulated by Sacks (1987), Pomerantz (1984) and, more specifically Bilmes (1988). At a broader level, the paper will argue that irrespective of the socio-cultural background or gender of

the suspect, there are considerable pragmatic impediments to any suspect's ability to properly invoke their right not to respond directly to questions.

The paper will present a detailed analysis of police interview data drawn from a corpus of 13 interviews with suspects that were recorded in the state of Victoria, Australia. The speech behaviour represented in the data extracts will be considered in relation to pragmatic principles, as well as conversational rules, in order to identify what happens when the participants attempt to access the resource of silence to a question or request in these interviews. In particular, the paper will focus on the management of accusations by participants and, as mentioned, it will pay special attention to the rules of preference, as described by Bilmes (1988).

The findings will contribute to an understanding of institutional interviews and the ways in which lay and professional participants may be applying different sets of conversational rules to the interaction. To some extent, this paper further develops the detailed analyses of police interrogations by Edwards (2006; Edwards, 2008) and Stokoe and Edwards (2008) which have similarly contributed to the differentiation between police discourse and ordinary conversation. Edwards (2008) for example attends to the specialised legal use of language in police interviews by examining the foregrounding of intent and its relationship to *mens rea* in police interrogations. However, the findings of the present study are also expected to contribute to the ongoing debate in criminal justice circles concerning the right to silence, and whether it is appropriate for the judge and jury to be allowed to draw an adverse inference from a suspect's choice to remain silent in an interview. While the debate has thus far focused on the legal and civil rights issues concerning a suspect's right to silence (Biber, 2005; Hamer, 2006), this paper will demonstrate that it is critical that the **pragmatic** implications of the legislation are also clearly understood.

I will begin with a discussion of the legislation and police regulations in which the right to silence is grounded and some of the legal considerations that need to be taken into account. Following this, I will briefly describe some of the key features of police interview discourse, paying particular attention to interactional strategies used in the

construction of the interview. I will then outline the notion of preference in a CA framework and how it applies to the adjacency pair types mentioned previously – accusations and attributions. Several extracts from the data will be presented to see how these utterances are realised in context in terms of the sequential ordering of accusations and allegations and their second pair parts. Finally, I will discuss the ramifications of preference for the right to silence.

1.1 Legislative background

In the Australian state of Victoria, considerations of interview procedure can be supported by reference to the Crimes Act (1958) and to the police Standing Orders, which are derived in part from the legislation contained in the Crimes Act.¹ 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 police Standing Orders as follows:

...the member shall, before asking any questions, or any further questions, as the case may be, advise such person that he is not obliged to answer such questions. (Victoria Police Standing Orders S 8.9 (1))

¹ Note that the Standing Orders were superseded in the early 1990s by the Operating Procedures of the Victoria Police Manual, which presents the same information in a more succinct format. However, the Standing Orders provide a more interpretative insight to the Crimes Act and in any case, were still current when the data analysed here were recorded. For further discussion of this issue, see (Heydon, 2005): 6).

This is followed in S 8.9 (3) with the instruction to “say words to this effect, or similar in meaning: ‘You are not obliged to say anything, but anything you say may be given in evidence.’”

For the analyst, this provides the institutional background for the use of particular utterances as in the following extract from Interview 1 of the data:

Extract 1

25. pio1: °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 Standing Orders, 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.

In order to understand the issues surrounding the right to silence and the police caution, it is useful to understand what its purpose is perceived to be, according to the legal documentation. While the legislation itself is relatively quiet on the matter, a great deal more explanatory information can be found in the case material, which forms a commentary to the Act, and in the Police Standing Orders. We can find some insight in section 568.50.8 which mentions 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” (R v Bueti CCA(SA), 12 December 1997, unreported).

A definition of ‘voluntary’ is provided by the Standing Orders, Section 8.5, where a summary of the relevant law is used to define a confession 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 we can see that 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 which follows a caution as a matter of course and police officers are instructed to avoid certain strategies which 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 (sic) to which unfavourable replies have been received.”² In other words, although a confession may have been offered which is 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.

To summarise, the right to silence as stated in the Crimes Act and articulated by police officers in interviews is intended to ensure that anything the suspect says after being cautioned, is said voluntarily – in the sense that the suspect is considered to have chosen to say something.

In England, changes to the legislation governing the wording of the caution given to police detainees have meant that the court can draw an adverse inference from anything

² I believe that the word ‘answers’ should in fact be ‘questions’ in this Section.

that the suspects fail to mention in a police interview, but which they later rely on in court (See Rock, 2007 for a detailed linguistic analysis of the caution used under English law). That is, should a suspect invoke their right to silence in relation to a particular point made during the police interview and then later use that point in their defence in court, the judge or jury may hold that invocation against the defendant when arriving at a judgement. For instance, it may be inferred by the court that the suspect was being deceitful or, at least uncooperative, during the interview with police. In effect, this legislation has restricted the suspect's access to their right to silence in England, and similar legislation is being considered in the State of Victoria, Australia.³ A significant difference between English criminal proceedings and Victorian proceedings is that in Victoria, as in most jurisdictions in Australia, a lawyer may not be present during a suspect's interview with police investigators. A suspect may telephone their lawyer (once) at any time to seek advice, but no other support is available to the suspect during the interview, except when the suspect is a child or vulnerable witness.

1.2 Preference in Conversation Analysis

As mentioned, the analysis of the data in this study draws on Conversation Analysis (CA) and the specific concept of 'preference' for its theoretical basis. Firstly, I wish to stress that while the concept of 'preference' is explored by a number of theorists in CA (Pomerantz, 1984; Sacks, 1987), I am using it here in the same sense as Bilmes (1988) when making a clear distinction between the everyday and the technical conceptualisations. Bilmes reminds us that the purpose of CA is to provide a set of conversational rules which are "conventional reference points that actors orient to and that give behaviour its particular intelligibility" and "by which actors understand one another's behaviour" (Bilmes, 1988, p. 162). Central to the rule of preference is the principle of ordering, which Bilmes identifies in Sacks' lectures on the notion of preference. Bilmes' definition of the technical notion of preference holds that following first pair parts of adjacency pairs (e.g. invitations, requests, accusations etc) certain

³ One result of this change to the UK police caution is that police interview methods are much more focused on information seeking and less on persuasion as suspects are legally more compelled to respond to questioning. In Australia, there remains a tendency to apply the more persuasive methods of interview or

responses, or second pair parts, are ‘preferred’ over others by virtue of the fact that if there is no response, those ‘preferred’ responses will be noticeably absent. For example, following an invitation it is possible for the recipient to accept or refuse the invitation. However, if the recipient remains silent, it is the acceptance which is lacking, and a refusal is assumed to have been offered in its absence. In other words, preference is used by speakers to make inferences about responses they receive. Consider the following exchange:

John	Do you want to see a movie with me next Friday?	<i>First pair part (invitation)</i>
Jane	...er...	<i>Second pair part (non-response filler)</i>
John	Well, maybe Saturday?	<i>First pair part (invitation)</i>

Jane’s non-response is interpreted by John as a rejection, since an acceptance was not offered, and John offers a modified invitation next on the basis of this interpretation.

Regarding the particular case of accusation-response adjacency pairs, Atkinson and Drew (1979) find that following accusations, denials are preferred such that “[i]f one fails to deny an accusation, a denial is noticeably absent and is a cause for inference, the most common inference being that the accusation is true” (Bilmes, 1988, p. 167). Moreover, this preference for denials following accusations is part of a broader type of preference – “when A attributes some action or thought or attitude to B, in B’s presence, there is a preference for B to contradict A **interruptively or immediately following** the turn in which the attribution was produced...When such attribution occurs without contradiction, a contradiction is relevantly absent” (Bilmes, 1988, p. 167).

In a police interview, the accusation-response adjacency pair has a special legal significance as part of the proving of evidence. Police officers must prove certain points in the course of the interview by presenting pieces of evidence they may have against the suspect and inviting the suspect to offer an explanation for the existence of such

interrogation as taught in the USA (such as the Reid method) in order to address the concern that the suspect will fail to respond (Halliday, 2006).

evidence. Ostensibly, this is intended to establish whether there might be innocent explanations for apparently incriminating evidence and thus avoid wrongful convictions. However, according to police interviewing methods, such as Eric Shepherd's Conversation Management (Shepherd, 1993) it is considered helpful for police interviewers to use this phase as an opportunity to persuade a suspect to change their story in favour of the police version of events by drawing attention to evidence that contradicts the suspect's own version. Thus, the presentation of points of evidence is very often the most challenging and conflictual part of the interview and, as such, is typically realized as a series of accusation-response adjacency pairs. As we shall see below, the extent to which a suspect can adequately access his or her right to silence during this phase is diminished because of the broader interactional features of the police interview.

1.3 Features of police interview interactions

The interactional strategies found in the police interviews analysed all contribute to the construction of the interview discourse as an oriented-to chain of adjacency pairs (Frankel, 1990), most of which can be loosely classified as question/answer pairs. In all respects, police interviews match the general criteria of institutional interviews discussed by Drew and Heritage (1992). Each turn of the interview participants is constructed to maintain a Q-A sequence, even when the nature of the turn would normally cause some change in the chaining sequence. Suspect-initiated utterances and topic shift (Button & Casey, 1984) are produced only within exchange structures or turn types that facilitate the return of the floor to the police participant at their conclusion. For example, if a suspect initiates a question, it is always a clarification question, which, once the clarification has been received from the interviewing officer, allows for the suspect to respond to a prior police question. In this way, suspect initiated questions form insert sequences (Levinson, 1983, pp. 304-305) as follows:

Police interviewer Q1

Suspect interviewee Q2

Police interviewer A2

Suspect interviewee A1

In other words, there is an inflexible ‘chain rule’ (Sacks, 1992) governing turn allocation which operates in police interviews so that recurring sets of adjacency pairs obligate the suspect to respond to first-pair parts, such as questions, and return the floor to the police interviewer.

If we consider the institutional requirements which produce the interview turn structure, we see that it is the role of the police officer as ‘elicitor’ which is crucial in establishing the recurring chain rule. This is made clear in the allocation of topic management strategies. As discussed, one of the results of the chain rule is that the role of interviewer affords the police officer a far greater range of topic initiation devices than the interviewee. Whereas the interviewee is only able to introduce new topics in ways which do not obligate the interviewer to take up a respondent role, the interviewer can introduce a new topic within any first pair part. The interviewee is therefore constrained to topic initiations which are minimally obligating and can be easily ignored, while the interviewer is able to introduce new topics within highly obligating adjacency pair structures. For instance, the interviewer is able to ask questions which obligate the interviewee to produce a topically-relevant answer, even if the interviewee’s previous turn related to a completely different topic.

This extract demonstrates how this is realised in the data:

Extract 2

380. pio1: do you know why she would have gone out the back room↑

381. (0.4) li' would she have been scared or ↓
382. IN1: maybe she was ⇒
383. but m' Betty's never ev seen me like that ↓
384. I've never been like that before ↓
385. (0.4) Betty knows I would not hurt her or hurt anyone ↓
386. (1.1) and she must have known something really sparked him off ↓
387. to get me goin like that ↓
388. something had to be goin ↓
389. hh //something* had to ^
390. pio1: w'l what* happened then- ↓
391. IN1: (1.1) get me going to do something like that ↓
392. pio1: you've hit him a coupla times ⇒
393. he's um (.) holding his mouth or bleeding ⇒

The effort made by IN1 to complete his turn in line 391, when he has previously been interrupted by a topically disjunctive question put to him by pio1 (lines 389-390), is subsequently ignored by pio1, and this only serves to underline the weakness of the obligation on the interviewer to take up new information provided by the interviewee in this format. Several other cases exist in the data of interviewing officers ignoring new information provided by the suspect, and taking the floor to ask an unrelated question. However, this example best demonstrates the phenomenon because of the overt display by IN1 that he considers the information important.

The application of a Q-A chain rule in interviews provides police officers with recurrent access to the floor to produce highly obligating topic initiation devices in any sequential position. Thus, the structure of the turn-taking mechanism ensures that police interviewers are endowed with an authoritative voice by virtue of their institutional role, while suspects are heavily constrained in their allowable contributions. We need to recognise that such an authoritative voice can provide the means by which a police officer may use inappropriate pressure to elicit a confession or admission.

2 Accusations and attributions

Accusations and attributions form a key resource for police interviewers trying to establish a police version of events as they present sections of the police narrative in a form that obligates the suspect to respond. In this section, I will present a number of examples of accusations and attributions made by the interviewing officers and the responses offered by the suspects. In these examples, it is noticeable that the rules of accusation-response adjacency pairs described by Bilmes (1988) are clearly invoked by the participants. In Extract 3, below, we see the participants producing an accusation-denial pair:

Extract 3

314. pio1: he states that it was a closed fist ↓
315. that you //punched* him in the //mouth↓*
316. IN1: nah↓* caw⇒*

In this example, IN1 interrupts pio1 in line 316 to deny the allegation made against him. This form of denial is predicted by Bilmes (1988) according to the rules of preference which state that a denial will appear “interruptively or immediately following” the accusation/attribution first pair part. Another example from the same interview is given in Extract 4, below:

Extract 4

333. pio1: (1.3) it's also alleged that there was actually three hits ↓
334. IN1: (0.5) no=
335. pio1: =two punches ⇒
336. and then //a* backhander ⇒ before you left ↓
337. IN1: w'l*
338. (0.7) w'l I tell y what if I gave out three ⇒
339. they must have been quick ↓

Here we see that in lines 334 and 337, IN1 again interrupts pio1 to deny the accusation.

The next example is from another interview and demonstrates that when the suspect takes a different approach to his response, it is not oriented to as a denial by the police interviewer and ultimately it is ignored.

Extract 5

159. pio2: (0.8) so ah:: ((creaky voice)) // what didju*didju (.) forcibly (0.2) drag 'er outta the house ↓
160. IN2: like I said look I⇒*
161. IN2: (1.0) aw well it was more o' less (.) you know arguin an' pushin' n' pullin' n
162. (0.4) yeah^ n' ↓ (1.4) whe'^
163. (1.0) I grabbed'a by the bag ↓ (0.2) a-
164. no that was outside I grabbed'a by the ↓ (0.2) by 'er hand^ bag ↓
165. she had 'er handbag over 'er shoulder ⇒

166. (0.8) cos we were going⇒
167. (0.4) and then I d'n know what happened↓
168. (1.0) she↓ (1.2) must have (.) gone to take off⇒ or someth' like that⇒
169. grabbed her by the handbag⇒
170. and↓ (1.4) I remember 'er (h)handbag got ripped to shreds^

In Extract 5 above, IN2 does not directly deny the accusation implicit in pio2's utterance in line 159 – that IN2 “forcibly dragged” his girlfriend out of the house. He begins to speak in overlap with the police officer in line 160, at the point when pio2 is beginning his accusation. However, this cannot be seen as an interruptive denial, because firstly, IN2 doesn't complete his utterance so that it forms a denial, and secondly, the accusation of “forcibly dragging” the victim has not actually been made at this point. When the accusation is completed in line 159 and IN2 commences his response – “aw well it was more o less you know arguin an pushin n pullin” – he does not offer a direct denial but rather describes the context of the actions. This is pertinent because a little later, in line 181 (see Extract 6 below), pio2 indicates that he believes IN2 was *still draggin'* 'er when in fact IN2 did not confirm ever having ‘dragged’ the victim. Therefore, pio2 has heard IN2's lack of a denial as an acceptance of the accusation.

Extract 6

181. pio2 were you ah⇒* (.) still draggin' 'er at this stage^

Similarly in lines 184-187 (see Extract 7 below), pio2 makes an accusation that IN2 has dragged his girlfriend by the hair. IN2 does not expressly deny this in the immediately following turn but says it happened at a different time to that indicated by pio2.

Extract 7

184. pio2 (1.8) right↓ (.) it's it's alleged that at that stage⇒

185. that it was er (0.2) thatcha had (.) hold of 'er hai:r↓
186. (0.2) dragged her out by the hair↓ waddeyer say to that^
187. IN2 (0.8) that was after she went back into the house⇒ (0.2) // an I* // (*)

Later, in lines 193-197 (see Extract 8 below), IN2 explains that he did not drag Leila outside by the hair, but rather that he had hold of her hair as she was sitting inside and tried to pull her to her feet.

Extract 8

192. pio2 (0.2) she went back inside^ // what* happened then↓
193. IN2: yep*↓ (0.2) yeah↓ that's when I dragged her↓
194. (0.4) I didn't dra:g her⇒ (0.4) kinda⇒ (0.2) by the hair outta th' house^
195. I (0.8) she was⇒ (0.2) kinda⇒ (0.4) kneeling in front of the TV⇒
196. and I just went in there and grabbed 'er by th' hair n'⇒
197. kinda (0.6) tried to lift 'er up^ and yeah^
198. pio2: (1.0) w' would you agree that ⇒
199. thas: (0.4) not the normal way that anyone would ah⇒
200. (0.2) assist someone up⇒ onto their feet by pick'n them up by the hair^
201. IN2: (0.2) not really^
202. pio2: (1.0) right and ah (0.2) what happened then↓
203. after↓ (.) you've↓ (0.2) dragged 'er up by the hair↓
204. IN2: (0.8) well eventually we've got in the car an (0.2) left^

Clearly, a denial placed at a distance from the accusation does not have much impact, and, given this lack of an adjacent denial, the police officer is able to continue the interview as though IN2 accepts the accusation. This is evident when he restates that supposition in line 203: *after ↓ (.) you've ↓ (0.2) dragged 'er up by the hair ↓* . Again in the following extract, pio2 mentions *dragging her outside ↑*, despite the fact that IN2 has never directly admitted that he undertook this action, and has offered forms of denial, as seen above.

Extract 9

239. pio2: *a::hm⇒ (2.0) it's a::h⇒ (.) she's had (.) some injuries on 'er arm⇒*

240. *(0.2) bruising to bo:th (.) biceps ↓*

241. IN2: *mm hm^=*

242. Pio2: *=at some stage ↓ (0.2) didju have hold of 'er other bicep ↑*

243. *(.) dragging her outside ↑*

These examples from INT2 demonstrate that failing to produce a clear denial immediately following an accusation is a risky strategy that may result in any subsequent denial being ignored. As will be discussed further below, this implies that there may be dire consequences for the suspect who chooses to invoke his or her right not to answer any question.

Extract 10, below, offers a further example of a denial, this time from INT3. The slow pace of this interview is such that the extended pause before IN3's response in line 231 is not considered a lack of preferred response.

Extract 10

229. pio3 *(0.4) oh right ↓ (0.6) I'll put it to you that you put em there to dry out^*

230. (0.8) for later use↓

231. IN3: (1.1) no (0.2) just (0.2) to (0.4) get out of the way^

While these examples do not include cases where the suspects successfully invoke their right to silence, the above analysis of these data supports Bilmes' (1988) findings in that denials are routinely treated as preferred responses by interviewers producing accusations and attributions. As mentioned, this makes the choice to remain silent at any time in the interview a high risk strategy for suspects. In the following extract from INT1 the suspect comes close to offering a zero response after an attribution:

Extract 11

433. pio1: uh you saw the glass shatter to the ground^

434. IN1: (0.4) I just kept walking↓

435. (0.2) I just got in the car ⇒

436. and Rob (0.6) me friend said what the hell's going on^

437. (0.4) whadcha do^

438. pio1: (1.2) so you didn't bother saying anything to them↓

439. that the glass was broken^ or↓

In response to pio1's attribution of seeing the glass shatter, IN1 claims that he *just kept walking*↓. This is not an overt contradiction or acceptance of the attribution. He may have seen the glass shatter before he *kept walking*↓, or he may not have. IN2 seems to be making an entirely different point to that which pio1 is pursuing and which she articulates in lines 438-9. Regardless of the point IN1 may have been making though, pio1 has assumed that he accepts her attribution of seeing the glass shatter and being aware that it has shattered, as we can see in her next turn. Thus there is evidence in this extract, as

well as in Extracts 5-9, that a lack of a contradiction immediately following an attribution is treated as an implicit acceptance of that attribution by the suspect.

The analysis presented here supports Bilmes' findings that denials are routinely treated as preferred by interviewers producing accusations and attributions, and importantly, that the timing and placement of the denial is key to its recognition in the interview. This raises a number of concerns about the practicality of invoking of one's right to silence – concerns that a traditional legal analysis may not identify since they relate to the micro-level management of conversation.

3 The implications of 'preference' for right to silence

'Silence' as a legal construct in a police interview does not have to be an absence of utterance, as is made clear in the English caution which instructs suspects that there may be adverse consequences 'if they do not mention now [in the interview] something which they later rely on in Court.' In the Victorian version of the caution to suspects, the word silence is not specified, but instead suspects 'do not have to say anything'. Thus, the right to 'silence' is realised through the caution as the right not to produce information. In a pragmatic sense, this failure to produce or 'mention' information in an interviewing context can usually only mean failing to respond appropriately to a question, since interviewees do not 'mention' information as a topic initiation: they 'mention' something as a response (very often as a confirmation or an agreement to a first pair part) and thus maintain the topic initiated through the question and produce a preferred response,. In order not to mention or say something, in these circumstances, the suspect must offer an alternative version, a non-confirmation or a denial thus providing a non-preferred response. These are the ways in which suspects actually access their right to 'silence' – by failing to co-construct a police narrative.

It is helpful to recognize that the suspect's attempts to access their right to silence, to ignore a question or to offer an alternative explanation without explicitly denying an accusation, are all heavily constrained by the discourse environment of the police interview. Moreover, this is a discourse environment that can leave suspects vulnerable

to acts of discursive coercion by interviewing officers. This vulnerability is addressed in part by legislation requiring all suspects to be informed that they have the choice to remain silent at any time. However, the most technical understanding of the CA notion of ‘preference’ informs us that in the case of a suspect actually invoking their right to silence in response to any accusation or attribution made by police interviewers, a denial or contradiction will be relevantly absent and “[g]enerally, the conclusion drawn is that the recipient is acknowledging the truth of the attribution [or accusation]” (Bilmes 1988: 167).

This has serious ramifications for criminal justice proceedings for two reasons. Firstly, if a police officer continues to make false assumptions based on the suspect’s ‘absent denial’ to an accusation, it may prove difficult for the suspect to address the underlying false assumption, particularly if the suspect wishes to continue to invoke his or her right to silence. In the analysis presented above, it was observed that in INT2 the police interviewer was able to continue to produce the allegation of ‘dragging’ after the suspect had chosen not to address the first allegation directly. The structure of police and other institutional interviews means that interviewees lack access to discursive devices, such as topic initiations, and questions and other first pair parts, which may be needed to address interviewer assumptions. Moreover, in Victoria and most jurisdictions in Australia, suspects do not have the support of a trained legal professional who might be able to access some of these interactional resources on their behalf. Suspects are therefore in a very vulnerable position, discursively speaking, and choosing not to deny an accusation immediately presents a great risk that a misunderstanding or presumption of guilt may never be addressed.

Secondly, in a subsequent trial, the judge or jury would be likely to apply the usual rules of conversational preference to accusation-response pairs and infer from a delayed or absent denial that the suspect accepts the allegation as true. The possibility of a court drawing an adverse inference from a suspect’s refusal to respond to police questions continues to be a cause for concern within the legal fraternity, as evidenced by recent articles dealing with the topic in law journals (Biber, 2005; Hamer, 2006). Whilst these

authors consider the legal arguments surrounding the recognition of a suspect's invocation of the right to silence in the subsequent court trial, this research makes it clear that there are substantial linguistic considerations.

It is critical that these pragmatic issues are part of the debate about any change to the legislation that removes the suspect's right to remain silent without the threat of adverse inference. Suspects are in a discursively vulnerable position and access to silence as a legitimate resource in a police interview is already at risk due to the assumptions that police interviewers themselves are able to make at the time of interviewing. Such assumptions are presently avoided in the courtroom at least, because adverse inference is not permitted should a suspect choose to remain silent. Conversation Analysis and the technical notion of preference present a powerful argument to protect the suspect's right to remain silent, and if an argument is made that the proposed changes to the legislation may encourage reluctant suspects to impart valuable information, it must be remembered that it is a suspect's right not to be compelled to answer questions.

Finally, while the legislative debate will no doubt continue in legal fora, this study has clearly demonstrated that CA can be successfully and usefully applied to an ideological problem precisely because 'its concern is with relevance, intelligibility and systemic function' (Bilmes, 1988, p. 161).

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Appendix

Transcription conventions

Symbol	Description
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Symbol	Description
pio	Primary interviewing officer
IN	Interviewee (suspect)
//	overlapping speech commences
*	overlapping speech ends
=	latching
(0.6)	silence measured in seconds
(.)	micro-pause of less than 0.2 seconds
°word°	softer than surrounding speech
<u>word</u>	syllables having greater stress than surrounding sounds
↑	high rise intonation
^	low rise intonation
⇒	level intonation
↓	falling intonation
::	the sound is lengthened by one syllable for each colon
-	truncated word

Symbol	Description
(())	transcriber's remarks, including comments on voice quality or non-verbal sounds

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Dr Georgina Heydon is a linguist currently lecturing in criminal justice in the School of Global Studies, Social Science and Planning at RMIT University. Her published research is largely focussed on the investigation of interactions between participants in police interviews, and her book *The Language of Police Interviewing* proposes a framework for the analysis of police interviews in which micro-level data analyses can be related to macro-level orders of discourse.