

# Communicative (inter-)action transcending the police investigative interview room

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**Abstract.** *Police officers anticipate the evidential function and the absent audience while interviewing and recording investigative interviews. This audience consists of judges charged with taking procedural decisions based, among other things, on their reception of these written records. Qualitative studies have revealed that interviewers use confrontational questions to communicate their doubt regarding the interviewee's credibility to the audience, and that they formulate the questions in the written record more confrontationally than in the actual interview for the same reason. However, so far, insufficient knowledge exists about the intended effect: Is the audience receptive to the police officer's doubt when reading the written record? Our paper reports an experiment testing the effects of this confrontational questioning style. The results show that there is, indeed, a communicative (inter-)action transcending the police investigative interview room: the audience is receptive to the police officer's doubt transmitted via the questioning style reported in the written record.*

**Keywords:** *Spoken Interaction, Written Records, Evidence, Police Investigative Interview, Questioning Style, Credibility.*

**Resumo.** *Policiais antecipam a função probatória e o público ausente ao entrevistar e gravar entrevistas investigativas. Esse público é composto por juízes encarregados de tomar decisões processuais com base, entre outras coisas, na recepção desses registros. Estudos qualitativos revelaram que os entrevistadores usam perguntas confrontadoras para comunicar suas dúvidas sobre a credibilidade do entrevistado para o público, e que pelo mesmo motivo, reformulam as perguntas no registro escrito de forma mais confrontadora do que na entrevista real. No entanto, até o momento, não há conhecimento suficiente sobre o efeito pretendido: o público-alvo é receptivo à dúvida do policial ao ler o registro escrito? Nosso artigo relata um experimento que testa os efeitos desse estilo confrontador de inquirição. Os resultados mostram que há, de fato, uma (inter)ação comunicativa que transcende a sala da entrevista policial: o público*

*é receptivo à dúvida do policial transmitida por meio do estilo de inquirição relatado no registro escrito.*

**Palavras-chave:** *Interação Oral, Registros Escritos, Provas, Entrevistas Investigativas Policiais, Estilo de Inquirição, Credibilidade.*

## **Introduction**

Spoken utterances of suspects and witnesses in police investigative interviews are ephemeral. To make them permanently available for later proceedings, they are recorded. While in some countries, it is mandatory to have both audio recordings and written records (e.g., for suspect interviews in England and Wales, see Richardson *et al.* (2022)), in other countries, written records have primacy (e.g., in France, the Netherlands or Switzerland; see Blackstock *et al.* (2014); Capus *et al.* (2014)). In both cases, the written records of police investigative interviews are presented to the court, either in written form or as a basis for the prosecution to convert them back into an oral format. In legal practice, written records of spoken interaction receive little scrutiny from the institutions (Richardson *et al.* 2022). In court, for example, the interviewee's statements are treated by judges as being his or her own words irrespective of the actual interview situation (Komter 2012). In general, written records of police investigative interviews are frequently quoted, summarized, and recontextualized by trial participants in court hearings, e.g., to reconstruct the past events, or to check the consistency of previously made statements (D'hondt and Houwen 2014; Komter 2019).

Due to their great importance in criminal proceedings, numerous studies exist on the production of written records of investigative interviews. They examine how accurately the written records depict the spoken interaction (Hyman Gregory *et al.* 2011; Kassin *et al.* 2017; Meise and Leue 2017), or they analyze the reasons for the observed differences between the spoken interactions and their written records within the specific institutional context (Jönsson and Linell 1991; Charldorp 2013; Komter 2019).

The present paper is inspired by two key findings of previous research on investigative interviews and its written records in criminal proceedings: First, confrontational questions are powerful instruments not only to elicit information in the interview but also to communicate information such as doubts to a wider audience that may be present in the room or will acquire knowledge of the interview at a later stage (Drew 1992). Second, the questioning style in the written record tend to be more confrontational than in the actual interview if the interviewer wants to document his or her doubts about the interviewee (e.g., De Keijser *et al.* (2012); see Audience design for details). These studies have explored the topic from the perspective of interviewing and recording. The reception of these records, however, has received scant attention so far. Researchers still have to empirically investigate how the audience reacts to the interviewers' presented opinions and whether they are indeed influenced by them.

We aim to explore the effects of a confrontational questioning style that challenges the credibility of the interviewee's responses on the perception of criminal law judges and their assessment of different key judgment criteria. Our data have been collected with an experimental study conducted with criminal law judges in Switzerland (see Experimental study below). We will show that the confrontational questioning style influences several criteria, including credibility, which is the most central feature in the evaluation of evidence.

## **Audience design of investigative interviews and their records**

It has been widely recognized that written records are not exact representations of the spoken interactions (see Capus *et al.* (2014), for an overview). Some studies refer to the differences between spoken interactions and their written records as “errors” that can be prevented or corrected with appropriate training (Meise and Leue 2017), while others view them as unavoidable because simultaneous questioning and writing is a cognitively challenging task (Hyman Gregory *et al.* 2011). Ethnomethodological studies in the tradition of Garfinkel (1967), however, have demonstrated that there are “good” reasons for these differences: to fit the written record to the relevant institutional categories, organizing principles, and purposes, the writing process inevitably involves selection, modification, and deletion (see, Komter (2019), for an in-depth study). An important orientation in the construction of written records is the audience and the subsequent intended use (*audience design*; Bell (1984); Haworth (2013)). The analysis of written records of police investigative interviews suggests that the process of questioning, responding, and writing is oriented towards the reader and aims to produce useful evidence (Jönsson and Linell 1991; Coulthard 2002; González Martínez 2006; Komter 2006, 2019; Charldorp 2013). In that sense, even though neither criminal law judges nor prosecutors are present in the interrogation room, they form the most important audience (Oxburgh *et al.* 2010).

Of particular importance are the transformations of the police officer’s questions. Studies show that interviewers add questions in the written record that they did not ask in the interview to make the interview more understandable (De Keijser *et al.* 2012) or they change the assignment of responses to more openly formulated questions to increase the probative value of the statements (Lamb *et al.* 2000). Another important finding on written records is that police officers who doubt the interviewee’s testimony formulate the questions in the written record more confrontationally than in the actual interview. De Keijser *et al.* (2012) showed how, when writing the record, a police officer inserted single words into the questions that were not part of the conversation but emphasized the confrontational aspect, such as the word “indeed” in the question “The clerk and a woman have seen that you were indeed at the petrol station” (De Keijser *et al.* 2012: 620). Studies have also shown that in asylum procedure interviews, confrontationally formulated questions are often omitted in written records and only find their way into the protocol if the interviewer doubts the credibility of the statement (Scheffer 1998: 259-262).

However, the interviewer’s orientation to the future audience already begins in the spoken interaction, that is, at the time of the primary interaction. Studies acknowledge that, besides their main function of eliciting of information, “questions can and do perform many other functions” (Grant *et al.* 2016: 18). Research on interviewing in legal settings has demonstrated that one of these functions is to demonstrate reasonable doubt to judges and jurors who read, listen to, or view the police evidence at a later stage of the proceedings. Defense lawyers, for example, use confrontational questioning strategies to present witnesses’ testimony to the attending jurors as “unresolved puzzles” and thus implicitly as implausible (Drew 1992: 505-515). Conley and O’Barr have shown that with a confrontational questioning style (e.g., with questions such as “To many people your age, that [partying] means sexual activity, does it not?”; “And at the very least it means the use of intoxicants?”), defense lawyers even succeed in transforming the actually dialogical questioning into a “self-serving monologue” (Conley and O’Barr 1998: 24-25).

Consequently, the interviewer portrays the witness in their own desired way – independent of the witness' answers. Even “silly questions” are used by police officers to make the interviewee's intention, actions, and legally relevant knowledge explicit to judges and jurors (Stokoe and Edwards 2008). However, within the scope of our knowledge, no studies to date have examined how the future audience of the interviews' written records respond to this confrontational questioning style attacking the interviewee's credibility and whether they are influenced by it. A few psychological studies have investigated the effect of specific interviewing techniques (e.g., “Structured interview”; “Cognitive interview”) in police-witness investigative interviews based on video transcripts (Westera *et al.* 2011, 2013).

## **Experimental study**

### **Research question and hypotheses**

In our experiment, we investigate the impact of a confrontational questioning style as opposed to a non-confrontational questioning style in a written record of an investigative interview on the judges. In our study, the confrontational style includes questions that subtly confront the interviewee, a male suspect, with the police officer's doubts about the defendant's credibility by adding simple words such as “even” into a question (e.g., “According to the notification, following the initial pushes, you even tried to hit your wife.”; see question no. 8 in the Appendix). Furthermore, it also includes questions that make the police officer's doubts more explicit (e.g., “I don't believe you. So, your wife describes the situation very differently”; see question no. 9). In contrast, the non-confrontational questioning style includes only questions formulated in a neutral manner that do not indicate the police officer's opinion on the suspect and his responses.

Assessing the credibility of statements is an important task for police officers, prosecutors, and judges in criminal proceedings and, accordingly, the subject of a wealth of scientific studies. The results of initial studies that are based on witness statements suggest that police officers and prosecutors may be influenced by the interview style when assessing credibility. In the two experimental studies conducted by Westera and colleagues, an identical statement of an adult rape complainant was rated as less credible when the questions recorded were closed-ended and suggestive rather than open-ended (Westera *et al.* 2011, 2013). These studies have investigated the effect of specific forms (structures) of questions and not their function in the interaction. However, linguistic literature suggests that function is more informative than form (see Oxburgh *et al.* (2010) for a detailed description of the distinction between the form [structure] and function of questions). For example, depending on the sequence of questioning, closed-ended questions may well be aimed at providing a narrative account rather than merely a yes/no response (Oxburgh *et al.* 2010; Grant *et al.* 2016). Nevertheless, based on the results of Westera *et al.* (2011, 2013) indicating that the questioning style has an impact on the evaluation of the credibility of the interviewee's answers, it can be assumed that marked doubts in the questions may also influence credibility assessments of the suspect's statement. Decision-making theories such as the cognitive bias of ‘anchoring’ (Vrij *et al.* 2010) or the Story Model of Pennington and Hastie (1992) confirm the general importance of initially made statements and their storytelling manner. Anchoring refers to the process of insufficient adjustments that are made from an initial value or assessment (the anchor) and results in decisions that are biased towards the anchor (Vrij *et al.* 2010; Kahneman

2011). According to this approach, judges may base their credibility assessments on the police officer's prior credibility assessment, as expressed in the officer's questioning style (the anchor). The Story Model suggests that judges construct different stories when assessing evidence and favor the most convincing story. From this perspective, a story appears convincing and thus credible if it is consistent with other evidence, free of contradictions, and plausible and complete (Pennington and Hastie 1992). It can be assumed that the confrontational questioning style in our study negatively influences these prerequisites for story credibility as the questioning style emphasizes contradictions and sometimes explicitly presents the doubts. Thus, our first hypothesis is as follows:

H1. Criminal law judges exposed to a confrontational questioning style in a written record of an investigative interview will assess the suspect's story as less credible compared to judges reading a written record with a non-confrontational questioning style.

Procedural fairness in investigative interviewing has been emphasized as being highly relevant to decision-makers (Goodman-Delahunty *et al.* 2013). Interestingly, De Keijser *et al.* (2012) showed, in their quasi-experimental study with law students, that participants rated investigative interviews as fairer if the written records did not include the questions. This would ensure that participants did not have explicit knowledge of the interviewer's questioning style. To assess procedural fairness, De Keijser *et al.* (2012) use the following components, as proposed by Tyler (2007, 2017): voice, neutrality, respect, and trust. Voice is the opportunity given to people to tell the story from their own perspective and in their own words. Neutrality refers to legal authorities making decisions based on law rather than personal opinions and applying the law consistently across cases and people. Respect includes both treating people with courtesy and politeness and showing respect for people's rights when providing information on criminal procedures. Trust refers to sincerity and care. Studies have not investigated how specific questioning styles determine the evaluation of procedural fairness. In science and practice, questions in which the police officer explicitly expresses their opinion and thus considerably limits the scope for answering and exerts pressure on the interviewee are considered "controlling" (Oxburgh *et al.* 2016: 150-151) and "coercive" (Newbury and Johnson 2006; Berk-Seligson 2009). Consequently, judges can be expected to evaluate an investigative interview recorded in such a style as less fair. Thus, our second hypothesis is as follows:

H2. Criminal law judges exposed to a confrontational questioning style in a written record of an investigative interview will rate the procedural fairness of the investigative interview as lower compared to judges reading a written record with a non-confrontational questioning style.

In court, written records of police investigative interviews may be used for several purposes (see Introduction). The usefulness of written records of police questioning in court depends, among other things, on how the police conducted the questioning. In Switzerland, where the study was conducted, the written record can only be used in evidence if the investigative interview depicted therein is judged to be fair. Due to the confrontational questioning style, which we assume would be judged as unfair, we further assume that this questioning style will also negatively impact the usefulness assessment. Accordingly, our third hypothesis is as follows:

H3. Criminal law judges exposed to a confrontational questioning style in a written record of an investigative interview will evaluate the usefulness of the written

record in court as lower compared to judges reading a written record with a non-confrontational questioning style.

In criminal proceedings, suspects are held accountable for what they supposedly said in interviews (Scheffer *et al.* 2010; Komter 2012). By signing the written record, the interviewee declares that the record correctly reflects his or her statement. Consequently, a signed written record of an investigative interview has a binding character. Appealing against written records is particularly difficult, and it is often to the interviewee's disadvantage to deviate from previously recorded statements (Culhane and Hosch 2012). Given that the binding character depends on the evaluation of the police officer's fairness and that the confrontational questioning style negatively influences this assessment, we assume that the confrontational questioning style reduces the binding character of the recorded statement. Hence, our fourth hypothesis is as follows:

H4. Criminal law judges exposed to a confrontational questioning style in a written record of an investigative interview will evaluate the character of the written record in court practice as less binding than judges reading a written record with a non-confrontational questioning style.

## Methods

### Participants

The sample relevant for this study includes 217 criminal judges from Switzerland (see also Procedure). The majority of the judges (61.2%) are professional judges, that is, jurists and 38.8% were lay judges. Their ages range from 30 to 71 years (*Mean* [*M*] = 52.18, *Standard Deviation* [*SD*] = 9.32), and their tenure as judges (weighted by workload) varies between less than a year and 33 years (*M* = 5.88, *SD* = 7.22). Thirty-eight percent of the sample was female. The participants in the two conditions do not differ significantly in their socio-demographics according to *Chi square* ( $\chi^2$ ) tests or *independent-samples t-tests* (*t*), with the exception of tenure,  $t(182.40) = 2.36, p = .020$ . We will account for this finding in the analysis (see Data analysis). All participants have experience as criminal judges, and it is common for them to evaluate evidence prior to the trial, as was required in this study.

### Materials and design

Our research is based on a randomized experiment with a between-subjects design; that is, participants were randomly assigned either to a written record with a confrontational questioning style (experimental condition) or a written record with a non-confrontational questioning style (control condition). Based on the written record – the stimulus – participants evaluated the suspect, his statement, and the questioning style in a separate questionnaire (see Measures). To isolate the effects of the questioning style on these evaluations, we kept the suspect's answers constant in both conditions.

The study is based on an ambiguous case about a violent incident that occurred between a separated couple. The wife testified that she had been physically attacked and injured by her husband after a verbal confrontation while handing over their children. All materials originated from a real case file<sup>1</sup>. To retain confidentiality and anonymity, the names, places, and other identifying information of the actual case file were modified and replaced with fictitious data in all materials used in this study.

### **Written records of investigative interview (stimulus)**

Participants in the non-confrontational questioning style condition received the actual, anonymized written record of the police investigative interview, in which the suspect denied the alleged offence<sup>2</sup>. According to the written record, the police officer questioned the suspect following best-practice guidelines (for best-practice guidelines in the UK, see, e.g., Bull (2018); for Switzerland, see Courvoisier *et al.* (2016): He told the suspect about his rights (question 1 and 2; see Appendix for a detailed description of all questions in both questioning style conditions), and gathered, first, information from the suspect by using questions such as “What happened next” that aimed in eliciting the suspect’s free account (questions 3 to 6). Only afterwards, the police officer disclosed the evidence (questions 7 to 11). In this phase, the police officer formulated questions such as “What do you say to that?” in order to challenge the suspect. The interview ends with two concluding questions (questions 12 and 13).

To vary the degree of confrontation in the second questioning style condition, we replaced some of these neutrally formulated questions with questions that expressed the police officer’s doubts about the suspect’s responses. Out of all questions, we manipulated five questions in this way: We reformulated three open-ended questions into suggestive ones (e.g., question 5, “So, then you pushed her to the ground” instead of “What happened next?”; questions 4 and 8 were similarly manipulated). Furthermore, we strengthened the confrontational moment more strongly in two questions by adding explicit references to the (fictional) police officer’s disbelief (“I don’t believe you”, question 9; “It’s quite clear that you did this”, question 10). We did not change the suspect’s answers at all. In general, we adapted the style of questioning while ensuring that the initial responses remained congruent with the modified questions.

### **Case summary**

In addition to the written record of the investigative interview (stimulus) and the questionnaire, all participants received a case summary describing the summarized testimony of the witness and some additional information on the case.

### **Procedure**

We used a written survey to collect data. All materials were distributed with a pre-paid envelope and a cover letter<sup>3</sup>. In the cover letter, we informed the judges that the survey concerned the use of written records of investigative interviews in courts and was part of a research project at the Faculty of Law at the University of Basel funded by the Swiss National Science Foundation<sup>4</sup>. In addition, we ensured the anonymity of the judges. We asked the participants to first read the case summary and the written record of the investigative interview and then fill in the questionnaire. As this study is part of a more comprehensive study conducted by the authors on the effect of different recording styles, we addressed all criminal judges (including lay judges and substitute judges) and all professional civil and administrative judges (excluding lay judges and substitute judges) from the German-speaking part of Switzerland; its overall response rate is 32%<sup>5</sup>.

### **Measures**

The dependant variables relevant for this study were measured using multi-item Likert-type scales, except binding character, which was measured with a single item. The items for story credibility, procedural fairness, and binding character, were rated on a 6-point

scale ranging from 0 to 5 (*strongly disagree* to *strongly agree*). A 6-point Likert-type scale was also used for the assessment of usefulness, with endpoints representing *not useful at all* (0) and *very useful* (5). All items had *do not know* as an additional option. We operationalized *story credibility* with four items referring to the construct of ‘story acceptability’ from Pennington and Hastie’s Story Model (Pennington and Hastie 1992), which De Keijser *et al.* (2012) also used in a similar way: *Giovanni B.’s statement is convincing* (Giovanni B. is the fictitious name given to the suspect in this study); *Giovanni B.’s statement is consistent*; *Giovanni B.’s statement is plausible*; *Giovanni B.’s statement is credible*. The ratings were averaged to create a mean composite score, which has good internal reliability (Cronbach’s  $\alpha = 0.90$ ). We measured the evaluation of *procedural fairness* using the items from De Keijser *et al.* (2012) in a slightly adapted way: *Giovanni B. was given enough discursive space to explain the facts from his own point of view* (voice); *The police officer interviewed Giovanni B. comprehensively* (voice); *The police officer showed a respectful attitude towards Giovanni B.* (respect); *The police officer was biased against Giovanni B.* (neutrality); *The police officer interviewed Giovanni B. competently* (competence); *The police officer interviewed Giovanni B. in a fair manner* (fairness). The ratings were averaged to create a mean composite score, which has good reliability (Cronbach’s  $\alpha = 0.90$ ). The judgment of the police evidence’s usefulness in court practice includes the following five items formulated as questions: *How useful do you assess the written record of Giovanni B.’s police investigative interview to be regarding (1) the reconstruction of facts; (2) the assessment of statement credibility; (3) the assessment of the person’s credibility; (4) the assessment of linguistic skills; and (5) the assessment of intellectual skills?* Again, the ratings were averaged to create a mean scale of usefulness, which has good internal reliability (Cronbach’s  $\alpha = 0.76$ ). Finally, we measured the evaluation of the binding character of the written record using a single item: *The recorded statement can later hardly be revoked by Giovanni B.* Besides these items measuring the dependant variables, the questionnaire included some questions about the participants’ socio-demographic characteristics.

### **Data analysis**

We conducted a series of *independent-samples t-tests* with questioning style as the independent variable to test the hypotheses using SPSS. The analyses of group differences revealed that the participants in the two conditions differ significantly in tenure (see Participants), and bivariate analyses of the study measures demonstrate that tenure significantly correlates with age, gender, and legal education (Pearson’s  $r$  and  $r_{pb}$ , respectively, are 0.20,  $-0.28$ ,  $0.50$ ;  $p < .05$ ). Therefore, we ran four regressions. For each dependent measure, the regression model includes questioning style as the independent variable and tenure, legal education, age, and gender as the control variables. For all dependent variables, the effect of questioning style is the same in the t-test and the regression. The regression shows no significant effects of tenure, legal education, age, or gender on the dependent measures ( $p > .05$ ), except for one dependent variable that is usefulness, where age is a significant predictor ( $B = .23$ ,  $p = .014$ ). The control variables, however, are not the variables encompassing our key interest and will not be discussed further. Instead, we will describe the results of the independent t-tests.

Prior to the main statistical analyses, we tested the relevant assumptions. For procedural fairness, we used the Welch t-test as the homogeneity of variances was violated. For binding character, which is measured with a single item using a 6-point scale,

the measurement was at the ordinal level and not the continuous level, as required for parametric tests. Although some consider parametric tests robust against this violation (Norman 2010), we checked this result with a non-parametric test (the Mann-Whitney U-test), which confirmed the parametric finding. To enable comparisons with the other dependent measures, we provide the parametric test statistics in this article. Finally, all statistical tests used in our analyses and their associated p-values are two-tailed. Table 1 summarizes the results of the t-tests and provides Cohen's *d* for the effect size.

	Comparison of means		Statistics of independent t-tests and effect sizes			
	Non-confrontational questioning style	Confrontational questioning style				
	Mean ( <i>SD</i> )	Mean ( <i>SD</i> )	<i>t</i>	<i>p</i>	<i>d</i>	<i>n</i>
Story credibility	3.16 (0.79)	2.93 (0.80)	2.09	.038	0.29	214
Procedural fairness	3.58 (0.61)	2.24 (0.87)	13.22	<.0005	1.76	216
Usefulness	3.11 (0.75)	2.78 (0.79)	3.00	.003	0.43	200
Binding character	2.86 (1.38)	2.68 (1.24)	0.97	.332	0.14	202

**Table 1. Results of t-tests for story credibility, procedural fairness, usefulness, and binding character.**

## Results

After the initial data analysis described earlier, we tested the four hypotheses relevant to our study. For *story acceptability*, we expected judges to rate the suspect's story as less credible in the confrontational questioning style condition (Hypothesis 1). The results of the t-test support this hypothesis: Judges who read the written record with the confrontational questioning style assessed the story as less credible ( $M = 2.93$ ,  $SD = 0.80$ ) than judges who read the written record with non-confrontational questions ( $M = 3.16$ ,  $SD = 0.79$ ; see Table 1). This difference, 0.23, 95% CI [0.01, 0.44], is statistically significant,  $t(212) = 2.09$ ,  $p = .038$ , and represents a small effect,  $d = 0.29$ .

Second, we assessed whether the confrontational questioning style lowered the judges' ratings of *procedural fairness*, as predicted in Hypothesis 2. The results of the t-test show that judges in the confrontational questioning style condition rated the investigative interview at a considerably lower level ( $M = 2.24$ ,  $SD = 0.87$ ) than judges in the non-confrontational questioning style condition ( $M = 3.58$ ,  $SD = 0.61$ ). The difference, 1.33, 95% CI [1.13, 1.53], is statistically significant,  $t(204.47) = 13.22$ ,  $p < .0005$ , and represents a large effect,  $d = 1.76$ . Thus, Hypothesis 2 is confirmed.

Hypothesis 3 postulates that the confrontational questioning style negatively influences the judgement of the *usefulness* of the police's written record in evidence. The results support this hypothesis. Judges in the confrontational questioning style condition assessed the written record as less useful ( $M = 2.78$ ,  $SD = 0.79$ ) than judges in the non-confrontational questioning style condition ( $M = 3.11$ ,  $SD = 0.75$ ). The difference in the participants' mean ratings, 0.33, 95% CI [0.11, 0.54], is statistically significant,  $t(198) = 3.00$ ,  $p = .003$ , and represents a small effect,  $d = 0.43$ .

Finally, we tested Hypothesis 4, which predicted that the confrontational questioning style negatively affects the ratings of the *binding character* of the evidence in court. Our

results show that judges considered the binding to be weaker when they were assigned a written record with a confrontational questioning style ( $M = 2.68$ ,  $SD = 1.24$ ) than when they were assigned a written record reflecting non-confrontational questioning ( $M = 2.86$ ,  $SD = 1.38$ ). However, the difference in the participants' mean ratings, 0.18, 95% CI [-0.18, 0.54], is not statistically significant,  $t(200) = 0.97$ ,  $p = .332$ . Therefore, our study cannot confirm Hypothesis 4.

## Discussion and conclusions

Drawing on important qualitative findings regarding the supposed effects of confrontational questioning style, we have used experimental methods to test what so far has not been empirically investigated. Regarding the assessment of *story credibility*, our study confirmed the hypothesis. Although the suspect's account was the same in both questioning style conditions, criminal law judges perceived the suspect's denial statement as less credible when the police officer's questioning style indicated doubt. This finding demonstrates that the participants did not solely scrutinize the suspect's answers in the process of assessing the story's credibility; rather, they relied on the police officer's opinion expressed in his questioning style. This finding confirms the significance of the anchoring heuristic for credibility judgements (Vrij *et al.* 2010), and simultaneously indicates that the questioning style may determine which story judges perceive as convincing in trial. Hence, even if the police officer is not present in court, their questioning style can influence the decision-making process. Given that police investigators often presume suspects to be guilty even before interviewing them (Mortimer and Shepherd 1999) and that the assumption of guilt determines the questioning style (Kassin *et al.* 2003; Hill *et al.* 2008), this is a disquieting finding. This is particularly true in countries where police investigative interviews are recorded in written records that are part of the case file and are key in criminal proceedings. If the police interview is recorded in written form, the influence of the interviewer is particularly significant. They decide not only the style of questioning but also which questions (and answers) to record. Consistent with the second hypothesis, the judges rated the *procedural fairness* of the investigative interview as significantly lower if the questioning style was confrontational. This result shows that criminal judges recognize that the evidence was obtained in an unfair manner. Consistent with theory and previous research on procedural justice, our research confirms that principles such as voice, neutrality, respect, and competence are key in police procedure evaluations not only for community members, as demonstrated in previous research (Tyler 2007; Mazerolle *et al.* 2013), but also for criminal justice professionals. For the evaluation of the evidence's *usefulness*, the results show that the judges found the evidence significantly less useful in the confrontational questioning style as postulated in the respective hypothesis. This indicates that the judges correctly acknowledged the questioning style's potential distorting effect on the information elicited in the interview that should, therefore, not be relied on in court. However, our study did not confirm the last hypothesis. We did not find empirical evidence that the suspect could revoke his statement in trial, although the judges acknowledged that he was questioned in an unfair manner. There was no significant difference between the ratings on the *binding character* of the evidence in the two questioning style conditions. This is most likely related to the fact that the questioning style tested in our study does not breach Swiss law. In Switzerland, answers obtained with confrontational questions may remain admissible as evidence as long as they are not deceptive according to the Swiss Federal

Supreme Court and legal doctrine. Consequently, from a legal perspective, the judges correctly decided that the suspect could not revoke the statement. However, future studies should further investigate the relationship between the questioning style and the binding character of pre-trial evidence. Previous research on the use of written records in criminal trials has shown that deviating from or retracting previous statements is difficult and often disadvantageous for the suspect (Culhane and Hosch 2012). This finding is particularly disturbing if a suspect is interviewed in a manner that, although legal, is considered coercive in the literature (Berk-Seligson 2009; Oxburgh *et al.* 2016).

Our results must be considered in the context of some limitations. First, even though our prudent approach which consisted in a modest alteration of the questioning is legitimate in that it ensures the authenticity of the investigative interview, its compliance with legal rules, and its compatibility with the initial answers, it has led to a small effect of the questioning style on the judgement of the story credibility. Hence, further research could investigate whether there is a greater effect on the credibility assessment if the police officer's questions express his/her doubts more strongly in order to be able to conclusively assess the relevance of this result for criminal law practice. Second, although we conducted the study with actual criminal judges as well as with real materials, as with all laboratory studies, we were limited to replicating a completely ecologically valid setting. Reading written records of police-suspect investigative interviews is an important task for judges in Switzerland, as in other countries; in practice, however, the judges' information baseline is much more comprehensive. Therefore, we recommend future studies to include at least other central documents of a case file (e.g., written record of the police-witness interview or other evidence). In addition, studies should investigate whether our findings prevail with other modes of recording. Previous research revealed that in some cases, the mode of presentation and even aspects such as audio quality affects the evaluation of evidence (Davis *et al.* 2006; Bild *et al.* 2021). Finally, our study was based on one specific case, which was a disputed case and was about interpersonal violence. Future research should investigate the relation between questioning style and judges' perception of the suspect and his or her story in other types of crimes and in cases in which the suspect confesses. The latter is of particular interest given the relevance of confession evidence for various decisions in criminal trials (Kassin 2022).

Our study is original in that it adds valuable knowledge to qualitative research on talk-in-interaction in police and judicial settings by experimentally testing transcending effects of the specific discursive practice of police officers using a confrontational questioning style, not only when interviewing but most importantly when establishing the written record. Given the present findings, we suggest that the risk has to be limited to ensure the questioning style is artificially adapted to communicate to the future audience, that is, by way of mandatory audio recording. Audio recordings are the only means to allow judges to reconstruct the questioning properly, that is, to use the original of the statement entirely. However, a lack of time resources and resulting pragmatic reasons lead to judges reading exclusively the written record. Hence, judges must become more aware that the questioning style as one of many discursive practices may impact their perception when reading written records.

## **Appendix**

All questions in the written record of the police-suspect investigative interview presented in the non-confrontational and confrontational questioning style conditions (translated

from German and completely anonymised). For this article, minor spelling errors of the original police record have been corrected.

No. of question	Non-confrontational questioning style condition (original written record)	Confrontational questioning style condition (manipulated written record; <i>all manipulations are highlighted in italic</i> )
1	You will be questioned about bodily harm, optional assault against Sandra, your separated wife. You have the right to remain silent. Your statements can be used as evidence. You can always order a defence lawyer. Further, I draw your attention to the right to refuse to testify.	You will be questioned about bodily harm, optional assault against Sandra, your separated wife. You have the right to remain silent. Your statements can be used as evidence. You can always order a defence lawyer. Further, I draw your attention to the right to refuse to testify.
2	Today, you have appeared at the police station for questioning according to telephone agreement. Is that correct?	Today, you have appeared at the police station for questioning according to telephone agreement. Is that correct?
3	On Friday evening, you met with your 'soon-to-be ex-wife' on the square in front of the community hall. You wanted to pick up your joint children according to your visitation rights. Why did the initially verbal differences occur?	On Friday evening, you met with your 'soon-to-be ex-wife' on the square in front of the community hall. You wanted to pick up your joint children according to your visitation rights. Why did the initially verbal differences occur?
4	What happened next?	<i>And then this led to a physical confrontation, which resulted in the injuries to Sandra?</i>
5	What happened next?	<i>So, then you pushed her to the ground.</i>
6	How did you notice that he thought it was funny?	How did you notice that he thought it was funny?
7	You are being accused of pushing Sandra against the chest with your outstretched arm. What do you say to that?	<i>But now</i> you are being accused of pushing Sandra against the chest with your outstretched arm. What do you say to that?
8	According to the notification, following the initial pushes, you then tried to hit your wife. What do you say to that?	According to the notification, following the initial pushes, you <i>even</i> tried to hit your wife. <i>Do you accept this information as accurate?</i>

9	Next, Sandra allegedly prepared for another attack and stood in a kickboxing position. You allegedly grabbed Sandra's foot and pushed her back, whereupon she fell to the ground. What do you say to that?	<i>I don't believe you. So, your wife describes the situation very differently: You say that Sandra attacked you 'with full thrust'. Your wife, however, testified that you attacked her first and that the kickboxing position was a precautionary defence against another attack from your side. Then, you allegedly grabbed Sandra's foot and pushed her back, whereupon she fell to the ground.</i>
10	Furthermore, after pushing her to the floor, you apparently beat her. What do you say to that?	<i>Furthermore, you have been accused of even beating Sandra, after pushing her to the floor. It's quite clear that you did do this.</i>
11	According to the notification, Sandra allegedly sustained the following injuries: [...] What do you say to that?	<i>According to the notification, Sandra sustained the following injuries: [...] Comment on that.</i>
12	A report will be submitted to the prosecution indicating a charge for bodily harm (optional assault). Have you understood that?	A report will be submitted to the prosecution indicating a charge for bodily harm (optional assault). Have you understood that?
13	Would you like to add something to this questioning?	Would you like to add something to this questioning?

## Notes

<sup>1</sup>This case file belongs to a research project that was directed by the second author and conducted at the Faculty of Law at the University of Basel.

<sup>2</sup>Copies of the anonymized written records are available upon request.

<sup>3</sup>Experimental studies, whose participants are often students, are usually conducted either on-site or as online surveys. In contrast, the traditional postal survey method was chosen in this study. We opted for this approach as a means of differentiating ourselves from the daily deluge of emails. We accepted the disadvantages associated with this method, e.g., the lack of control for the time spent on different aspects of the task, in favour of the prospect of a satisfactory response rate from criminal justice practitioners.

<sup>4</sup>The Faculty of Law at the University of Basel is the previous affiliation of both authors.

<sup>5</sup>This comprehensive study was conducted as a part of the first author's PhD dissertation at the University of Bern (Switzerland) and comprised four case studies. These examined, in addition to the confrontational questioning style, the effect of handwritten corrections made by the suspect in the written record (Hohl Zürcher *et al.* 2017), the monologue, and the language style. In total, we addressed 1,941 judges, of whom 615 (31.7%) participated. Other than the control group, only one of the four experimental groups was relevant for this article. All participants who belonged to one of the other groups ( $n = 361$ ) or had no professional experience in criminal court ( $n = 37$ ) were excluded from the sample.

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