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Introduction:

Law-in-(inter)action: communicative practices in legal settings

Fábio Ferraz de Almeida & Camila Alves Borges Oliveira

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This collection is the result of the work of the “Law and Language” working group, which convened at the Empirical Research in Law Meetings in 2019 and 2021. At these meetings, we had the opportunity to bring together Brazilian researchers interested in studying different interactional and discursive practices in a wide range of police and judicial contexts. Originally, the special issue was conceived as a way to organise and disseminate research conducted in the Brazilian context, but it took a different form when we decided to accept contributions from researchers worldwide. This decision opened the doors to insights and perspectives beyond the Anglo-American tradition. The result is a rich compilation that includes studies from Brazil as well as those conducted in Denmark, Nigeria and Switzerland.

Despite the distinctive contexts in which these studies were produced, the research gathered in this issue shares two fundamental characteristics: a) it focuses on the communicative practices used by law and legal participants in conducting their affairs in justice institutions; b) it employs theories and methodologies associated with linguistics to unravel these practices.

The rather restrictive scope of the Language and Law work assembled here is essential to distinguish it from the studies in forensic linguistics conducted with the main goal of assisting legal professionals in decision-making and case resolution. The articles in our collection are focused on describing and analysing the language in the legal process (Coulthard *et al.* 2017, 2020), ranging from police practices to interrogating suspects, to the work of judges and interpreters in court hearings, and the role of mediators and conciliators in judicial mediation sessions and preliminary hearings, respectively. Although these studies were conducted by researchers primarily interested in observing aspects related to language and who found Law a fertile field for developing their research, by unveiling the linguistic underpinnings that constitute the fabric of law-in-action (Ferraz de Almeida and Drew 2020) in particular contexts, this collection has the potential to dialogue with other interdisciplinary traditions, especially those that maintain a close relationship with legal scholarship, such as Socio-Legal Studies and Law

& Society. Emerging from Sociology, these two traditions expanded their territory by adding knowledge produced by a multitude of disciplines - such as Anthropology, Political Science, History, and Linguistics itself, among others - to study actors, institutions and processes that constitute or are constituted by the law.

Despite language's pervasive role in the routine of legal professionals, the study of interactional and discursive practices in police and judicial institutions remains on the fringes of Law and Social Sciences. By employing methodologies, approaches and concepts that are typical of Linguistics, the papers here highlight the centrality of language to understand law as a social phenomenon and help to unveil the interactional mechanisms by which legal institutions operate in their micro-level.

The special issue starts with a focus on UK police departments. Benefiting from privileged access to audio recordings of police investigative interviews, Heini (2022) studies how police warnings are presented and explained to 17 and 18-year-old suspects. The analysis reveals, for example, how the comprehension check, followed by a paraphrase of the legal text, becomes a professional police formula. The problem with this protocol is that it disregards the interactional context in which it is produced and, therefore, does not guarantee that young suspects actually understand the warning. Combining methodological tools and concepts from Conversation Analysis and Critical Discourse Analysis, the author reveals how police warning reformulation practices can involve the participation of suspects to ensure comprehension and how the course of the interaction can alter - positively or negatively - the way in which officers rephrase the warning and check the suspects' comprehension.

In the second article, the focus remains on issues related to police-suspect communication. This time, however, we are introduced to Nigeria's complex multilingual context. Adebite and May (2022) delve into the use of linguistic code-switching in police interrogations with suspects. In their analysis, the authors show that in addition to the common uses by both parties, which aim to endow their speech with credibility and authority and highlight shared sociocultural knowledge, this alternation also serves very particular interests. For police officers, it serves to warn, threaten and carry out verbally aggressive acts that attack the self-esteem of those questioned; while for suspects, it serves to beg for mercy and shift responsibility. In addition to the detailed analysis of these episodes, the article by Adebite and May invites us to reflect on the suspects' rights, more specifically on how apparently harmless resources, such as switching linguistic codes, are capable of coercing suspects to confess or self-incriminate. The discussion proposed by the authors points to the importance of audio and/or video recording of interrogations, despite the difficulties in turning this procedure into a mandatory one.

While the first two articles focus on the study of particular interactional practices in the police questioning of suspects, the third one, by Hohl Zürcher and Capus (2022), transcends a situated analysis of this type of interaction. Grounded on qualitative research on the different uses of confrontational questions in legal contexts (e.g. Drew 1992; Haworth 2013; Komter 2019), the authors propose an experimental study to test how judges in Switzerland assess the effects of a confrontational police questioning style in investigative interviews with suspects. Based on the results of an experiment in which magistrates evaluated written records of these interactions, Hohl Zürcher and Capus conclude, for example, that a confrontational style of questioning negatively impacts the credibility of the story told by the suspect and the perception of procedural fairness in the

interview. In the discussion, the authors highlight the importance of making magistrates aware of the effects of different questioning styles on their perception and evaluation of written records of police interviews.

In the fourth article, Machado and Vieira (2022) shed light on the overall structural organisation of preliminary hearings in Special Criminal Courts in Brazil. Created almost 30 years ago, these courts were an attempt to reduce the complexity of conflict resolution involving minor criminal offences. Studies in legal anthropology had already revealed the efforts of legal professionals to avoid a judicial process by promoting agreements and distributing non-custodial punishments (Fullin 2015). By revealing the interactional phases that constitute these hearings and describing the actions undertaken in each of them, Machado and Vieira (2022) show in detail the work done by conciliators to persuade the parties involved to close the case. The article contributes to the debate about the goals and objectives of criminal justice institutions in Brazil and the challenges associated with their bureaucratic procedures (Azevedo 2001).

The study of communicative practices in alternative means of conflict resolution is also the focus of the fifth article, in which Pereira *et al.* (2022) investigate the role of listening by mediators in a family court mediation session. One of the main difficulties experienced by these professionals involves how to act (or react) when a participant reports an episode of domestic violence. In the article, Pereira *et al.* (2022) demonstrate how the mediator's active listening reveals her interactional effort to avoid aligning or affiliating with the descriptions contained in the narratives of each of the parties, and to topicalize elements deemed relevant, but absent in the narrative until that particular moment of the interaction. In the article, the authors also analyse how the mediator re-textualizes these reports by producing written records of the session for the judge responsible for the case, calling into question the parity in the way episodes of violence are recontextualized.

The special issue concludes with a visit to a courtroom in Denmark. Based on audio recordings of interpreted-mediate criminal hearings, Karrebæk *et al.* (2022) investigate the ways in which defendants, who do not speak the national official language, are informed about the opportunity to speak with their lawyers in private. The authors demonstrate how this task involves not only the interpreter, as one could imagine, but also depends on the judge, who initiates these interactional sequences. Data analysis suggests that the work of interpreters goes beyond the exercise of translation, as they are also responsible for contextualising and detailing the information passed on by the judges, which seems to meet the latter's expectations.

While the articles in the special issue hold immense potential, they also illustrate, more or less explicitly, the challenges to connecting Social Sciences and Linguistics to Law. Karrebæk *et al.* (2022), for example, share their frustration in presenting their research results to judges in Denmark. Whereas for the authors, revealing the cooperative process by which an interpreter and the judge inform the defendant about the right to consult his lawyer is a relevant step towards understanding the functioning of interpreter-mediated judicial hearings, for the judges, the only real concern relates to the accuracy of the translation. Not by chance, although all the articles presented here propose alternatives to operationalize linguistic knowledge to conduct empirical analyses on how legal institutions are produced *in situ*, they also exemplify the difficulties in translating the social world to the legal field (Mertz *et al.* 2016). Thus, this collection serves to explore the complexities of interdisciplinary work, in this case, associated with the tensions, dilemmas and difficulties

faced by language and law researchers as we navigate between the Social Sciences and the Law and have to engage with the field (see D'hondt and May 2022).

We extend our profound gratitude to the journal's editorial team, especially Rui Sousa-Silva, for providing us with the opportunity to publish this special issue, and for the unwavering support throughout the laborious process of organising this collection. Our appreciation also goes to the authors, for their original and thought-provoking contributions, and to the reviewers, whose meticulous feedback enhanced the quality of the published articles. We hope that the special issue *Law-in-(inter)action: communicative practices in legal contexts* will inspire those interested in understanding law and legal institutions through the study of the language in the legal process. I hope you enjoy reading the articles!

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Nota introdutória:
**Direito-em-(inter)ação: práticas comunicativas
em contextos jurídicos**

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Este número especial surgiu como um desdobramento dos esforços produzidos no grupo de trabalho “Direito e Linguagem”, organizados nos Encontros de Pesquisa Empírica em Direito¹ em 2019 e 2021. Nesses encontros, tivemos a oportunidade de reunir pesquisadores brasileiros interessados em estudar diferentes práticas interacionais e discursivas nos mais diversos contextos policiais e judiciais. Inicialmente concebido como uma maneira de organizar e divulgar essas pesquisas produzidas no contexto brasileiro, o número especial tomou forma distinta quando optamos por receber contribuições de pesquisadores de outros países. Essa abertura teve como principal efeito a submissão e publicação de trabalhos produzidos fora do tradicional (tratando-se de *Linguagem e Direito*) eixo Estados Unidos/Reino Unido. Assim, além dos trabalhos brasileiros, o número reúne também estudos conduzidos na Dinamarca, na Nigéria e na Suíça.

A despeito dos diferentes contextos em que foram produzidas, as pesquisas reunidas neste número partilham duas características fundamentais: a) tomam o trabalho dos profissionais de instituições de sistemas de justiça e suas práticas comunicativas como objeto; b) fazem uso de teorias e metodologias associadas à linguística para a compreensão dessas práticas.

O escopo um tanto restrito quanto à escolha do objeto parece-nos primordial para distinguir as pesquisas aqui apresentadas dos trabalhos de linguistas forenses conduzidos com o objetivo de auxiliar os profissionais do direito na tomada de decisão e na resolução de casos. Os artigos que compõem este número especial estão focados em descrever e analisar a linguagem no processo jurídico (Coulthard *et al.* 2017, 2020), desde as práticas policiais para interrogar suspeitos, até o trabalho de juízes e intérpretes em audiências judiciais, passando pelo papel de mediadores e conciliadores em sessões de mediação judicial e audiências preliminares, respectivamente. Embora tenham sido produzidos por

¹Os Encontros de Pesquisa Empírica em Direito são eventos anuais organizados pela Rede de Estudos Empíricos em Direito (REED), organização brasileira formada por professores(as) e pesquisadores(as) que desenvolvem pesquisas em Direito com base empírica. Cf.: <https://reedpesquisa.org/>.

pesquisadores primordialmente interessados em observar aspectos relativos à Linguagem e que encontraram no Direito um campo fértil para o desenvolvimento de suas pesquisas, ao desvelar as engrenagens linguísticas a partir das quais o Direito se constitui em seus contextos específicos, este conjunto de pesquisas tem o potencial de dialogar com outras tradições interdisciplinares, especialmente aquelas que mantêm uma relação próxima com a academia jurídica, como *Socio-Legal Studies* e *Direito & Sociedade*. Surgidos da Sociologia, esses dois campos se expandiram ao agregarem conhecimentos produzidos por uma multiplicidade de disciplinas - como a Antropologia, a Ciência Política, a História, a própria Linguística, dentre outros - para estudar as dinâmicas de atores, instituições e processos que constituem o/são constituídas pelo Direito.

Apesar do aspecto pervasivo da linguagem nas rotinas dos profissionais jurídicos, o estudo das práticas interacionais e discursivas em instituições policiais e judiciais ainda ocupa lugar marginal nos debates nos campos do Direito e das Ciências Sociais. Por meio do manejo de metodologias, abordagens e conceitos típicos da Linguística, as pesquisas reunidas neste número especial atribuem à linguagem a devida centralidade para a compreensão do direito enquanto fenômeno social, e ajudam a desvendar os mecanismos interacionais pelos quais ele é fabricado (Ferraz de Almeida e Drew 2020).

O número especial tem início nos departamentos de polícia no Reino Unido. Aproveitando seu acesso privilegiado a gravações de áudio de entrevistas investigativas policiais, Heini (2022) estuda como a advertência policial² é apresentada e, eventualmente explicada para suspeitos de 17 e 18 anos de idade. A análise da autora revela, por exemplo, como a checagem de entendimento, seguida de uma paráfrase do texto legal, tornou-se uma fórmula profissional dos policiais. O problema deste protocolo é que ele desconsidera o contexto interacional em que é produzido e, portanto, não garante a compreensão da advertência por parte dos jovens suspeitos. Combinando ferramentas metodológicas e conceitos da Análise da Conversa e da Análise Crítica do Discurso, Heini revela como as práticas de reformulação da advertência policial podem envolver a participação dos suspeitos para assegurar a sua compreensão e como o desenrolar da interação pode alterar - positiva ou negativamente - a maneira pela qual os policiais reformulam a advertência e conferem sua compreensão.

No segundo artigo, o foco permanece nas interações entre policiais e suspeitos. Desta vez, entretanto, no complexo contexto multilíngue da Nigéria. Adegbite e May (2022) têm como objeto de pesquisa os diferentes usos da alternância de códigos linguísticos em interrogatórios policiais com suspeitos. Em sua análise, os autores mostram que para além dos usos comuns de ambas as partes, visando dotar sua fala de credibilidade e autoridade e destacar um conhecimento sociocultural compartilhado, essa alternância serve também interesses bem particulares. Para os policiais, serve para avisar, ameaçar e realizar atos verbalmente agressivos que atacam a autoestima dos interrogados; enquanto que para os suspeitos, serve para implorar por misericórdia e transferir responsabilidade. Para além da detalhada análise desses episódios, o artigo de Adegbite e May suscita uma reflexão sobre a garantia de direitos, mais especificamente sobre como recursos aparentemente inofensivos, como a alternância de códigos linguísticos, são capazes de coagir suspeitos a confessar ou se auto-incriminar. A reflexão proposta pelos autores aponta para a importância da gravação em áudio e/ou vídeo dos interrogatórios, a despeito das dificuldades para

²Por advertência policial, fazemos referência à tarefa dos policiais entrevistadores de informar o suspeito entrevistado a respeito de seus direitos. No original em inglês “police caution”.

operacionalizar um protocolo profissional desse tipo.

Enquanto os primeiros dois artigos têm como foco o estudo de práticas interacionais particulares presentes na inquirição de suspeitos pela polícia, o terceiro artigo, de autoria de Hohl Zürcher e Capus (2022), transcende a análise situada desse tipo de interação. Amparadas por pesquisas qualitativas sobre os diferentes usos de perguntas confrontadoras em contextos jurídicos (e.g. Drew 1992; Haworth 2013; Komter 2019), as autoras propõem um estudo experimental para testar como juízes na Suíça avaliam os efeitos de um estilo de inquirição policial confrontante no contexto suíço. Com base nos resultados de um experimento em que magistrados avaliaram registros escritos de interrogatórios policiais com suspeitos, as autoras concluem, por exemplo, que um estilo confrontante de inquirição impacta negativamente na credibilidade da história contada pelo suspeito e na percepção de equidade procedimental do interrogatório. Na discussão, Hohl Zürcher e Capus apontam para a importância de conscientizar os magistrados sobre os efeitos dos estilos de inquirição em sua percepção e avaliação dos registros escritos dos interrogatórios policiais.

No quarto artigo, Machado e Vieira (2022) exploram a organização estrutural global das audiências preliminares nos juizados especiais criminais no Brasil. Criados há quase 30 anos, esses juizados são uma tentativa de reduzir a complexidade da resolução de conflitos envolvendo infrações penais de menor potencial ofensivo. Estudos da antropologia do direito já haviam apontado para o esforço dos profissionais jurídicos para evitar o processo judicial ao promover acordos e distribuir punições não carcerárias (Fullin 2015). Ao revelar as fases interacionais constitutivas dessas audiências e descrever as ações empreendidas em cada uma delas, Machado e Vieira (2022) mostram detalhadamente o esforço dos conciliadores para persuadir os envolvidos a arquivar o caso. Ainda que indiretamente, o artigo contribui para discussão sobre os objetivos das instituições do sistema de justiça no Brasil e os desafios associados às suas dinâmicas burocratizantes (Azevedo 2001).

O estudo de práticas comunicativas em meios alternativos de resolução de conflitos também é o objeto de estudo do quinto artigo, no qual Pereira *et al.* (2022) investigam o papel da escuta dos mediadores em uma sessão de mediação judicial familiar. Uma das dificuldades experimentada por esses profissionais diz respeito às maneiras de agir durante as sessões, quando os mediados relatam episódios de violência doméstica. No artigo, Pereira *et al.* (2022) demonstram como o trabalho de escuta da mediadora revela seu esforço de não se alinhar nem se afiliar interacionalmente às descrições contidas nas narrativas de cada uma das partes, e de topicalizar elementos julgados relevantes, mas ausentes na narrativa até aquele determinado momento da interação. No artigo, os autores analisam ainda como a mediadora retextualiza esses relatos ao produzir registros escritos da sessão para o juiz responsável pelo caso, colocando em xeque a paridade na forma como os episódios de violência são recontextualizados.

No sexto e último artigo, Karrebæk *et al.* (2022) conduzem o leitor em uma visita às salas de um tribunal na Dinamarca. A partir de gravações em áudio de audiências criminais mediadas por intérpretes, os autores investigam as formas pelas quais os réus, que não dominam a língua oficial do país, são comunicados sobre a oportunidade de conversar com seus advogados em particular. Karrebæk *et al.* (2022) demonstram como essa tarefa envolve não apenas o intérprete, como geralmente imagina-se, mas depende também do juiz, que inicia essas sequências interacionais. Além disso, a análise dos dados sugere

que o trabalho dos intérpretes ultrapassa o exercício de tradução, sendo eles responsáveis também por contextualizar e detalhar as informações passadas pelos juízes, o que parece atender às expectativas dos magistrados.

A despeito das potencialidades referidas nos parágrafos iniciais, os artigos reunidos neste número especial, de forma menos ou mais explícita, ilustram também os obstáculos para conectar as Ciências Sociais e a Linguística ao Direito. Karrebæk *et al.* (2022), por exemplo, verbalizam sua frustração ao apresentarem os resultados de sua pesquisa a juízes na Dinamarca. Se, para os autores, revelar o processo cooperativo pelo qual intérprete e juiz informam o réu sobre o direito de consultar seu advogado é um passo relevante para a compreensão do funcionamento de audiências judiciais mediadas, para os juízes, a única preocupação real é a precisão da tradução. Não por acaso, embora todos os artigos apresentados aqui proponham operacionalizar um conhecimento linguístico para conduzir análises empíricas sobre como as instituições jurídicas são produzidas *in situ*, muitas vezes é perceptível uma dificuldade de traduzir o mundo social para o Direito (Mertz *et al.* 2016). Este número especial, portanto, é também dedicado a ilustrar e explorar os desafios da interdisciplinaridade, neste caso, associados às tensões, dilemas e dificuldades enfrentadas por pesquisadores em Linguagem e Direito ao transitar entre os campos das Ciências Sociais e do Direito (D'hondt e May 2022).

Por fim, gostaríamos de expressar nossa imensa gratidão à equipe editorial da revista *Language and Law / Linguagem e Direito*, em especial na pessoa de Rui Sousa-Silva, pela oportunidade de publicar e divulgar o número especial, e pela presteza de sempre ao longo do trabalhoso processo de organização desta coletânea. Nosso agradecimento também a todos os autores, que contribuíram com a submissão de artigos originais e instigantes, e aos avaliadores, cujos comentários e sugestões criteriosas elevaram a qualidade dos trabalhos publicados. Esperamos que a coletânea “*Direito-em-(inter)ação: práticas comunicativas em contextos jurídicos*” possa inspirar todos aqueles interessados em compreender o Direito por meio do estudo da linguagem no processo jurídico. Uma boa leitura!

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‘Basically, I’m gonna ask you a load of questions’: Cautioning exchanges in police interviews with adolescent suspects

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Abstract. *The police caution in England and Wales is a compulsory element of every police interview that informs suspects of their right to silence and outlines the concept of adverse inference. This research draws on authentic data from interviews with 17- and 18-year-old suspects from two English police forces, analysing how the cautioning exchanges are negotiated while considering suspects’ ages and legal statuses as children and adults, respectively. Taking an inductive approach rooted in conversation analysis, the findings reveal an overall tendency for interviewers to explain the caution directly after reciting it, thereby acting on a presumption of suspects’ non-comprehension. It is also considered how the (discursive) presence of appropriate adults in interviews with juveniles can complicate the interactions. The study sheds light on the experiences of an under-researched group of interviewees and discusses the implications of these findings on police practice and vulnerable persons’ access to justice.*

Keywords: *Police Caution, Adolescent Suspects, Vulnerability, Comprehension Checking, Conversation Analysis.*

Resumo. *A advertência policial na Inglaterra e no País de Gales é um elemento obrigatório de todas as entrevistas policiais que informa os suspeitos sobre seu direito ao silêncio e descreve o conceito de inferência adversa. Esta pesquisa baseia-se em dados de entrevistas policiais com suspeitos de 17 e 18 anos de duas forças policiais inglesas, e analisa como as advertências são negociadas considerando as idades e os status legais dos suspeitos como crianças e adultos, respectivamente. Adotando uma abordagem indutiva enraizada na análise da conversa, os resultados revelam uma tendência geral para os entrevistadores explicarem a advertência logo após recitá-la, agindo assim com base na presunção de incompreensão dos suspeitos. O artigo considera também como a presença (discursiva) de adultos apropriados (e.g. responsáveis legais) nessas entrevistas policiais com jovens pode complicar as interações. O estudo ilumina*

as experiências de um grupo de suspeitos entrevistados pouco pesquisado e discute as implicações dessas descobertas na prática policial e no acesso de pessoas vulneráveis à justiça.

Palavras-chave: Advertência Policial, Suspeitos Adolescentes, Vulnerabilidade, Checagem de Compreensão, Análise da Conversa.

Introduction

In England and Wales (E&W), the caution is a crucial part of any police interview, and its mandatory recital is stipulated by Code E, s.3.6 of the Police and Criminal Evidence Act 1984 (PACE). Due to the legal significance of this notification explaining to detainees their rights, the caution and its international counterparts have attracted academic research, especially regarding their comprehensibility and comprehension (Rock 2007; Shuy 1997; Innes and Erlam 2018; Ainsworth 2012; Heydon 2007). The preponderance of this research focuses on interactions with adult, non-vulnerable interviewees; this paper contributes to the scholarship by offering novel insights on an underrepresented group, namely, 17- and 18-year-old suspects. These suspects belong to the legal categories of 'children' and 'adults', respectively, immediately on either side of E&W's statutory age divide. Using a data-driven approach rooted in Conversation Analysis (CA), complemented by basic descriptive statistics, 19 authentic police interviews from two police forces in England are examined to explore whether there are discernible patterns regarding the suspects' age groups and the different police forces that the interviews were conducted at, and how the cautioning exchanges play out in interviews with adolescent suspects. The findings from these analyses are critically interpreted and embedded in the broader contexts of vulnerability, youth justice, and professional practice.

Context

PACE and PEACE

The police interview as a communicative event must be considered in its legal context: suspects are interviewed after arrest and prior to a (potential) charge, and the record of the interview – typically a largely verbatim transcript of the interaction produced by police typists – constitutes a crucial piece of evidence in the investigation and subsequent legal proceedings (Haworth 2018, 2021). The overall goal of a police interview in E&W today is to obtain useful information from the interviewee; however, up until the 1980s constabularies in E&W were using largely unregulated, confession-seeking interrogation practices. The changes of the past 40 years are discussed in detail elsewhere (Shawyer *et al.* 2013; Milne and Bull 1999); important for this research is the introduction of PACE 1984. The Act and its accompanying Codes of Practice stipulated – amongst many other issues surrounding the treatment of detained persons – the mandatory audio recording of all police interviews (s.60 PACE) and formalised the wording of the caution to inform suspects of their right to silence (Code C, s.10.5 PACE). Incidentally, constabularies in E&W started producing invaluable data for researchers from various disciplines who could examine contemporaneous interviewing practices. This revealed the apparent absence of a standardised practice and lack of formalised training, as a result of which the Association of Chief Police Officers developed the PEACE framework of investigative interviewing (Central Planning and Training Unit 1992; Milne and Bull 1999). PEACE is a mnemonic of the five interview stages, namely:

1. Planning and preparation;
2. Engage and explain;
3. Account, clarification, and challenge;
4. Closure;
5. Evaluation.

The PEACE model presents a clear departure from confession-seeking interrogation methods and embodies progressive approaches to information-seeking interviews. It is a model based on the principle of free recall, where suspects are given the opportunity to recant all the events in question in their own words during the 'Account' stage. The cautioning exchange takes place in the 'Engage and explain' stage; see e.g. Clarke and Milne (2016) for details on all PEACE stages.

The 'Engage and explain' stage represents the formal opening of the interview where the recording starts and the interviewer outlines the process. The interviewer has to fulfil the PACE requirements, which includes informing the suspect of their right to silence (the police caution) and legal representation (Code E, s.3.6 PACE). All persons in the interview room are prompted to identify themselves on record, and Appropriate Adults (AAs), whose presence is mandatory in interviews with juveniles, are instructed of their duties. AAs are discussed in more detail below.

Institutional discourse

Police interviews as a genre fall under the domain of institutional discourse, that is,

a form of interaction in which the relationship between a participant's current institutional role (that is, interviewer, caller to a phone-in programme or schoolteacher) and their current discursive role (for example, questioner, answerer or opinion giver) emerges as a local phenomenon which shapes the organisation and trajectory of the talk'. (Thornborrow 2002: 5)

Institutional discourse is dictated by a speaker's affiliation to an institution, but naturally the discursive event itself relies on interaction and is thus co-constructed by the speakers. Closely connected with institutional discourse are the intertwined concepts of language and power; Fairclough's approach in particular helps us uncover how 'people with power control what happens in specific interactions', such as in police interviews (Fairclough 2015: 3). Police interview discourse presents a legal-lay dichotomy; the interviewer is familiar with the institutional rules and the associated language, which puts the interviewee in a weakened position both institutionally and discursively (Dijk 1993).

Vulnerability in police interviews

There are many types of vulnerabilities that can exacerbate the asymmetry of power in police interviews. Interviewees considered vulnerable (e.g. juveniles, persons with learning disabilities, mental health issues, or a physical disorder that impacts their ability to communicate, non-native English speakers – note that interviewees can exhibit a multitude of vulnerabilities) are entitled to special measures in the form of intermediaries, AAs, and interpreters to help enable and facilitate communication (s.16 Youth Justice and Criminal Evidence Act 1999; Code C, s.1.13(d) PACE).

While in E&W there is no lower age limit for witnesses – research shows that reliable information can be obtained by specially trained officers from witnesses aged just two (Marchant 2013) – the lower limit for suspects, also known as the age of criminal

responsibility, is 10 years old (s.50 Children and Young Persons Act 1993). The upper age limit for the 'child' age bracket is the same for all interviewees, namely 17, as stipulated by the Children Act 1989. The 17-year-olds in the current dataset are thus considered vulnerable due to their age. Neurologically speaking, the human brain is not fully developed until a person reaches their mid-twenties (Gogtay *et al.* 2004), and while parts of the adolescent brain are still developing, certainly no significant developmental leaps take place overnight between ages 17 and 18, rendering the strict 17/18 age divide largely arbitrary. Furthermore, 'children' do not constitute a uniform group of people but instead persons with individual stages of development and characteristics (Rooy *et al.* 2016: 58). Yet in legal terms 10- to 17-year-old suspects are grouped together in the 'children' category. The group referred to in this study as 'adolescents', that is, 17-year-old children and 18-year-old adults, represent a group that has largely been overlooked in police interview discourse research. Studies focusing on children tend to focus on (very) young interviewees – often witnesses – and frequently present analyses on language acquisition and cognitive development (Marchant 2013; Rooy *et al.* 2016; Milne and Bull 2006). Studies on adult interviewees rarely mention the ages of the subjects, but it can be assumed that they present a cross-section of adults, with little attention paid to 'newly' adult 18-year-olds. In the current study, then, the interaction between interviewer and suspect is not only marked by the abovementioned legal-lay dichotomy but reinforced by the superimposed asymmetry based on age and associated legal status. As mentioned briefly above, Code C, s.11.15 PACE sets out the mandatory presence of an AA in interviews with juvenile or otherwise vulnerable suspects. The AA role is taken on by a parent/guardian, a social/care worker, or a volunteer. In terms of their duties, Code C, s.11.17 PACE states that

[i]f an appropriate adult is present at an interview, they shall be informed:

- that they are not expected to act simply as an observer; and
- that the purpose of their presence is to:
 - advise the person being interviewed;
 - observe whether the interview is being conducted properly and fairly; and
 - facilitate communication with the person being interviewed.

Research into the role of the AA has been conducted from several disciplinary angles, with focuses on the practicalities of familial vs non-familial AAs (Haley and Swift 1988; Brown *et al.* 1992; Evans and Rawstorne 1994), and on issues surrounding the comprehension of their duties (Palmer and Hart 1996; Evans 1993; Dixon *et al.* 1990; Fennell 1994). Research on the AA 'in action' comes preponderantly from observational studies in custody suites and from interviews with AAs or custody staff (Pierpoint 2006; Dehaghani 2019). Research on the AA's role inside the interview room is scarce: broad analyses of interview transcripts by Evans (1993) and Farrugia and Gabbert (2019) both reveal that AAs tend to take on a passive role in spite of being instructed not to simply observe.

Regardless of whether an interviewee is vulnerable and special measures are used, the aim of all interviews remains the same, namely, to gather as much useful information as possible to contribute to the investigation at hand Milne and Bull (2006).

The police caution

The police caution is recited to detainees at various stages of the legal process: first upon arrest, then during the interview, and an additional time if they are formally charged with a

crime (Rock 2012: 313). The purpose of the caution is to inform detainees of their right to silence, of the court's right for adverse inferences to be drawn (s.34 Criminal Justice and Public Order Act 1994), and of the fact that the interview record can be used as evidence at a later stage (Haworth 2018; Rock 2007). The wording of the caution is as follows:

You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence.

The caution, albeit comprised of only three sentences and 37 words, presents a complex structure and the second sentence in particular can cause confusion. Firstly, it starts with the conjunction 'but' which 'effectively signal[s] the removal of the suspect's non-prejudicial "right to silence"' (Cotterill 2000: 6). It furthermore contains a conditional clause, multiple embeddings, and selected lexis with specific legal meanings. As a result, many (non-vulnerable) adults struggle to understand the meaning and implications of the police caution (Cotterill 2000; Brown 1997; Kurzon 1996; Rock 2005, 2007, 2012; Walsh and Bull 2010). Police interviewers are instructed to mitigate apparent comprehension issues as follows: '[i]f it appears a person does not understand the caution, the person giving it should explain it in their own words' (Code C, Note 10D PACE). Interviewers use comprehension-checking questions (CCQs) – the terminology here is informed by Rock (2007) – which typically take on a polar yes-no format, e.g. 'do you understand what the caution means?' Polar CCQs are precarious as suspects have a strong tendency to provide a (preferred) affirmative response even if this does not correspond with the truth. As the nature of the police interview 'involves a general preference for suspects to cooperate', affirmative responses to polar CCQs are considered valuable for interactional progressivity (Diepeveen *et al.* 2022: 176). The strong tendency to answer CCQs with 'yes', is an example of 'gratuitous concurrence' (Eades 2015), and is strong for any type of suspect, given their inferior positioning in the interview interaction (Rock 2007). Especially when the suspect is vulnerable, the risk of suggestibility (Gudjonsson 2003) is heightened. Research into different displays of epistemic access in classroom settings, provides a useful lens through which to analyse word choice in CCQs. According to Koole (2010), a 'do you understand...?' question prefers a simple 'claim' as a response (e.g. 'yes'), whereas 'do you know...?' prefers a 'claim' plus a 'demonstration' (e.g. 'yes, it is...'; see Sacks (1992). We see both of these questions oriented to in the data where they fulfil slightly different purposes.

Rock's research shows that in a typical cautioning exchange, the suspect's affirmative response to the CCQ is followed by the interviewer's prompt to explain the caution back to them (Rock 2007) – an endeavour that virtually no suspect succeeds in. The prompt for the suspect to recontextualise the caution is a problematic social action itself; it puts the suspect in a potentially face-threatening position where they may be exposed as either not having answered the original CCQ truthfully or as not having understood the caution correctly. Crucially, however, an unsuccessful recontextualization by a suspect does not necessarily indicate non-comprehension, but simply an inability to express comprehension (Rock 2012).

Once an interviewer has established – through CCQs and failed explanation attempts or by other verbal and non-verbal signals – that the interviewee does not understand the caution, they then provide the paraphrasing, or the *reformulation* (Rock 2005; Godsey 2006). Interviewers frequently announce their reformulation using metadiscourse, e.g.

'so we break it down into smaller chunks', 'erm the first bit...' (Extract 5 below; Heini (2020: 156). As interviewers are instructed to use 'their own words' when reformulating, unsurprisingly there is variation in the structure and the completeness of reformulations.

In many cautioning exchanges, the reformulation –complete or otherwise – is followed by a second question, which asks about comprehension (Rock 2007). These questions are also routinely answered affirmatively. Once again, the preferred response means that the interview can progress to the next stage. Post-reformulation comprehension checking is sometimes skipped completely, as some officers consider the provision of the reformulation itself as ensuring comprehension, as illustrated by this piece of personal correspondence with a police officer:

if [the suspect] said they did understand it, I would ask them to explain it to me in their own words. They normally got it wrong and I would end up explaining it to them anyway. *In that way I could prove that the suspects knew and understood their rights*, which can help down the line when a defence statement is submitted before a hearing. (2019, italics added)

A cautioning exchange, then, must legally be compiled of at least one element, the recital of the caution, but frequently includes others, (e.g. CCQ, a reformulation attempt, a reformulation, a second CCQ, etc., see Rock (2007: 159). Considering the overall interview context, issues with comprehensibility based on the complex language, the observed troubles with comprehension, as well as factors of gratuitous concurrence and suggestibility, it is not surprising that navigating the cautioning exchange as a vulnerable interviewee is even more demanding (e.g. for persons with intellectual disabilities see Gudjonsson and Joyce (2011); for non(-native) English speakers see Berk-Seligson (2016); Dumas (2020); Pavlenko (2008). This study will examine (1) what patterns emerge in the data regarding cautioning practices with 'juvenile' and 'adult suspects', as well as across different police forces in a legal system with a high degree of police practice regulation, and (2) how the exchanges play out in terms of their interactional structure, both in terms of comprehension-checking practices and how the need for a reformulation is negotiated between the interviewers and the suspects.

Data and methods

The data consist of 19 interviews with 17- and 18-year-old suspects conducted between 2016-2017 by two police forces in England. The interviews vary by their duration, the suspected offence, the persons present, and interlocutors' genders. Not all of these variables are relevant for the current research; Table 1 outlines the dataset with the pertinent attributes. Note that the suspects have all been given pseudonyms.

The audio data were anonymised using the Audacity software and subsequently transcribed according to conventions by Jefferson (2004). The transcription is considered part of the analysis (see Bucholtz 2000), in line with the data-driven research paradigm of CA. While we consider the backdrops of institutional discourse and age-based vulnerability, this research is at its core inductive and salient issues are made visible by the participants themselves while interacting with each other in these cautioning exchanges.

CA considers interactions in terms of their conversational structure, whereby individual turns are dependent on the preceding conversational context (Sacks *et al.* 1974). Turns consist of one or more turn-constructive units (TCUs) and end in transition relevance places (TRPs), at which point the floor can (but does not have to) be passed to

Suspects aged 17		Suspects aged 18	
Andrew	Police Force 1	Kevin	Police Force 1
Ben		Luke	
Charlie		Matt	
Daniel		Nathan	Police Force 2
Eric		Olivia (2x)	
Frankie	Paul		
Gavin	Robert		
Helen	Samuel		
Ian	Police Force 2		
Jack			

Table 1. Data description with suspect ages, suspect names, and police force numbers

another speaker (Schegloff 2007; Clayman 2013). Another basic tenet of CA are adjacency pairs, i.e. two 'pair-type related' turns by two subsequent speakers (Schegloff 2007: 13). Question-answer adjacency pairs consist of a first pair part characterised by interrogative syntax or intonation whereby the interlocutor is expected to produce a response. The second pair part can consist of a preferred or dispreferred answer:

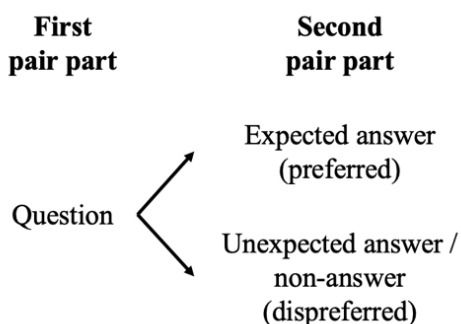


Figure 1. Question-answer adjacency pair with preferred and dispreferred second pair part (Levinson, 1983: 336)

What constitutes expected and unexpected answers is dependent on the conversational context (Pomerantz and Heritage 2012); in the cautioning context, affirmative responses to interviewers' CCQs are preferred and almost always given. As mentioned above, preferred responses furthermore contribute to the progressivity of the interaction.

While interacting, interlocutors can encounter trouble in producing, hearing, or correctly understanding a turn. When this occurs, the source of the trouble must be identified, and the problem repaired. In everyday conversation, repair initiations often take the form of clarification questions of varying degrees of specificity (Schegloff 2007). As outlined previously, in the institutional context of police interviews suspects often strive to cooperate. Thus, in the interest of progressivity (Kitzinger 2012), clarification questions from interviewees are rare (Rock 2007).

CA is an inductive approach that allows for the identification of the most salient issues in a given conversational context. It has been applied to a broad range of police interview data, including interviews with suspects, witnesses, adults, children, and other

vulnerable persons (Carter 2011; Komter 2003, 2006; Rock 2007; Ferraz de Almeida and Drew 2020; MacLeod 2016; Haworth 2006, 2017; Stokoe 2013; Heydon 2005; Jol and Stommel 2021). Given the institutional nature of these 'unequal encounters' (Fairclough 2015: 73), when discussing the findings from the CA I will draw on relevant concepts from the critical discourse analysis (CDA) literature. Interactions are evaluated in light of how 'social-power abuse and inequality are enacted, reproduced, legitimated, and resisted' by means of discourse (Dijk 1993: 249). This phenomenon is particularly marked in police interviews with vulnerable persons who are at risk of having their access to justice hampered. Multi-method approaches whereby CA is complemented by elements from CDA have been applied to police interview discourse (Haworth 2009; MacLeod 2010). Combining the applied/forensic linguistics paradigm of helping to improve the delivery of justice through language analysis with Fairclough's notion of (transformative) action (Fairclough 2015), I will conclude the discussion of the findings with a series of recommendations for practitioners.

Where appropriate, this analysis uses basic descriptive statistics, to quantitatively describe the structures and patterns observed in the overall dataset according to suspect age groups and police forces.

Analysis

The analysis firstly considers categories and patterns of the cautioning exchanges, focussing on age groups and police forces (Research Question 1). Secondly, it presents a detailed account of the interview transcripts, examining how the need for a reformulation – or lack thereof – is negotiated (Research Question 2). The subsequent Discussion section explains these observations in the contexts of institutional discourse and vulnerability, and provides recommendations for transformative action.

Cautioning exchange categories

The cautioning exchanges are readily identifiable within 'institutionally provided-for slots' (Edwards and Stokoe 2011: 22) in the 'Engage and explain' stage. To examine how cautioning exchanges unfold, the exchanges were categorised according to whether a reformulation takes place or not. Closer inspection then revealed four broad sub-categories (see Figure 2; numbers in brackets denote the number of interviews per (sub-) category).

Evidently, there is a clear preference for interviewers to provide a reformulation (16 out of 19 interviews, 84%) and, more specifically, to recontextualise without putting an explicit CCQ to the suspect before doing so (13 interviews, 68%). In this adolescent suspect dataset it appears interviewers work on the default assumption that suspects *do not* understand the caution and require a reformulation as a matter of course. Thirteen out of nineteen interviewers skip the post-recital CCQ, and three of them also forego any checking procedures post-reformulation; this implies these interviewers' shifts from a default assumption of non-comprehension post-recital to a default assumption of comprehension post-reformulation, without consulting the suspect at either point throughout the exchange. The majority of interviewers who recontextualise do, however, engage in some form of post-reformulation checking, ranging from explicit (e.g. 'do you understand that?') to implicit progression questions (e.g. 'is that alright?'; 'okay?').

Age- and force-based patterns

Age-based patterns are quite subtle but nonetheless warrant two observations. Firstly, the 'no reformulation after CCQ' category – the short typical cautioning exchange in which

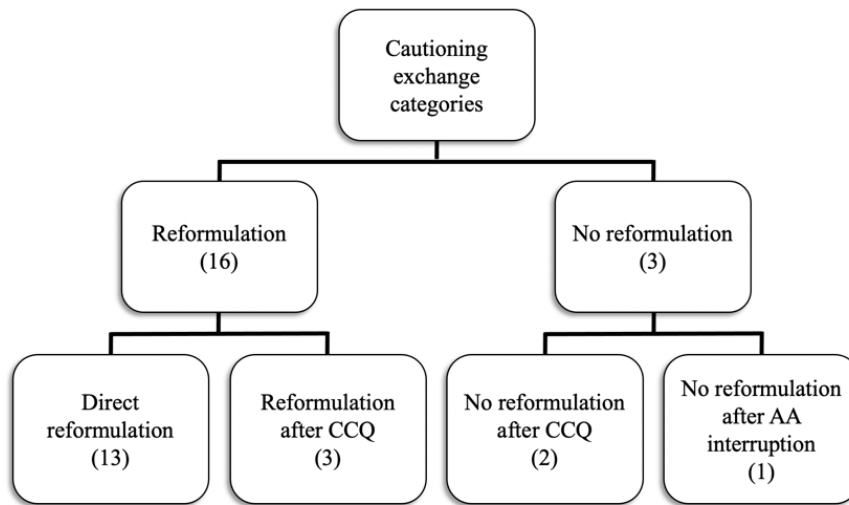


Figure 2. Cautioning exchange categories and sub-categories

a suspect's affirmative response to the CCQ is accepted as true – is populated only by 18-year-olds. While issues with adults' comprehension of the caution have been discussed earlier, it is somewhat reassuring to see that this short exchange does not take place in interviews with children. Secondly, 17-year-old Eric's exchange is clearly a special case, with an interactional power struggle involving his AA.

Table 2 shows the exchange categories arranged by police force, making patterns of institutional practices discernible.

	Suspect (age)	Category
Force 1	Andrew (17)	Direct reformulation
	Ben (17)	
	Daniel (17)	
	Charlie (17)	Reformulation after CCQ
	Kevin (18)	
	Luke (18)	No reformulation after CCQ
	Matt (18)	
	Eric (17)	No reformulation after AA interruption
Force 2	Frankie (17)	Direct reformulation
	Gavin (17)	
	Ian (17)	
	Jack (17)	
	Nathan (18)	
	Olivia (18)	
	Olivia (18)	
	Paul (18)	
	Robert (18)	
	Samuel (18)	
	Helena (17)	Reformulation after CCQ

Table 2. Data listed by police force with suspect ages and cautioning exchange categories

Table 2 shows that Force 2 is considerably more unified in their cautioning exchanges than Force 1. In all but one interviews conducted by Force 2 (91%), the interviewer reformulates the caution directly; only in the interview with Helena does the interviewer first assesses her comprehension by asking a CCQ and using an explanation prompt, before providing her with the reformulation. In Force 1, only three suspects (37.5%) have the caution reformulated directly, and another 25% receive the reformulation after a CCQ. All three instances in the 'no reformulation' category (shaded in grey) take place in Force 1, accounting also for 37.5% of the force's overall practice in this dataset. It is also noteworthy that both 'no reformulation after CCQ' interviews are with 18-year-old suspects, meaning that interviewers in Force 1 take the comprehension claims of the suspects officially labelled as adults at face value and do not prompt recontextualisation.

The four sub-categories are now examined in more detail. Extract 1 lists the full wording of the caution; in subsequent transcripts it is shortened to include only the tail end. Ellipses signal preceding and subsequent continuation of the turn by the same speaker. Extracts are numbered continuously and include the suspect's name and age, and the force number.

Direct reformulation

Direct reformulations constitute the most common category across the dataset. This suggests that the default expectation is that suspects will not understand the official wording – an assumption that is consistent with the literature (Kurzon 1996; Rock 2005, 2007, 2012). Consider Extract 1 for a typical transition from caution to reformulation:

Extract 1: Andrew (age 17, Force 1)

- 01 IR1 ... I must remind ↑you that you are under caution? and that you do not have to say anything? but it may harm your defence if you do not mention ↑when questioned (.) .hh something that you later rely on in court, anything you do say may be given in evidence,
(0.7)
- 02 IR1 .hh I'm going to explain that caution for you Andrew basically what that means is you don't have to talk to me today if you don't want to? ...

There is a 0.7-second pause after the interviewer's recital of the caution, which marks this as a potential TRP. The continuing intonation at the end of turn 01, however, indicates the interviewer's orientation to continuing with a reformulation without an explicit expectation of a contribution by the suspect. The pause can thus be seen as an audible divisor between the official recital and the reformulation units – a feature that appears in many other interviews in the dataset (see Extracts 2, 3, 5 and 8). In turn 02, the interviewer announces the reformulation by using metadiscourse; a common tool for engaging the suspect during this initial part of the interview, and this in turn is in accordance with official police guidance pertaining to the 'Engage and explain' stage (College of Policing 2022). The interviewer also uses the adverb 'basically', which is found to be a fairly common lexical choice by interviewers in the cautioning exchange part of the interview, as illustrated in Extract 2 below:

This example shows a minimal transition from caution recital to reformulation, signalled only by 'basically', following a 0.9-second pause that separates the recital from

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Extract 2: Paul (age 18, Force 2)

- 01 IR ... rely on in court. (0.5) anything you do say may be
given in evidence,
(0.9)
02 IR basically. I'm gonna ask you a load of questions Paul
(0.6)
03 SU °°okay, °°
04 IR you ↑don't have to answer them? ...

[

the reformulation unit. Similar to Extract 1 above, the recital ends on a continuous intonation, which is likely why there is no uptake of the potential TRP by the suspect. The adverb 'basically' frames the reformulation as a 'basic' version of the caution, thereby orienting to the officer's attempt to bring about clarity and comprehension. Paul's brief feedback token (turn 03) follows the interviewer's use of his first name as a term of direct address.

In Extracts 1 and 2, the interviewers' assumptions that the suspects will not understand the caution is realised by the immediate reformulation. This presumption of non-comprehension, where suspects are not given an opportunity to demonstrate their understanding, is potentially a face-threatening act.

Consider on the other hand Extract 3, which shows a reformulation that is framed explicitly as ritualized practice:

Extract 3: Ian (age 17, Force 2)

- 01 IR ... anything you do say may be given in evidence.
(0.9)
02 IR ↑basically. Ian I'll >go< through:: <what that is ex-
<it's ↑not just >'cause it's< you I do it with
everybody. (.) >basically you don't have to say
anything ...

[

Ian's interviewer follows the recital with the metadiscursive announcement (with an initial false start) that he will 'go through' the caution. He then further pre-empts the reformulation by ensuring Ian 'I do it with everybody', thereby framing the reformulation as procedural by assuring the suspect that he is not giving him any special treatment on the basis of his vulnerable status. This is closely connected with what Rock observes in interviews where, when officers prompt suspects to explain the caution, they frame this as 'something other than challenges to detainees' professed comprehension' – in this case as a 'routine or procedure' (Rock 2007: 212-213; see also Urbanik and Pavlenko 2021). This mitigates the face-threatening potential that Extracts 1 and 2 exhibit, where no such framing is given and the presumption of non-comprehension is foregrounded.

Gavin's interview constitutes a special case of a direct reformulation. While it is not uncommon for interviewers to announce the recital (e.g. 'just have to caution you for the purpose of the interview; you do not have to say anything...'), in Gavin's interview we see a departure from this in that the interviewer additionally characterises the caution (turn 01), thereby triggering the suspect's confusion and clarification question (turn 02).

Gavin's inquiry about the 'type of caution' (turn 02) could indicate that he knows about different cautions¹ (Rock 2007: 150); however, it is more likely that the source

Extract 4: Gavin (age 17, Force 2)

01 IR I must remind you that you're still under ↑cau:tion.
(.) the caution it was the same one that
[you was given.-]
02 SU [what type of cau]tion is it.
(0.5)
03 IR it's the caution that ↑everyone's (0.4) <given upon
(.) arrest,
04 SU alright.=
05 IR =I'll [read it-]
06 SU [I don't know what that means [(inaudible)]
07 IR [I'll-]
I'll ↑read it out [to you]
08 SU [okay,]
09 IR and [then I will e]xplain. it
10 SU [alright.]
11 IR to you [alri::ght.]
12 SU [yeah yeah,]
13 IR .hhh so:, (.) the caution is you >do not have to< ↓say
anything? [but it may ha]rm
14 SU [yeah]
15 IR >your< de[↓fence]
16 SU [↑a:right.]
17 IR if you >do not mention< ↑when questioned >something
which you later rely on in< court. anything you do say
may be given in evidence,=
18 SU =yeah.
19 IR .h the basic gist of the caution Gavin is. (.) <I'm
>going to ask< ...

of the problem is the fact that the interviewer not just mentions the caution but instead characterises it as 'the same one' that the suspect had been given previously. The interviewer clarifies by referring to the arrest when Gavin would have been cautioned, and the suspect's evaluation 'alright' (turn 04) first suggests that the interviewer's explanation had provided clarification; however, he voices his lack of understanding when interrupting the interviewer anew and stating 'I don't know what that means' (turn 06). The interviewer uses metadiscourse to start announcing his intentions (turn 05) before being interrupted by Gavin. Turn 07 shows the interviewer insisting on fully announcing his intentions, thereby framing the recital (turns 05 and 07) and explanation (turn 09 and 11) as a routine procedure. Following the recital, the interviewer frames his reformulation as 'the basic gist' (turn 19), which echoes the observations made for Extracts 1, 2, and 3. In total, the full cautioning exchange in this interview stretches across 74 turns, with the interaction first characterised by Gavin's alternations between claiming to understand (turn 04) and to not understand (turn 06), and later his frequent back-channelling, interruptions, and resulting overlaps.

These extracts have shown that there are commonalities in the ways in which interviewers introduce the direct reformulation, such as by using adverbs or short phrases relating to the 'basic' gist of the caution. Extracts 1, 2, and 3 show the interviewers' orientation to reformulate the caution as a matter of course while often framing it explicitly as a routine procedure; in Gavin's case this default orientation is obscured by his voiced confusion as soon as the topic of the caution is introduced.

Reformulation after CCQ

As outlined earlier, comprehension checking is a difficult undertaking, fuelled by interviewers' tendency to view the cautioning exchange as a box-ticking exercise (Rock 2016) combined with suspects' tendency to claim comprehension even if this is not accurate. Consider the following extract from the interview with 17-year-old Charlie:

Extract 5: Charlie (age 17, Force 1)

01 IR1 ... anything you do say? (.) may be given in evidence.
(0.6)
02 IR1 d'you know what- (.) that caution ↑means.=
03 SU =yeah
(0.4)
04 IR1 can you explain it to me?
(0.7)
05 SU that I'm (.) under arrest for,
(1.7)
06 SU a robbery, (.) or something?=
07 IR1 =°okay, °
(1.4)
08 IR1 .hh so the ↑caution?
09 SU °yea[h°]
10 IR1 [so] we break it down into smaller <chunks. so
you do not have to ↓say anything. ...

Following what we could call a customary pause following the official recital, turns 02-03 show an adjacency pair: the interviewer asks a CCQ enquiring about knowledge, and Charlie latches a preferred, affirmative response (claim), although he does not provide a demonstration thereof. The interviewer subsequently prompts him to explain the caution and Charlie's response (turn 05) is characterised not only by non-comprehension in terms of the caution's content, but also by a long, 1.7-second pause. Based on the intonation pattern of Charlie's turn, the interviewer refrains from taking the floor. Charlie eventually completes the syntactic unit by mentioning the offence he has been arrested for ('a robbery') and subsequently uses interrogative intonation in 'or something?' to signal the end of his contribution (turn 06). The interviewer picks up on this swiftly and latches an 'okay' as a response to the suspect's implicit request for help. Charlie signals active listening with a quiet 'yeah' token (turn 09) upon the start of the reformulation.

Extract 6 below shows the somewhat uncommon structure of 'recital → CCQ → affirmation → reformulation', with the interviewer skipping the explanation prompt:

Extract 6: Kevin (age 18, Force 1)

01 IR1 ... anything you do say may be given <in evidence. do
you understa[nd that↓]
02 SU [((sniffles))] (.) yeah.
(0.3)
03 IR1 okay (0.3) I'll just break it down for you what it
me:ans is ...

Following the recital, the interviewer asks Kevin a polar CCQ and his affirmative response (turn 02) is acknowledged by the feedback token 'okay' (turn 03). Despite this, the interviewer subsequently announces the reformulation regardless using metadiscourse, 'I'll just break it down for you...'. Whether it was always the interviewer's intent

to reformulate regardless of the suspect's response to the CCQ cannot be determined conclusively. It is possible that the beat preceding Kevin's 'yeah' is interpreted by the interviewer as a hesitation marker and thus potential non-comprehension. Another factor that could influence the interviewer's behaviour is the presence of Kevin's solicitor. Luke and Matt, the other two 18-year-olds from Force 1, have no solicitor present and their respective interviewers do not provide reformulations after the 'recital → CCQ → affirmation' pattern (see Extract 7 below for Luke's exchange). To further compare, in Extract 5 above, after Charlie's claim of understanding he is prompted to provide a demonstration, which ultimately reveals his non-comprehension and triggers the reformulation. Extract 6, on the other hand, shows Kevin claiming understanding followed directly by a reformulation; it is possible that the presence of the solicitor impacts the interviewer's sense of obligation to explain the caution to the extent where he skips the demonstration prompt (Sacks 1992).

It must be mentioned at this point that not all reformulations are alike and there are some discrepancies regarding their comprehensiveness, and a detailed examination of the contents is beyond the scope of this paper. A brief survey of which of the three caution sections² are covered in the reformulations shows 15 out of the 16 interviewers that provide a reformulation cover all three sections of the caution, and 13 out of 16 (81%) do so in a chronological, 1-2-3 order. In Russel's (2000: 33) data, only 7 out of 13 (53%) retained the original order; in Rock's it is 60 out of 144 (42%) officers (Rock 2007: 183). The high number of 1-2-3 reformulation sequences can be indicative of interviewers' overall efforts to keep the reformulations as logical and simple for the adolescent age group.

Kevin's interviewer from Force 1 (Extract 6) explains only sections 1 and 2, meaning he makes no explicit mention of the interview being recorded and used as evidence. The data thus reveal that in Force 1, two out of three 18-year-old suspects (Luke and Matt) do not get a caution reformulation at all, while the reformulation for the third 18-year-old, Kevin, only covers sections 1 and 2. This means that the three 18-year-olds from Force 1 either receive an incomplete explanation of the caution or no explanation at all.

No reformulation

This section will examine both sub-categories under the 'no reformulation' umbrella. The 'no reformulation after CCQ' exchanges are very brief; consider Extract 7 below:

Extract 7: Luke (age 18, Force 1)

- 01 IR ... anything you do say may be given in evidence:, do
you understand what that ↑me::ans.=
- 02 SU =yes,
(0.2)
- 03 IR okay. so the ↑reason for your arrest ...

The interviewer poses a polar CCQ, 'do you understand what that means' (turn 01), and Luke's latched response is a monotonous affirmation, rendering it little more than a progression marker. The interviewer acknowledges this claim with a feedback token 'okay' (turn 03), before proceeding to the next topic without a pause. Note that Luke was asked about 'understanding' the caution, which is how the CCQ for Matt, the other suspect in this category, was also formulated. In both cases, the suspects' affirmative claims satisfy the interviewers, and the interview progresses. These 'recital → CCQ → affirmation' cases

present another way in which routine police procedure is manifested, in line with what Rock refers to as the 'typical' canonical form (Rock 2007: 158-160).

A special case in the 'no reformulation' category is taken from the interview with 17-year-old Eric. As a juvenile, Eric has an AA present and the introduction sequence at the beginning of the interview reveals the AA as a professional with no familial relation to the suspect. During the cautioning exchange between the interviewer and the suspect, the AA joins the interaction unprompted in a way that results in the interviewer ultimately not providing an explanation.

After the recital, the interviewer does not ask Eric a CCQ, and instead asks him whether the caution 'had ever been explained to [Eric] at all' (turn 02). The question likely orients to the presence of the AA, who, as a professional, may have explained the caution to Eric prior to the interview. Having said that, the construction of the question including the intensifying adverbs 'ever' and 'at all' can be seen as steering towards 'no' as a preferred response. The 1.1-second pause that passes without Eric taking the floor can be indicative of possible confusion on his part, where instead of a CCQ formulated to expect an affirmation, he is asked a question about a potential previous interaction that expects a negative response. Seeing the silence as a prompt for self-repair, he adds an increment as an attempt to clarify his previous question (turn 03). What follows is the only occurrence in the dataset of a suspect answering the interviewer's post-caution question with a vague response, 'sort of' (turn 04). In this context this is a dispreferred response, for it hampers the progressivity of the interview.

The interviewer is receptive to Eric's response by assuring him, 'yeah...no worries' (turn 05). As he begins to outline his objectives, 'what I do-', the AA interrupts, resulting in an overlap which makes her contribution beyond 'we' (turn 06) unintelligible and eventually makes the interviewer abort his turn. Given the context, as well as the previously discussed examples, it can be cautiously assumed that the interviewer was in the process of using metadiscourse to announcement the reformulation of the caution.

From the interviewer's clarification in turn 07 it becomes apparent that the AA has referred to a previous interaction between her and Eric where they had discussed the caution. The institutional asymmetry is exacerbated here, for the interviewer affords credibility to the AA and her comments, even repeating the information provided by her out loud (turn 07). The interviewer asks a 'so'-prefaced polar CCQ targeting Eric's 'understanding' with a final 'then' (turns 11-13), to which he immediately latches an affirmative claim (turn 14). Even though Eric is encouraged to let the interviewer know if he does not understand it (turn 15), based on the language of the preceding three-way interaction it is effectively a phatic offer, which Eric unsurprisingly does not take up. The interviewer accepts the AA's report about her having been through the caution with Eric in the interviewer's absence; this means he essentially outsources what PACE stipulates, namely that the person giving the caution (the interviewer) ought to explain it to the suspect in their own words.

Discussion

This analysis first explored whether there were any discernible linguistic patterns indexing 17- and 18-year-old suspects' ages and legal status, as well as the police forces at which the interviews were conducted. Secondly, transcripts were then analysed using CA to examine in detail how the exchanges play out.

Extract 8: Eric (age 17, Force 1)

01 IR ... anything that you do say may be given in
eviden:c:e,
(0.9)
02 IR now the cau:tion. has it ever been explained to you.
(.) >at all.<
(1.1)
03 IR about what it means,
(0.8)
04 SU sort of,
05 IR yeah. (0.5) no worries (0.5) [what I do.]
06 AA [we (inaudible)]
(0.6)
07 IR have you- have you have you >been ↓through it with
him be[fore< like the caution,]
08 AA [we did befo]re. yeah.
[I reme]mber.
09 IR [yeah]
10 AA but,=
11 IR =so do you [<understa]nd what >the< caution
12 AA [hm:]
13 IR ↓means then.=
14 SU =yeah
15 IR °yeah. brilliant,° ↑if not. (.) let me know and I'll
>explain it t'you< okay,
(0.5)
16 SU °yeah°
17 IR °°cool°°
(1.9)

The data show that by far the most common strategy – observed in 13 out of the 19 interviews – is the direct reformulation, where interviewers forego the typical comprehension checking and provide an explanation in their own words immediately after the recital of the caution. By doing this, interviewers display the pre-emptive assumption of suspects' non-comprehension, which is, according to relevant scholarship, mostly an accurate one (Cotterill 2000). The data also show three reformulations after two-way interactions involving question-answer adjacency pairs consisting of a polar CCQ and an affirmative response. In two interviews with 18-year-olds the affirmative claim to 'understand' the caution satisfies the interviewer and the caution is not explained. Finally, the data includes a special case whereby an interruption by a professional AA directs the interviewer away from an intended reformulation.

A closer look at these strategies reveals that the police seem to be less influenced by suspects' ages than by institution-specific procedures. This shows that, even with E&W's largely unified police guidance, the practice varies. While Force 2's practice is largely consistent across the age groups in that every suspect gets the caution recontextualised, Force 1 exhibits more varying practices. There is an age-divide within the force, whereby 18-year-olds are either not given a reformulation (i.e. where their claim to understanding is accepted by the interviewer) or given an incomplete reformulation, as is the case with Kevin who only has caution sections 1 and 2 explained.

The detailed analyses show that, first, interviewers who reformulate the caution directly tend to use continuous intonation while audibly dividing between recital and reformulation by pausing post-caution and pre-reformulation. The intonation can be seen

to signal that this is not a TRP and the interviewers are likely to continue their talk. When considering direct reformulations exchanges as a whole, it becomes apparent that, in terms of the acoustic make-up, the reformulation often sounds equally as rehearsed and standardised as the official caution itself (Snook *et al.* 2016). This means that the PACE requirement is expanded to include both, and genuine comprehension-checking is forgone completely. Secondly, interviewers use metadiscourse to introduce the reformulation and sometimes explicitly frame the process as a routine (e.g. 'it's not just cause it's you, I do it with everybody'). To 'older' child suspects, who know they are close to adulthood and autonomy, this practice demonstrates that they are not being treated differently because of their juvenile status.

Polar CCQs are formulated so as to check comprehension of the caution, and the data shows patterns consistent with Koole's work on questions about 'understanding' and 'knowing' (Koole 2010). The CCQ 'do you know what the caution means' demands a claim ('yes') and a demonstration (recontextualization attempt), as is apparent in Charlie's interview (Extract 5); 'do you understand what the caution means?', as the question is put to Kevin, Luke, and Matt (all 18 from Force 1), demands only a claim ('yes'), which is provided by all three suspects. As discussed in the analysis, Kevin's interviewer reformulates the caution without prompting him to explain it first – this can be due to the features of Kevin's assertive response and the physical presence of Kevin's solicitor.

The data exhibits an interaction in which a non-familial AA interrupts the cautioning exchange between the interviewer and the suspect, ultimately shifting the interviewer's orientation away from a reformulation. The interaction reveals the AA's professional status which positions her in institutional proximity to the interviewer and thus away from the suspect she is meant to support in the interview. The literature notes (and critiques) AAs' general passiveness (Farrugia and Gabbert 2019), whereas this data shows what can be regarded as too much active involvement. This is ultimately a youth justice issue as it shows the AA's potential to reinforce the institutional asymmetries reflected in the discourse produced by suspects, who, as a result, may feel even less empowered to speak up if they encounter comprehension problems.

Based on these findings there are four recommendations for practice: (i) Police should be wary of the 'caution recital and reformulation' package becoming ritualised in a way that trivialises legal implications (Rock 2016). (ii) Interviewers should provide complete reformulations that cover all three caution sections. (iii) Officers should try to verify the suspects' comprehension, even though this remains a central but challenging issue in this context. If suspects demonstrating understanding by explaining the caution back to the interviewer is deemed a useful method for this, then using CCQs that orient to suspects' 'knowledge' rather than 'understanding' of the caution could contribute to the flow of the interaction as this formulation targets a different epistemic domain. (iv) Police should be conscious of the status of professional AAs, for whom the legal process is second nature. Whether AAs have a familial connection to the suspect or are present in a professional capacity, their duty to safeguard vulnerable interviewees must be upheld.

Notes

¹'The caution' with a definite article means the one informing suspects of their rights; 'a caution' with an indefinite article means a reprimand or warning given to a suspect in lieu of a criminal charge (Cotterill 2000; Rock 2007).

²(1) You do not have to say anything. (2) But it may harm your defence if you do not mention when questioned something which you later rely on in court. (3) Anything you do say may be given in evidence.

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Code-switching as a marked socio-pragmatic discourse strategy in Nigerian police interrogation

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Abstract. *Police-suspect interrogation is a strategically adversarial engagement that involves tactical deployment of a variety of discourse strategies. This situation becomes more complex in a multilingual context like Nigeria where the interlocutors have the opportunity of expressing their communicative intents in a multiplicity of codes. This paper focuses on the pragmatic ways code-switching (CS) is deployed by interrogators and suspects as a socio-pragmatic discourse strategy to achieve their institutional and personal goals. We will see that CS is used persuasively, as interrogators and suspects negotiate from positions of power and inferiority, drawing on socio-cultural norms and expectations. 30 audio-recorded interrogations at the Òyó and Oñdó state commands of the Nigeria Police form the primary data. All the interrogations were conducted primarily in Nigerian English and the subjects were 18 years or above. Critical Discourse Analysis and Communication Accommodation Theory are adopted for analysis and discussion. Findings show that code-switching is employed with different effects for different participants: for interrogators to warn, threaten, and perform verbally aggressive acts that attack suspects' self-worth; for suspects to plead for mercy and to blame-shift; and for both to boost credibility and authority, and to highlight socio-cultural shared knowledge. Swearing and cursing also take place within CS with suspects using self- and other-cursing to indicate sincerity and to try to persuade interrogators to believe their claims and with interrogators swearing to express their commitment and determination to follow through with a course of action. CS is, therefore, seen as a marked and strategic communicative alignment that is motivated by institutional and personal goals and used for persuasive purposes.*

Keywords: *Persuasion, Code-Switching, Discourse Strategy, Swearing, Cursing, Institutional Discourse, Police Interrogation.*

Resumo. *O interrogatório policial é um encontro estrategicamente contraditório que envolve o uso tático de uma variedade de estratégias discursivas. Essa interação torna-se mais complexa num contexto multilíngue como a Nigéria, onde os interlocutores têm a oportunidade de expressar as suas intenções comunicativas*

numa multiplicidade de códigos. Este artigo enfoca as formas pragmáticas de alternância de códigos linguísticos utilizadas por policiais e suspeitos como uma estratégia discursiva sociopragmática para atingir seus objetivos institucionais e individuais. Veremos que a alternância de códigos é usado de forma persuasiva, pois policiais e suspeitos negociam a partir de posições de poder e inferioridade, valendo-se de normas e expectativas socioculturais. Trinta interrogatórios gravados em áudio nos comandos estaduais de Òyó e Ondó da Polícia da Nigéria constituem os dados primários. Todos os interrogatórios foram conduzidos principalmente em inglês nigeriano e os participantes tinham 18 anos ou mais. Adotamos a Análise Crítica do Discurso e a Teoria da Acomodação da Comunicação para análise e discussão. Os resultados mostram que a alternância de códigos linguísticos é empregada por diferentes participantes e por razões diversas: por policiais para avisarem, ameaçarem e realizarem atos verbalmente agressivos que atacam a auto-estima dos suspeitos; por suspeitos para implorarem por misericórdia e transferirem responsabilidade; por ambos para aumentar a credibilidade e autoridade, e para destacar o conhecimento sociocultural compartilhado. Xingamentos e insultos também ocorrem dentro das alternâncias de códigos; enquanto os suspeitos usam xingamentos para indicar sinceridade e tentar persuadir os policiais a acreditar em suas alegações, os policiais fazem uso de insultos para expressar seu compromisso e determinação em seguir um curso de ação. A alternância de códigos é, portanto, vista como um alinhamento comunicativo marcado e estratégico, motivado por objetivos institucionais e individuais, e utilizada para fins persuasivos.

Palavras-chave: Persuasão, Alternância De Códigos Linguísticos, Estratégias Discursivas, Insultos, Xingamentos, Discurso Institucional, Interrogatório Policial.

Introduction

Interviewing people suspected of crime is a skilled activity that is entrusted to our fellow citizens who become police officers. According to the United Nations' Code of Conduct for Law Enforcement Officials (OHCHR 1996 2023), police must 'at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts'. This gives them the dual responsibility of protecting the rights of suspects, while investigating allegations of crime on behalf of those affected. While it goes without saying that communication is at the heart of this complex 'activity type' (Levinson 1992), it is surprising that police officers receive little training in the strategic use of language, with many also not educated beyond secondary school in Nigeria and other parts of the world (though from 2020, police officers in England and Wales have had to be educated to degree level – see Mahruf *et al.* (2020)). To date, many police officers have relied on on-the-job learning or 'experience-based knowledge' (Gundhus 2012). Section 4 of the Police Act (1967) in Nigeria, modified in 1979, describes police work as 'military duties', bringing connotations of martial confrontation. These are, arguably, not qualities conducive to interviewing, a skill that requires patience, listening, and pacing.

Over the history of policing, the culture of mentorship has fostered less favourable behaviours and sub-cultures that have compromised justice, evidenced in some high-profile cases in which abuses of power were used to extract confessions. Unreliable and wrongful convictions, such as in the case of Derek Bentley in the UK (Coulthard *et al.* 2017) and those brought to light by the Innocence Project in the USA (innocenceproject.org), have

undermined public confidence in police interrogation techniques and, in many countries such as Nigeria, the police are feared by the public rather than trusted. While new recruits to policing, the world over, swear an oath similar to this: to ‘cause the peace to be preserved and prevent all offences against people and property’ (Police Reform Act 2002, UK, s. 83), there are all too often reports of brutal coercion, violence, and violations of basic human rights (Amnesty International 1999, 2012). Given the tensions between responsibility and abuse of power evident in the foregoing, it is, therefore, worth noting the more recent turn towards research-informed training that aims to harness ‘the use of language analysis in improving the delivery of justice’ (Grant and MacLeod 2020: 166). This move towards greater professionalisation in all areas of police investigation, including improving interviewing practices, audio-recording, and degree-level education and training, has been influenced by journalists and linguists who have exposed bad practice and through legislation that has brought regulation and codification of best practice (e.g. in the UK The Police and Criminal Evidence Act 1984, UK; The Regulation of Investigatory Powers Act 2000, UK). The most significant step forward, perhaps, has been the move to audio-record police interviews, though this is by no means worldwide.

While there has been a wealth of research on police interrogation in the UK, USA, Europe, and Australia (Gaines 2020; Haworth 2018; Heydon 2005; Johnson 2020; MacLeod 2020; Stokoe *et al.* 2020; Houwen 2020; Charldorp 2020), driven by the move from contemporaneous notetaking records to more widespread audio- and audio-visual-recording, there are many parts of the world where records are still made by notetaking and where access to these documents is restricted. Nigeria is one of these places. In these settings, negotiating access to interrogation data is difficult but nonetheless important. This study of Nigerian police interrogations represents one such endeavour which resulted in permission to make audio-recordings of interviews for research purposes.

Code-switching (CS) is ‘the selection by bilinguals or multilinguals of forms from an embedded variety (or varieties) in utterances of a matrix variety during the same conversation’ (Myers-Scotton 1993: 3). The matrix language, in this case Nigerian English (NE), is the main language of communication and embedded varieties are other languages or codes (Myers-Scotton 1993). CS is a sociolinguistic phenomenon, which means that it always indexes ‘[nuanced] social relationships by exploiting the socio-psychological associations of the languages employed’ (Myers-Scotton 1993: 1). It is an inevitable consequence of the language contact situation in the contemporary Nigerian linguistic landscape where over 500 local languages (Blench 2020: xxi) are in contact (Lewis 2009; Amuzu and Singler 2014). There are three major indigenous languages: Yorùbá in the Southwest, Ibo in the Southeast, and Hausa in the North and these languages coexist alongside the exoglossic official language, NE, and Nigerian Pidgin English (NPE), an English-lexifier pidgin spoken as a lingua franca across the multi-ethnic country (Ihemere 2006; Akerstrom 2010). CS is, therefore, complex in Nigeria, where speakers have the opportunity of expressing their communicative intents in a multiplicity of codes.

Since its emergence through contact between English and Nigerian local languages in the 16th century with the advent of European traders and missionaries, NPE has been creolised, as many Nigerians speak it as their first language and it serves as the de facto lingua franca. The notion of ‘Nigerian English has always therefore been described along the (post) creole continuum of basilect, mesolect, and acrolect depicting the polylectal situation in Nigeria’ (Bamiro 1991: 7). The acrolect is the highest variety, which is internationally intelligible,

the mesolect is the intermediate nationally accepted variety, while the basilect is the variety used by the largely illiterate masses. NE has undergone a great deal of decreolization which has been accentuated by its use in the media, literary works, entertainment and government institutions. From the perspective of Schneider's dynamic model (Schneider 2007), Ugorji (2015) opines that NE possesses features of Schneider's endonormative stabilisation stage. At the endonormative stage, 'a localised version of the (foreign) language which has become socially acceptable' Kirkpatrick (2007: 189) is identifiable. NE fits into this description.

Language alternation manifests in virtually all daily communication, including police interrogation. When CS is employed by the interrogator, it is not usually motivated by the need to solve their own communication fluency problem, as is more usual in other encounters, but is a strategic choice that psychologically indexes the suspect's vernacular code or a shared informal code, in order to persuade them to respond cooperatively. Since police interrogation is an adversarial institutional activity, it achieves its goals by exploiting all of the syntactic and pragmatic resources of language and CS is one such resource. For interrogators, moving between varieties could be seen as an acknowledgement of the suspect's 'full linguistic repertoire' (García and Wei 2014: 74) in a polylectal Nigerian context. But, when it is used by interrogators, it is a persuasive or coercive resource that can signal volition. In Example 1 the interrogating police officer (IPO) switches to NPE in order to make his invitation for the murder suspect to produce a free narrative about the alleged crime more familiar. (The NPE is shown in bold font with a word-for-word English gloss and then idiomatic English in italics, over three lines.)

Example 1 Murder 01

15. IPO: In Ofosu, okay. **Wetin happen?**
You hear this man say you kill im mama? Wetin happen?
You hear this man say you kill his mother? What happen?
You heard this man say you killed his mother? What happened?
16. Susp: On the 18th of this month, which is Monday, when I get to
farm in = the = after I finish my work, I go to farm because it was that
woman that normally pluck my Cocoa = before (...)

In (1), code-switching is not motivated by the need to borrow a lexeme (wetin) that is missing from the matrix language (cultural borrowing) but is a 'core borrowed lexeme' that is employed 'even though the recipient language already has lexemes of its own to encode the concept ... in question' (Myers-Scotton 1993: 5). This CS moment uses the mutually familiar NPE to pragmatically signal the IPO's expectation that a free narrative will result from the open *wh*-question and also to signal that the suspect could use NPE to tell his narrative. While the suspect's response shows uptake of that expectation, as he begins his narrative, he does not choose to use NPE, marking his understanding of the official rather than familiar register of the interrogation and downplaying the role of NPE, whilst taking the cue from the IPO's use of it. Both the IPO and suspect acknowledge English as the matrix language of interrogation but the IPO weaves NPE into his turn for pragmatic ends in a way that benefits the already powerful interrogator, rather than benefitting the suspect. The voice of the interrogator achieves its rhetorical effect by manipulating the suspect into a position of compliance by adopting synthetic rapport.

While in (1), the CS is not reciprocated in the suspect's subsequent turn, this is not always the case, though it is the dominant phenomenon, as we will see in section three. In (2) the intrasentential CS to Yorùbá in the IPO's turn is taken up by a different murder suspect and both continue completely in Yorùbá for six more turns.

Example 2 Murder 02

66. IPO: As at the time *tẹ ẹ gbé bàbá kúrò nílẹ̀ níbití wọn şubú sí, kín
 lerí lára wọn?*
 As at the time that you carry baba from ground where he fall to, what
 did you see on them?
 *As at the time that you lifted the old man from the ground where he
 fell, what did you find/see on him?*
67. Susp: **Kò sí ǹnkan kan tí a rí.**
 There is nothing that we see.
 We did not find/see anything.

The CS in (2) selects a common ethnic variety in what Osisanwo and Adegbosin (2020) describe as a solidarity strategy. At the same time, it is not an unmotivated choice by the interrogator. In this case the deceased old man was a distant relation of the woman's husband; the husband's family and the deceased were involved in a court dispute over a parcel of land. While the question in turn 66 acknowledges that the women and others 'lifted the old man from the ground' and took him to hospital, a helping action, the interrogator seeks to establish the extent of the woman's involvement in the alleged crime, since the old man has injuries that were not indicative of a simple fall.

In our illustrative examples (1 and 2) CS is motivated by institutional goals to elicit evidential detail in a strategic and persuasive way. In Malaysia's similarly multi-ethnic and multilingual country, David (2003) found that CS in the courtroom also had strategic and coercive functions. It is these functions that we are interested in: as a persuasive institutional resource which invites, offers, or directs the lay interlocutor to talk, but also as a resource used by suspects. We explore who initiates the CS (interrogator or suspect) and what the pragmatic effects are in a collection of 30 Nigerian police interrogations.

The context for research

The public image of the Nigerian police is so worrisome that, in 2017, the Nigerian Senate had to pass a bill to change the name of the Nigerian Police Force to Nigeria Police, as it was claimed that 'if the word "force" is removed, [their] slogan "Police is your friend" will resonate better with the public, as friends don't need force, like military, in relating to fellow friends' (*Vanguard Newspaper*, 26/07/2017). In the three main indigenous languages –Yorùbá, Ibo, and Hausa – nicknames are used for the police which further reflect this negative perception; in Yorùbá they are called *olópàá* and in Hausa *yan sanda*, which mean the one who wields the stick, staff, or baton, characterising the police solely by their use of force, while the Ibo use *eke*, which means the python that swallows people, a vivid metaphor for voracious extortion and corruption.

Abuse is so entrenched in police interrogation that interrogation rooms are nicknamed 'torture rooms' (Amnesty International, 2014) and officers in charge (O/C) are called 'O/C torture' (Maja-Pearce 2014). The most recent expression of condemnation of the Nigeria

Police's extra-judicial activities, which gained tremendous traction on social media and attracted international attention, was the phenomenal #EndSARS protest in October 2020. The Special Anti-Robbery Squad (SARS), is a police tactical unit notorious for its inhuman treatment of suspects (Uwazuruike 2020: 4), its torture methods being exposed in a BBC News documentary (BBC 2020) and news reports (e.g. Orjinmo 2020). The protests and demonstrations that 'rocked the country for two weeks' were 'dubbed Nigeria's "Arab Spring"' and 'led to the government agreeing to disband SARS and set up judicial panels of inquiry to investigate the widespread allegations of abuse by officers' (Jones 2021). It is against this background that we adopt 'interrogation' as the appropriate word to describe this activity rather than other terms like 'interview' or 'investigative interview' which are appropriate in other jurisdictions like the UK, Australia, etc.

The audio-recorded interrogations that were collected for this study were recorded in the Yorùbá-speaking Southwest, one of six geo-political zones. With a population of nearly 32 million, based on the last census (Federal Republic of Nigeria Official Gazette 2009), this region represents nearly a quarter of the population of Nigeria at that time.

Arising out of this multilingual context for police interrogation within a society that lacks trust in the police, we ask the following research questions:

- 1) What does CS reveal about discourse power in Nigerian police interrogation discourse?
- 2) What pragmatic functions do CS perform in Nigerian police interrogation when used by interrogators and suspects; and
- 3) What are the sociolinguistic implications of using CS in police interrogation?

Methodology

Data

In Nigeria, interrogation of suspects is not statutorily audio-recorded, so there was no database of police interrogations to use for research. Nigeria is divided into 36 states, plus Abuja, the Federal Capital Territory, and these states are grouped into 12 zonal police commands, at least at the time these data were collected in 2017 and 2018 (five additional zones were created in May 2020).

Author one collected 30 police interrogations with the permission of the Assistant Inspector General in charge of Zone XI police command, comprising Oyo, Ondo and Osun (in the Southwest). A Sony midget audio recorder using a micro cassette MC-60 was left with designated police officers in each state command. The recorded contents were burnt onto an audio DVD tape. The audio DVD tape files constitute a total of just over 20 hours (20.09.30 hours). A non-participant observation method was adopted, to avoid the 'Hawthorne effect' or 'observer's paradox (Labov 1966, 1972): a situation 'where people modify their behaviour when they know they are being watched or studied' (Oswald *et al.* 2014: 53). Although author one always set up the recording device, only the police interrogators were involved in the interrogation with suspects inside the interrogation room. Due to time constraints, 14 out of the 30 recorded interrogations were fully transcribed, with another 14 partially transcribed, chosen based on the relevance of their content in relation to the focus of analysis and their duration, having listened to all 30. Excerpts from across the 28 fully and partially transcribed interrogations feature in the analysis. The recordings are best considered 'opportunity samples' or 'convenience samples' because of the non-random

sampling method where ‘participants are chosen by the researcher on the basis of who is available at the time’ (Rasinger 2013: 50).

Out of the three state commands – Oyo, Ondo, and Osun – that constitute zone XI police command, two agreed to participate in this study: Oyo and Ondo. These are considered representative of the Southwest. Based on the relative size and population of the two states, author one adopted a proportionate sampling method to determine the number of interrogations to be recorded in each state, recording 21 in Oyo State Police Command and 9 in Ondo State Police Command.

The thirty criminal investigations, collected between September 2017 and January 2018, were sourced from four units of the State Criminal Investigation and Intelligence Departments: General Investigation, Special Anti-Robbery Squad (SARS), Homicide, and Special Anti-Kidnapping Squad (SAKS). The distribution of cases across states and alleged crimes are shown in Table 1.

Alleged crime	No. from Oyo State	No. from Ondo State	Total
<i>Killing cases</i>			<i>Total: 10</i>
Murder	8	0	8
Manslaughter	0	2	2
<i>Theft cases</i>			<i>Total: 16</i>
Stealing	7	3	10
Fraud	3	1	4
Burglary	1	0	1
Robbery	0	1	1
<i>Rape, Kidnapping, Assault, and Cultism</i>			<i>Total: 4</i>
Rape	1	0	1
Kidnapping	0	1	1
Assault	1	0	1
Cultism	0	1	1
Totals	21	9	30

Table 1. Distribution of cases across states and alleged crimes

Interrogations referred to in this paper are labelled by the alleged crime and a number, such as Murder 01, 02, etc, as in Examples 1 and 2.

Ethical approval was given by the University of Leeds ethics committee (ethics reference PVAR 17-110) and the Nigerian police authorities’ permission was given to record live interrogations. Each of the 30 suspects gave informed and signed consent and they were neither given nor promised any rewards for participation or pressured to participate. They understood that they had the right to withdraw their consent at any time. The suspects were also assured that their decision not to participate in the research would not have any negative effect on their cases. To ensure confidentiality, all names, places, and objects that have the potential for direct or third-party identification are removed and pseudonyms are used instead. Titles, ranks, honorific terms, and gender are retained for pragmatic reasons.

The interrogations were transcribed using Jefferson’s transcription conventions for analyzing naturally occurring interaction (Golato 2017), in order to capture the linguistic,

extra-linguistic, and contextual cues that are discussed. Rich transcription is necessary as 'there are many significant things going on in talk that parties to interaction treat as relevant, and that simple orthographic representation misses' (Hepburn and Bolden 2013: 57). Most of the conventional Jeffersonian symbols are used, including micropauses (.), timed pauses (0.7), overlapping [], quicker >< or slower pace < >, underlining to denote raised volume or emphasis, colons to indicate an elongated sound, capitals for louder or shouted words, and = to indicate latched utterances.

The Leipzig interlinear glossing method (Institute Max Planck 2015) is used to provide a word-for-word gloss and idiomatic translation of code-switched sentential utterances. To make the distinction clearer, the code-switched utterance is in **bold** while the idiomatic English translation is in *italics* (as in 1 and 2). However, if it is just a word that is mixed from another language, the English equivalent is indicated in a bracket after the word, as in: I saw him with that kòkòró (key) yesterday.

Critical approaches

A qualitative, discourse-pragmatic interactional sociolinguistic approach was adopted in the analysis of the data. Critical discourse analysis (CDA) is used to identify and discuss manifestations of power and a sociolinguistic approach is used to identify the functions of language alternation and its socio-pragmatic effects. Wodak (2007: 206), making a case for fruitful CDA research, canvasses this kind of methodological pluralism when she states that: 'an integrative pragmatic and discourse-analytic approach has to be complemented with a range of linguistic theoretical concepts as well as theories from neighbouring disciplines'. While CDA is adopted to track the power relations of the social actors, Communication Accommodation Theory (CAT) (Dragojevic *et al.* 2016) is deployed to explore the pragma-sociolinguistic implications of CS in the interrogation's social context.

CDA 'is a type of discourse analytical research that primarily studies how social-power abuse and inequality are enacted, reproduced, legitimated, and resisted by text and talk in the social and political context' (Van Dijk 2015: 466). There are many approaches to CDA, including: the socio-cognitive approach (Van Dijk 2018), the discourse-historical approach championed by Wodak and Reisigl and others (Wodak 2011), the multi-modal approach (Ledin and Machin 2018), and the dialectical-relational approach propounded by Fairclough (1992). All of these approaches are important, but the multi-modal approach is impossible without audio-visual recordings, so is not used here. Using Fairclough's version, this research brings together 'close textual and linguistic analysis', 'the macrosociological tradition of analysing social practice in relation to social structures and the interpretivist or microsociological tradition of seeing social practice as something which people actively produce and make sense of on the basis of shared common sense procedures' (Fairclough 1992: 72). Discourse as a social practice is 'constrained and shaped by social structure' (Fairclough 1992: 64), which includes the historical context of colonialism that has contributed to the complexity of Nigeria's relationship with English.

On the other hand, 'CAT [...] is a key theory of communication which uniquely combines intergroup and interpersonal, perceptual and behavioural, and contextual factors' (Giles 2016: 8). It was originally conceived by Giles as a theory to explain adjustments in accent, converging or diverging to minimize or emphasise the social difference between speakers, but has broadened to include all aspects of language use. It is concerned with the link between language, context and identity. The nexus of these three concepts is well captured in a Nigerian police interrogation situation, where English is the official medium of

interaction, but police and suspects make different code choices for strategic ends. CS can be evaluated in our analysis, as 'CAT provides a wide-ranging framework aimed at predicting and explaining many of the adjustments individuals make to create, maintain, or decrease social distance in interaction' (Giles *et al.* 2007: 133). CS to a shared local language (Yorùbá) or lingua franca (NPE) is an important code choice that works to produce persuasive and coercive effects in institutional interaction. In most contexts CS is seen as a strategy to aid communication, to promote positive affiliation, and to converge to the interlocutor's most comfortable language, in order to better accomplish joint goals (Giles 2016). However, in an interrogation, institutional goals are one-sided, whether they are those of the IPO or those of the suspect.

Social concepts of power, dominance, inequality and resistance find expression at the micro level of discourse having to do with discourse-pragmatic, and linguistic concepts like grammar, speech acts, common ground, code-switching, silence, interruption, laughter etc (Van Dijk 2001; Fairclough 1992; Kiguru 2014). Our analysis helps us to study how the macro concept of discourse power is demonstrated and negotiated through a variety of socio-pragmatic linguistic strategies, particularly CS, in the situational context of police interrogation. This is achieved by integrating CDA and CAT.

Code-switching as a socio-pragmatic persuasion strategy in interrogations

When IPOs and suspects CS they are making a linguistic choice which has socio-pragmatic goals. According to (Myers-Scotton 1998: 19) 'the goal of speakers is to enhance rewards and minimize costs; in two words, the goal is *to optimize*'. Optimising the effect of one's own choices involves negotiation of the 'rights and obligations which you wish to be in force between speaker and addressee for the current exchange' (Myers-Scotton 1998: 21). In this paper we conceptualise optimisation strategies in terms of their persuasive power. Central to persuasion as an argumentative act is the Aristotelian concept of rhetoric with its appeals to reason (logos), emotion (pathos), and credibility (ethos), which are marshalled by speakers to achieve diverse persuasive goals. Aristotle argues that rhetorical expertise in persuasion is displayed as the grounds for conviction (Dow 2015). Three overall strategies were observed in the use of CS as a persuasive strategy: warning/threatening, highlighting of shared socio-cultural knowledge, and swearing and cursing, which are discussed in the next sub-sections. Interrogators deploy persuasive strategies to optimise their discourse goals: collecting evidence for a prosecution, including achieving a confession. While interrogation aims to unearth the truth or otherwise of an allegation, the suspect often resists the 'police version' (Heydon 2005) of events in their own persuasive ways. Persuasion is therefore an important resource for both participants to negotiate their goals. The focus of our analysis is on cases in which CS is not taken-up by the interlocutor (non-reciprocal CS), as that was revealed to be the dominant pattern in our data.

CS to warn, threaten, and perform verbally aggressive acts

As the participant with institutional power, it is not surprising that it is solely police interrogators who use CS to warn, to threaten, or to engage in other verbally aggressive activity. When IPOs switch to their and the suspect's mother tongue to warn, they are indexing the cultural import of their turn that attempts to persuade the suspect to talk in ways that achieve interrogator discourse goals.

Excerpt 1 is from an interrogation with a murder suspect who is alleged to have killed his co-labourer. They lived in the same room, worked on the same rich man's farm, and

are from the same town in a neighbouring state, making them very close. On the day in question, they went to the farm together, but the suspect returned home alone. When asked about his friend's whereabouts, he said his friend had gone to work on another farm to make extra money, after completing his days' allocated work. A few days later their employer and landlord reported the missing person to the police, who found the decomposing body in a bush near where the two had worked. Excerpt 1 begins with an indication that the suspect has been held and detained for some time and possibly already interrogated.

Excerpt 1 Murder 05

5. IPO: I have brought you out again to interrogate you.
And I want you to tell me the truth.
Má ʃe agidí tí kò ní Ìtumò.
Don't do stubbornness that has no meaning
Don't be unreasonably stubborn.
Don't waste your time and don't waste my precious time.
ʃé o gbó?
Do you hear?
Did you hear me?
6. Susp: Yes
7. IPO: Are you ready to tell me the truth?
8. Susp: Ye::s, (0.4) I will tell you the truth.
9. IPO: **Sé o mò wípé'omọ́ tó bá sípá nìyá è gbé?**
Do you know that child that raise hand mother his carry?
Hope you know that it is the child that raises his hands that the mother carries.
It is only when you tell me the truth that I can help you in any way.
Iró kò jásí nìkan kan
Lie does not result to something one
Lies do not amount to anything.
We will still get to know the truth. That is certain.
Ran ara re lówó ká lè ràn é lówó.
Help body your we that can you help
Help yourself so that we can help you.

Bringing the suspect out again for interrogation, suggests that an earlier approach failed to make the suspect cooperate. It is, therefore, not inconsequential that the interaction begins with five instances of sentential CS over three IPO turns. Two are explicit warnings as directives (turns 5 and 9) and the other three are more implicit, with a proverb used in turn 9. Together these create an atmosphere of warning, appealing to the socio-cultural sensibility of the suspect, on the one hand and reducing the social distance on the other. Warning the suspect not to be 'unreasonably stubborn' but also 'help[ing] [him]self' is paradoxical, as the interrogator and suspect have opposite goals and the former has institutional power. Convergence to the shared code is powerful because it makes the warning more accessible and proximal. The combined effect of this strategy is a discourse manipulative act that hinges on discourse power inequality.

In this context, where NE is the 'unmarked code' (Myers-Scotton 1993), the IPO's marked use of Yorùbá obliges the suspect to open up. As Myers-Scotton (2007: 108) says, the CS 'signals that the speaker is trying to negotiate a different rights and obligations balance

as salient'. While Myers-Scotton notes that such switching 'can be positive by narrowing social distance if it is indexical of a relationship of solidarity, given the narrative matrix of association between varieties and social meanings in the community', in this case the solidarity is synthetic and unlikely to be wanted; it is certainly not reciprocated. Nevertheless the move from the 'they-code' to the 'we-code' (Gumperz 1982) strengthens the obligation for the suspect to talk.

The warning is also amplified by the use of a Yorùbá proverb (at the beginning of turn 9). It bears a resemblance to the English proverb, 'Heaven helps those who help themselves', and is used in Yorùbá society to encourage honourable behaviour. This more subtle coercion to confess (which the suspect eventually did) underlines the socio-cultural and socio-pragmatic forces at work, as the powerful state is compared with the nurture of a mother and followed up with a warning not to lie.

Excerpt 2 also uses CS to produce social affiliation while indexing social responsibility. The suspect is alleged to be the lookout for a kidnapping gang. He went to a shop to buy a fishing net around 7:30 pm, allegedly wearing army shorts with an army cap, a form of dress used by kidnapers in the area. Hardly had he entered the shop than a group of kidnapers appeared in a speed boat and ferried away the shop owner and his young son. People present at the scene of the incident arrested the suspect and handed him over to the police.

Excerpt 2 Kidnapping 01

39. IPO: Who else came with you that day from Escravos?
40. Susp: It was only that Isaac (0.2). He is the chairman of that meeting.
41. IPO: So, it was only you and Isaac that came together?
42. Susp: Ye::s, it was only me that came to that place to buy the (fishing) net. Yes.
43. IPO: (.hhh) Wai::t ↓wait, my friend let me tell you something
<Òré mi, o yẹ kó o tí mò báyii pé bi ọ̀rọ̀ yìi se n lẹ, kò sí ibi tí o le fara pamọ̀ sí mò>
Friend mine, it supposed you know now that the way this word is going, there is no place you can hide to again.
My friend, you should know now that going by what is unfolding, there is no hiding place for you anymore.
There is no amount of lies you want to tell. Those that saw you are still saying they saw you well and the shorts are still on you. So just tell us where you put the cap so that we can go and take it from there.

In this excerpt, prior to the CS turn 43, the IPO and the suspect engage in a struggle over facts, signalled in the IPO's use of conversational inference (who else) in turn 39, attempting to make a link between him and the kidnapping gang, and the so-prefaced question (Johnson 2002) in turn 41 that expects confirmation but signals doubt, versus the suspect's use of the word 'only' in turns 40 to 42 and the prolonged, hesitant 'Ye::s'. In a move to seemingly resolve this struggle, the CS in turn 43 first aims to create an atmosphere of social cohesion by calling the suspect 'ore mi' (my friend) after an utterance-initial audible inhalation (.hhh) and prolongation of the word 'wai::t'. The CS sentence is noticeably slower (indicated by < >) building up a sequence of prosodic elements that have semantic-pragmatic significance. While the audible inhalation (.hhh) is indicative of an intending adjustment, the prolongation

of the warning 'wai:t' with a falling pitch signals the shift to the warning tone and the slowness of delivery of the CS adds weight to the marked utterance for clarity and emphasis. Likewise, the emphasis on 'Ore mi' (my friend) in Yorùbá indicates the social proximity of the warning. Even the utterance terminal adverbial 'mó' (any longer) marks the previous struggle as lies. It is noticeable that after the CS, the interrogator returns to English, signalling that the rhetorical effect that was aimed for is complete, and gives a new directive to tell the truth.

Interrogators also deploy CS to perform threatening and verbally aggressive acts: utterances that are implicitly or explicitly capable of eliciting or causing fear in the suspect and thereby influencing them to confess to a crime. Through switching to the local code, rather than using the matrix language, speakers are seen as 'doing things with words' (Austin 1962) that are intentionally face-attacking (Culpeper 2005: 38). While warning acts are also face-attacking, threatening is a verbally aggressive act that can attack the suspect's sense of self-worth and is implicitly or explicitly capable of causing fear in the suspect. Excerpt 3 sees the use of indirect and direct threats.

Excerpt 3 Stealing 02

201. IPO: What substances were you into before? Tell me the truth!
202. Susp: My lord, to say the truth, before, I was smoking weed.
203. IPO: You smoked weed?
204. Susp: Yes = that was before. And I have stopped it when I have been preached to by some clerics.
205. IPO: Where are you now? Which police station is this that you are?
206. Susp: ((Confused)). This is Adákú.
207. IPO: ADÁKÚ!
208. Susp: Yes
209. IPO: Where in Adákú?
210. Susp: Dòjé
211. IPO: *Ibí tó o wàyí ní wọn ní CID, Adákú. Wọn tí gbé e kúrò ní àgọ̀ Olópáá Àdàbà. Wọn tí gbé e wá síbí yí. O le gba ibí yí dé ogbà ẹ̀wọ̀n, tí o ò bá ẹ̀tán láti jẹ̀ wọ.*
Where you are this they are calling CID Adákú. They have carried you from station police Àdàbà. They have carried you come to here You can follow here this to yard prison if you are not ready confess.
This is CID, Adákú. You have been transferred from Àdàbà Police Station to this place. You can from here go to jail if you are not ready to confess/say the truth
212. Susp: *Olúwa mi, ẹ̀dàrí jìn mí*
Lord my, you forgive me.
My lord, forgive me

In excerpt 3, the interrogator's goal is to secure a confession of substance abuse. As in excerpt 2 there is a struggle over the truth with the IPO lacking trust in the suspect's account, which precedes the CS. The question in turn 205 marks a shift in strategy which is followed up by the CS; these are designed to create fear in the suspect and make him tell the truth. Adákú is the location of the Àgídìgbo State Police Headquarters in the larger Dòjé area of Adáńdán city, but it is a feared police institution that no suspect likes being transferred to,

because it is synonymous with torture, punishment and inhuman treatment. Mere mention of the name ‘Adákú’ evokes fear in Adáńdán inhabitants (Ajayi 2015; Human Rights Watch 2005) and the most dreaded division is the Criminal Investigation Department (CID). So, the interaction from turns 205 to 210 negotiates an indirect threat with the CS in turn 211 marking the climax through the direct expression of a threat: going directly to jail. This strategy seems to produce a threatening effect, given the deferential apologetic response: ‘*Olúwa mi, ẹ dári jìn mí*’ [My lord, forgive me]. While ‘forgive me’ implies an admittance of wrongdoing, the utterance also expresses emotional desolation.

Sometimes there are physical threats as well. Excerpt 4 exemplifies one such instance.

Excerpt 4 Murder 04

125. IPO: Fine. When you got in there, did you tell the doctor that you treated her two days before then?
126. Susp: No sir. It is a secret issue and more so, she was not referred there (to the hospital) officially.
127. IPO: ***ÌKÀ ÈÈYÀNNÌ É!***
Wicked person are you
You are a wicked person!
Have you forgotten that you too will die some day?
BÓ O FÉ, BÓ O KÒ, o ó jẹ ìyà ẹsẹ rẹ bí aje ọrọ náà bá sí mó ọ lórí!
Whether you like, whether you don’t, you will eat the punishment of your sin if the faults fall on your head.
Whether you like it or not, your due punishment will be meted out to you if you are found culpable!

The short exchange in excerpt 4 is from an interrogation with an unqualified doctor who is alleged to have taken advantage of a patient who had undergone a series of abortions in his clinic. After befriending and impregnating her, he is alleged to have aborted the pregnancy and the woman died as a result of complications. The interrogator expresses the extent of the criminality involved in the alleged action when he code-switches to perform a verbally aggressive act in turn 127 (You are a wicked person!) in what (Heuback 2009: 15) calls ‘intense language’: language that indicates the extent to which it deviates from neutrality. This judgmental and value-laden language emotionally labels the suspect and attacks his sense of self-worth before (after continuing in English for one sentence) performing a physical threat of ‘due punishment’.

While interrogators use CS for persuasive institutional reasons, using warnings and threats via socio-pragmatic means, suspects and interrogators, relying on shared socio-cultural knowledge deploy CS to persuade or attempt to negotiate, as shown in the next section.

CS to persuasively appeal to shared socio-cultural knowledge and expectations

CS can be used persuasively to appeal through shared mother tongue to the shared socio-cultural signifiers. This strategy is used by both interrogators and suspects, though it is more beneficial for interrogators. IPOs make a persuasive appeal by highlighting the moral laxity and socio-cultural deficit in the suspect’s narrative. The strategy is logically persuasive because it weakens the suspect’s narrative on account of their non-conformity with societal norms and expectations and questions the acceptability of their alleged action or inaction

within the shared cultural value system. Excerpt 5 exemplifies this point. The excerpt is a part of an interrogation of a 22-year-old polytechnic student who is a robbery suspect. Following a misunderstanding with her boyfriend, she started dating another boy and two months into the new relationship, she was tracked and arrested by the police through an expensive mobile phone she took from the new boyfriend's apartment. Upon investigation, the police discover that he is a member of a robbery gang and the said mobile phone was stolen in addition to a large amount of money.

Excerpt 5 Robbery 01

220. IPO: So you ate and had fun? Do you know that it is because of the little money you are getting from him that you have landed yourself in a big problem now?
Ìwé làwọn òbí rẹ ní kó o lọ kà. Ìgbà tó ò lówó lówó, kín ló dé tó ò béèrè owó lówó àwọn òbí rẹ? Ìgbà tí fòònú rẹ bajẹ kín ló dé tó ò sọ fún mummy rẹ tàbí kó o padà lọ silé lọ sọ fún mummy rẹ pé fòònú rẹ bà jé? Šé boyfriend rẹ yìí ló rán ẹ lọ sí ilé iwé ni dé bi wi pé o lọ gbéšẹ lé fòònú rẹ méjì?
Book your parents said go to read. When do you not money in hand, why do you not ask money in hand of your parents? When phone your spoilt, why you do not tell mummy your or you back go home go tell for mummy your that phone your spoilt? Is boyfriend your this that send you go to school so that you go step on phone his two?
It is school that your parents sent you to. When you lacked money, why didn't you ask for money from your parents? When your phone developed a problem why didn't you inform your mother or go back home to tell her that your phone has a fault? Is the boy in question the one that sent you to school to the extent that you went to confiscate his two phones?
Do you know you are a thief yourself? Answer me before I give you a slap. Do you know you are a thief? You took two expensive phones in your boyfriend's apartment, just to pressurize him to give you money.
221. Susp: ((Sobbing)) Not that I = stole the phones.
222. IPO: It is not that you stole the phones, but you impounded them? You seized them, *àbí?*
223. Susp: On my mind, I thought I seized the phones so that he will come to me and give me the money. But not that I stole them.

In excerpt 5, the IPO expresses a cause-and-effect inference from the suspect's relationship with her new boyfriend by first asking a rhetorical question: 'Do you know that it is because of the little money you are getting from him that you have landed yourself in a big problem now?' The qualification of 'money' with 'little' and 'problem' with 'big' is pragmatically important, as the IPO draws a cost-benefit analysis of the suspect's action (of getting money and collecting expensive phones) and the potential charge of aiding and abetting crime or being an accomplice in a robbery. 'Little' minimizes the suspect's gains while 'big' maximizes the potential punishment for her alleged crime if found culpable. Emphasising and amplifying the moral and socio-cultural inappropriateness of the suspect's action, the IPO switches to Yorùbá. In her Yorùbá utterances and through successive rhetorical questions, the IPO portrays the suspect as an irresponsible, covetous, and wayward woman, also reminding her of the societal expectation of a responsible daughter. The

question tag ‘àbí’ at the end of turn 222, which roughly translates to ‘right’, is an invitation to the suspect to confirm the investigator’s stance expressed in turn 220, though probably should not be considered code-mixing. This is because the use of ‘àbí’ as a discourse particle in similar contexts has been described as a question tag traceable to colloquial NE (Achiri-Tabo and Lando 2020) which results from decreolisation. Nevertheless, the more colloquial tone is similarly persuasive.

The significance of this CS is to foreground the socio-cultural, moral unacceptability and impropriety of the suspect’s action and to thereby logically persuade her that she is in the wrong. This stance is further pursued by the IPO as she reverts to NE with her rhetorical question at the end of the CS: ‘Do you know you are a thief yourself?’ which is followed up by a physical threat in NE. In response to the IPO’s logical appeal in the shared code and the return to the matrix language with a physical threat, the suspect breaks down, but continues her denial.

While excerpt 5 exemplifies interrogator CS to highlight socio-cultural expectations for persuasive ends, excerpts 6 and 7 show CS examples from suspects who attempt to persuade the IPO through indexing shared socio-cultural knowledge. Excerpt 6 is a part of an interrogation in which a man in his sixties is alleged of raping his neighbour’s 14-year-old daughter.

In excerpt 6 the suspect uses CS twice to plead for mercy, in both cases shifting blame, first to the devil (turn 44) and then to a neighbour’s bewitchment of him (turn 60), appealing to the shared socio-cultural knowledge (Mey 2001) of the Yorùbá belief system which recognizes bewitchment, diabolical powers, and spiritual attack, as well as the potency of their negative influences on human affairs. In both cases the IPO rejects the appeal, both in the echo question (turn 45) and by asking ‘What is the meaning of all this you are saying?’ (Turn 61), as well as by reverting to NE, rather than matching the suspect’s chosen code. While the suspect fervently pleads for mercy on account of his old age, engaging in a logical fallacy called *argumentum ad misericordian* (i.e. appeal to pity), a situation in which the audience is asked to accept an argument not because of the strength of the argument but rather because of the speaker’s piteous circumstances, the interrogator rejects his appeals. The reversed polarity question (Koshik 2002: 1855), ‘Were you not caught in the act?’ (turn 41), projects a strong epistemic stance, forcing the suspect to briefly concede, but then describes it as befriending. In blame-shifting to the devil the suspect uses his bilingualism to express the emotional aspects of his appeal drawing on the greater emotional resonance that first language expressions have for speakers (Caldwell-Harris and Ayciçeği-Dinn 2009: 193). The suspect discursively leverages on widely shared socio-cultural knowledge to position himself as helplessly contending with superior diabolical powers that no human can defeat.

Excerpt 7 is a continuation of excerpt 2, a police interrogation with an alleged kidnapping suspect. The suspect uses CS to achieve a particular pragmatic end with the additional use of honorifics (the pronoun *ẹ* in turn 51) to boost his plea for mercy. The English equivalent of ‘*E*’ + ‘*dákun*’ is ‘please sir’. It indexes the suspect’s weak and compromised position and marks the emotional plea for help. (Note that this strategy is also used by the suspect in excerpt 6 in turn 44.)

In Yorùbá, honorific pronouns are plural pronouns but used to refer to one person. For instance, ‘*ẹ*’, ‘*yin*’, and ‘*ẹyin*’ and ‘*wọn*’, ‘*wọn*’, and ‘*àwọn*’ are second and third person plural forms of the English ‘you’ in subject and object positions in Yorùbá which can be used

Excerpt 6 Rape 01

39. IPO: What brought you here?
40. Susp: They said, they said I was having an affair with Tonton.
41. IPO: [They said you were having an affair, or you were having an affair?
Were you not caught in the act?
42. Susp: (0.5) .hhh okay. I am truly befriending her.
43. IPO: What pushed you to doing that?
YOU::R GRAND DAUGHTER'S AGE MATE!
44. Susp: *Iṣé ÈṢÙ ni. Ẹ sá bá mi bè é. Ẹ bá mi bè é. Ẹ dákun.*
Work DEVIL is. You just help me beg her. You help me beg her. You please.
It is the work of the DEVIL. Please, just help me beg her. Help me beg her, please.
Ẹ dákun. Ẹ má jẹ kí n fewú orí lọ ọ sẹwọn. Ẹ má jẹ n sẹwọn pètú ewú orí. Ẹ dákun.
You please. You not let me to grey hair on head to do prison. You not let me do prison with grey hair head. You please
Please, don't let me go to jail with grey hair. Don't let me serve jail term with grey hair, please.
45. IPO: Work of the devil?
[10 intervening turns]
55. IPO:Are you not old enough to be head of a clan at this your age? Don't you know that what you have done was terrible?
56. Susp: It is (.) the handiwork of (.) the wicked ones
57. IPO: What is the meaning of that? What do you mean by it is the handiwork of the wicked ones?
58. Susp: Ah! Ah! Bello, Bello.
59. IPO: [What did Bello do?
60. Susp: *Bello! Mo rọwọ rẹ o. Ibi o bámi dé rẹ é. Ah! Ibi o sìn mí dé nìyí o. Onísèè re jẹ o.*
Bello! I saw hand your o. Where you followed me to here is. Ah! Where you accompanied to here is o. Your errand runner delivered o.
Bello! I can see the repercussion of your bewitchment on me. This is how far you have dealt with me. Ah! This is how far you have dealt with me. I can feel the extent of your diabolical powers.
61. IPO: What is the meaning of all this you are saying?
62. Susp: Myself and Bello = are fighting over a parcel of land in my area and he threatened that he would deal with me diabolically.
63. IPO: He would deal with you!
64. Susp: He threatened he would deal with me diabolically. That very day I have a

Excerpt 7 Kidnapping 01

50. IPO: The person you (and your gang members) kidnapped, where did you plan to take him to?
51. Susp: The soldiers have beaten me enough, they have pestered me to confess but I didn't know anything about the case.
Tí mo bá mọ̀ nṛkan kan nipa rẹ̀ n kò ní máa fiyà jera mi tó báyii. Ẹ̀ dákun n kò mọ̀ nṛkan kan nipa rẹ̀. Ẹ̀ sàánú mi.
If me know one thing about it, me not be taking suffering punish myself at this. You please I don't know one thing about it. You mercy me.
If I knew anything about it, I would have told you. I would not be punishing myself this much. Please sir, I did not know anything about it. Sir, have mercy on me.
The man (the victim) is even a nice person to me. Sometimes when I come to buy things (wares) from him, he would give me money for taxi.

to denote respect for age, power or status, when referring to one person, and which the addressee is not obliged to reciprocate. They are pronouns of power (Brown and Gilman 1960) rather than solidarity, which can be used persuasively. Lamidi (2008: 239), in his analysis of pronoun choice and grammaticality in Yorùbá-English code-switching, notes that 'such pronouns are used to locate people on the social ladder in terms of usage - master/slave/junior/senior/elder in the society'. In this context, the suspect is much older than the IPO but the former shows deference to the latter's power and status for persuasive purposes.

Choice of code is a strategy for 'performing different kinds of local identities which index a range of social meanings and relationships' (Bock 2011: 183) and has context-bound interactional purposes. In everyday life in Yorùbá society, the use of honorifics by an elderly person to address a younger person portrays the elder interlocutor as humble. And this invariably boosts the younger interlocutor's ego and self-esteem. It consequently imposes on the addressee a positive disposition toward such an elderly interlocutor, making this a socio-pragmatic persuasive CS strategy.

While the previous sub-sections have focused more on how police and suspects deploy CS for logical and emotive purposes (logos and pathos) as persuasive strategies, in the final sub-section we discuss appealing on the basis of credibility and sincerity (ethos).

Swearing and cursing in CS utterances to show sincerity

Both IPOs and suspects use swearing and cursing to show their credibility, sincerity or authority though there are fewer uses by IPOs. By swearing we mean speech acts uttered to lend credence or veracity to a claim while using the name of God or a deity to validate their claim. Cursing, on the other hand, involves the speech act of invoking the name of God or other supernatural beings of the Yorùbá traditional belief system to invite adverse consequences or death to oneself or another person, to validate a claim as true.

Swearing as a construct in this study is viewed slightly differently from its prevalent use in most Western cultures as the act of using taboo, stigmatized, profane language with the purpose of expressing the speaker's emotional state (Jay and Janschewitz 2008; Vingerhoets *et al.* 2013; Pavlenko 2008; Dewaele 2004, 2010, 2012). Rather, it is viewed from an African fatalistic perspective as the act of giving additional/special credence 'to what one says or does

as a solemn appeal to God (or to a deity or something held in reverence or high regard) in witness to the truth of the statement or the binding character of a promise or undertaking' (Abdel-Jawad 2000: 217). However, while the communicative functions of swearing are somewhat the same in the Western and African contexts, the structural and propositional components of the concept vary significantly in the two societies. The type of swearing we discuss in this study is what Abdel-Jawad (2000) calls conversational swearing to distinguish it from swearing as a formal oath, such as in court or by assuming a public role.

In this section, we show one example of a suspect using swearing with the goal of authenticating the veracity of their claims and one from an interrogator in assuming and boosting authority. The kidnapping suspect in excerpt 8 seeks to convince the IPO that his claim of not putting on any army cap at the scene of the incident, as alleged, is true.

Excerpt 8 Kidnapping 01

45. IPO: Where is the cap you put on yesterday?
46. Susp: I did not put on anyhow cap. This was the cloth I wore.
Ojú Ọlórún tó gbogbo è. Mo fí Ògún tí mo fí n sísé bíra!
Eye God see everything. I take Ògún that I work with swear.
God sees everything. I swear to Ògún (who is) the god of my profession.

In turn 46 the suspect switches to Yorùbá to invoke Ọlórún (God) as the seer of all things, to express his desperation to establish the veracity of his claim, with CS to the marked language serving an emphatic purpose (Nwagbo 2018: 53), because he has repeatedly denied this allegation in his previous turns. He also swears by Ògún, the god of his profession. God's name is the highest and most venerated authority in Yorùbá culture (Igboin 2019; Bewaji 1998; Idowu 1966; Johnson 1921) and Ògún is the god of iron and is believed to be a temperamental and fierce god whose name must not be invoked or sworn by if the swearer is not very sure of their claim, as Ògún's judgement/punishment is believed to be instantaneous (Bewaji 1998; Idowu 1966). This kind of swearing is what Jay and Janschewitz (2008) call propositional swearing because it is consciously planned and intentional and could even be considered impolite, as it attempts to usurp the power of the IPO. This 'strategic rudeness' (Beebe 1995) shows stronger commitment to the content and boosts the veracity of the utterer's claim. Swearing in this context is therefore 'used for confirmation, affirmation and some sort of moral or legal binding' contract (Abdel-Jawad 2000: 221). Double swearing in this instance creates intensity and emphasis (Nwagbo 2018). When the suspect code-switches to Yorùbá to engage the ethnic identity he shares with the interrogator, the shared sociocultural ethos of this identity validates the claim that God's name must not be invoked in vain and indexes the suspect's commitment to the truth and the interrogator's responsibility to believe him.

Excerpt 9 is an example of one of the instances where an interrogator code-switches to swear. In this particular case, the IPO uses the switch to give valence to the subtle threat in NE in the first part of his utterance in turn 75: 'see, if you like...' and also to give expression to his frustration emanating from the suspect's uncooperative stance.

The interrogator's swearing in this case is a 'commissive act' (as well as a threatening act) expressing his avowed commitment to ensuring that all the suspects are identified and brought to justice. But it is categorised as a swearing act because of the overriding appeal it makes

Excerpt 9 Murder 06

65. IPO: What is the relationship between you and kk?
66. Susp: He's my friend.
67. IPO: Where is kk now?
68. Susp: I don't know.
69. IPO: When did you see him last
70. Susp: Humm e-em-em, last week Tuesday
71. IPO: Tell me what happened on Tuesday at the party.
72. Susp: I was not really at the party because I didn't stay long because I was travelling. But I learnt that some guys came to disrupt the party and fight broke out.
73. IPO: Where are your other friends that attended the party?
74. Susp: I don't know.
75. IPO: See, if you like say the truth. If you like don't say the truth.
Bí Ọlórún tí ń be tí ẹ̀mí rẹ̀ sì wà, mǎǎ ríi dájú pé gbogbo yín ni mo fin jáde léyọ kọ̀ọkan tẹ ẹ̀ sì fojú winá òfin.
As God is, and His spirit is, I will see it certainly that you all is I smoke out one by one and face the fire of the law.
As God lives and His spirit lives, I will ensure you are all identified one by one and be brought to justice.

to validating the intended course of action with the name of God. It is worth noting that the IPO's swearing exudes discourse power and control over the suspect. As a representative of the government, he has the official power to follow through with his swearing utterance; otherwise, the utterance becomes 'infelicitous' (Austin 1962). Swearing and 'reactions to swearing are pointedly marked by power and status relationships' and 'swearing... may also be socially advantageous, and therefore likely, as instrumental aggression' (Jay and Janschewitz 2008: 274-275). In this case, the interrogator uses aggression which is boosted by authority to create institutional power.

Related to swearing, cursing is a universal speech act found in all languages and used by speakers of all ages, though there is considerable variation in use or avoidance, as well as hearing or being the recipient of it (Horan 2013). Cursing belongs to taboo language, so it is a risky strategy for boosting authority. In invoking God or other supernatural beings to bring 'misfortune, injury, misery or death' (Sharifi and Ebrahimi 2012: 1911) to oneself or another, it is also used to validate the speaker's claims as true. Cursing oneself and cursing another are emotion-laden speech acts, which are uttered by suspects to convince interrogators of the validity of their claims. Excerpt 10 is from the kidnapping case we have seen in excerpts 2, 7 and 8.

Establishing the fact that the suspect wore the alleged cap has serious implications for linking him to the kidnapping gang. The suspect therefore has the responsibility of explaining himself out of the allegation. To realize this discourse goal, he switches to Yorùbá to curse himself, as a resource to validate his claim and convince the interrogator that his claim is genuine. It is an 'if-then' curse, which increases the burden of sincerity on the part of the suspect and believability on the part of the interrogator, as it is the belief of the Yorùbás that no sane person would invoke such a heavy curse on him/herself for a falsehood. However, in this context it also indexes the power differential between the interrogator and the suspect, as the suspect deploys every interactional strategy (including placing a curse on

Excerpt 10 Kidnapping 01

43. IPO: ... just tell us where you put the cap so that we can go and take it from there.
44. Susp: If I am lying = I don't lie. That my brother, Wazobia knows me. He knows I don't tell lies. He told me that I should come the way I was (dressed) when I went to buy the fishing net. And that was how I went to meet the soldiers. I cannot lie.

Tí mo bá paró, gbogbo nńkan tí mò ń wá láyé kí n má rí i. Àwọn ọmọ mi méfèèfà tí mo bí kí n má jèrè wọn.

If I lied, all things I am looking for in life may I not see them. They children my six that I born, may I not profit them.

If I lied, may all good things I desire in life elude me. And may all the six children that I have never prosper in life.

himself) to convince the interrogator that his claims are true. Inability to achieve this holds a potentially negative outcome for the suspect but the interrogator is not under any obligation to curse himself to convince the suspect, making this strategy unique to the suspect.

Excerpt 11 is an instance of cursing another to validate one's claim of innocence. In this case the suspect is suspected of stealing a motorbike. He lives in an eight-room bungalow with fellow low-wage artisans among who are commercial motorbike riders. He has confessed to stealing a woofer speaker from another co-tenant's room but denies stealing the bike. The interrogator sees him as a prime suspect, finding it difficult to believe his narrative. As a result of this, there is pressure to convincingly establish his innocence. This kind of cursing is different from cursing oneself, because it detaches the utterer from the target of the curse.

Excerpt 11 Stealing 02

121. IPO: Why is it that it is when you have problem that you believe in God?
122. Susp: Ah! I believe God now!
123. IPO: Why didn't you believe before now?
124. Susp: I always thought the Muslim Alfas and Christian Pastors I am close to were deceiving me. But as I was in the detention, I was regularly praying five times a day; though without water to do ablution; and also praying in Jesus' name; **Mo tún ń sọ wí pé kò ní dára fẹ̀ ní tó gbé ọkadà yíi, kò ní sun wọn fún un.**

I also was saying that it will not be good for the person that carried okada this, it will not be well with him.

I was also saying it will never be well with whoever stole the Okada; may he/she never prosper in life.

Turn 124 reveals an unusual combination of incongruent speech acts which show his frantic and angry efforts to convince the interrogator of his innocence. He states in English that he prays the Muslim way and the Christian way, though he is a Muslim, as he affirms in other parts of the interrogation. The two religions dominate Nigerian society and their doctrines are sharply polarised by the political elites in Nigeria for political gains (Isaac 2020). It is paradoxical to pray in these two ways, but is clearly a strategy used to boost credibility. Ending the prayer with a curse in the code-switched part of the utterance ('may

he/she never prosper in life') is also incongruous but is part of the suspect's appeal through religious authority to persuade the IPO of his credibility. This committed stance continues later in the interrogation with the suspect using a raised voice to also curse himself. Alia-Klein (2020: 492) describe 'anger as a social bargaining tool' and 'vocal changes' as parts of the variables that interlocutors leverage for the linguistic expression of their state of mind and to bargain better discourse outcomes. Here they are used to boost authority and attempt to persuade the IPO of their sincerity and, therefore, credibility as an innocent party.

Conclusion

CS is a marked activity in Nigerian police interrogation, producing communicative alignments that, on the part of police officers, persuade and coerce in an attempt to transform the suspect's evidence and that, on the part of suspects, try to recruit support from their weak(ened) position. In both cases, then, CS is used to negotiate power, whether that is from an already elevated position of power or from an inferior one. While interrogators use CS to exploit the inequalities that already exist in the asymmetrical discourse situation to try to manipulate the suspect to open up or confess to incriminating actions, suspects recognise these moments as coercive and usually do not reciprocate the CS, downplaying the shared code of their first language, Yorùbá, and aligning themselves with the formal matrix language of the interrogation. Similarly, interrogators usually fail to reciprocate suspects' CS, signalling their rejection of their appeals for mercy or use of shared socio-cultural knowledge to recruit support for their position.

In terms of the pragmatic functions of CS, some resources are used exclusively by police, some by suspects, and some are shared. Police officers use CS to warn and threaten suspects. Using the resource of social affiliation they index social responsibility on the part of suspects, highlighting their position as citizens who have a duty to do the right thing and own up to their transgressions. This is an activity that is unique to the more powerful participant. Threatening and verbally aggressive acts are also limited to interrogators who seem to view their institutional position as giving them the right to use these tactics. As the interrogations are only audio-recordings, it is impossible to tell whether suspects have been subject to the kind of physical abuse that has been reported in the press and which led to the protests described earlier in this paper, but the distress of suspects is evident at times and evidenced in the emotional outbursts and sometimes desperate appeals discussed above. Suspects use CS to plead for mercy and to curse themselves and others as a way of expressing the sincerity and truthfulness of their claims. Speaking from their inferior position, they mobilise CS as a powerful resource to align their code with the interrogator's non-institutional identity, in order to try to gain interactional leverage and to mitigate their actions. However these attempts are mostly unsuccessful in terms of transforming the interrogator's stance. Nevertheless, by their use, suspects succeed in registering their positions in the record. At the same time, since police interrogations are not currently audio-recorded in Nigeria, it is unlikely that these details will make it into the official written record of the interrogation, a circumstance that further points to the need for audio-recording in all jurisdictions, as important defence material is potentially lost.

Both interrogators and suspects use CS to highlight shared socio-cultural knowledge. For interrogators, this performs moral confrontation and signals the moral expectations of citizens and moral inappropriateness of the suspect's actions under the shared socio-cultural system, making this another powerful coercive resource. For suspects, appealing to shared socio-cultural knowledge through the shared non-institutional code of Yorùbá appeals to

and tries to persuade the interrogator that certain actions and circumstances are beyond their control. Both interrogators and suspects also use swearing, invoking God and deities, to express their sincerity. This is an emotional act that draws on deep-seated beliefs and uses CS to emphasise the depth of conviction. In excerpt 8 we saw the suspect invoke Ògún, ‘the god of [his] profession’ to give special credence to his claim that he did not wear a particular type of cap that would mark him out as a kidnapper. His invocation of the ‘all-seeing God’ is a solemn appeal that underlines his authenticity. In excerpt 9, however, the interrogator’s use of CS to swear is delivered alongside a threat to ‘ensure that you are all identified and brought to justice’, making his commitment especially coercive and authoritative.

The sociolinguistic implications of CS as a resource in police interrogations are clear. CS to a shared non-institutional code, such as Yorùbá, is a resource that exploits social hierarchies within and outside the interrogation room. Police officers already have powerful language at their disposal; they are the questioners. But CS is a resource that adds to that repertoire to increase coercion at critical points in interrogation. We have seen that interrogators can switch to Yorùbá and back to English within a turn to mark a particular act, such as warning or morally confronting the suspect. Since this is a code that interrogator and suspect share, communicative alignment is used to make social demands on the suspect to respond. With such powerful resources at their disposal, it is unthinkable that physical aggression is ever justified. It is clear that the power of CS as an interrogator’s resource is one that amplifies their ability to coerce self-incrimination and confession. Returning to the social responsibility of police officers to serve their communities that we mentioned at the start, CS is a resource that needs to be recognised as a particularly manipulative and synthetic social solidarity. The role of English in this situation cannot be overlooked either. Since the interrogation has to take place in NE, this gives CS to Yorùbá a special status that it would not have if the interrogation took place in the shared language of the interrogator and suspect. This exemplifies the complicated role of English as an official language in post-colonial Nigeria.

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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* (χ^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 file¹. 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 offence². 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 letter³. 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 Foundation⁴. 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%⁵.

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?	According to the notification, Sandra sustained the following injuries: [...] <i>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

¹This 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.

²Copies of the anonymized written records are available upon request.

³Experimental 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.

⁴The Faculty of Law at the University of Basel is the previous affiliation of both authors.

⁵This 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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Fases de uma audiência preliminar no Juizado Especial Criminal: uma abordagem linguístico-interacional

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Abstract. *This paper aims to investigate the overall structural organization of a preliminary hearing in the Special Criminal Court, a court which is responsible for judging misdemeanor cases. The research is based on the theoretical-methodological approach of Conversation Analysis (Sacks et al. 2003 1974), focusing on studies of institutional talk-in-interaction (Drew e Heritage 1992; Roberts e Sarangi 2005; Robinson 2013), as well as combining concepts from Interactional Sociolinguistics (Gumperz 1999; Gumperz, J.J. 2002). The results show four phases: opening, that occurs when the conciliator takes a roll call and greets the parties; presentation of the problem, which happens when they explain legal concepts to laypeople; offering to file the case, when the conciliator tries to persuade the parties to file and close the case; and ending, that takes place when the parties sign the paper agreement.*

Keywords: *Talk-in-interaction, Special Criminal Court, Overall Structural Organization.*

Resumo. *O trabalho objetiva investigar a organização estrutural global de uma audiência preliminar no Juizado Especial Criminal, órgão da justiça responsável por julgar delitos de menor potencial ofensivo. A pesquisa baseia-se na abordagem teórico-metodológica da Análise da Conversa (Sacks et al. 2003 1974), com o foco em estudos dedicados à análise da fala-em-interação institucional (Drew e Heritage 1992; Roberts e Sarangi 2005; Robinson 2013), aliando também conceitos da Sociolinguística Interacional (Gumperz 1999; Gumperz, J.J. 2002). Os resultados mostram quatro fases: abertura, marcada pelo apregoamento e saudação; apresentação do problema, em que ocorre o esclarecimento das leis; oferecimento do arquivamento, na qual acontece a argumentação a favor do arquivamento do processo e o arquivamento; e fechamento, marcado pela assinatura do termo de conciliação.*

Palavras-chave: *Fala-em-Interação, Juizado Especial Criminal, Organização Estrutural Global.*

Introdução

Os primeiros estudos em Análise da Conversa focalizavam a fala cotidiana, considerada pelos pesquisadores da área a *pedra fundamental sociológica*. O interesse central dos analistas era observar a ação humana em ocorrências naturais, face a face ou por telefone (Sacks *et al.* 2003 1974). Contudo, essa tradição de pesquisa estendeu seu campo de estudos à fala-em-interação em geral, focando, nas últimas décadas, na análise da conversa em contextos institucionais. Esses cenários se diferenciam de interações cotidianas por apresentarem características particulares, tais como a orientação para o cumprimento do mandato institucional (Maynard 1984) e para a realização de tarefas rotineiras das instituições (Drew e Heritage 1992).

Numa abordagem etnográfica, o trabalho desenvolvido por Roberts e Sarangi (2005) em contexto de consultas médicas lança luz sobre a realização de pesquisas em cenários institucionais. A pesquisa etnográfica, segundo Erickson (1990), investiga ocorrências reais de ações situadas ecologicamente, visando à compreensão das construções de sentido e das ações dos atores nos contextos selecionados para o estudo. O trabalho de campo compreende a participação intensiva do pesquisador no cenário investigado, o registro detalhado das observações em notas de campo e a coleção de diferentes documentos, assim como a sistematização dos dados. Segundo Roberts e Sarangi (2005), em uma pesquisa etnográfica, é identificada, primeiramente, a ecologia comunicativa da situação investigada. Por exemplo, a identidade dos participantes (etnia, idade, gênero), o que é falado (por exemplo, fluxo de tópicos) e de que maneira (tom de voz, franqueza). Após o desenvolvimento dessas ideias etnográficas iniciais, as interações são gravadas e transcritas. A primeira etapa de análise dos dados é a escuta repetida dessas gravações, o que possibilita detalhar e aprofundar a análise.

Como destacado por Drew e Heritage (1992), o estudo da organização macroestrutural global de encontros institucionais mostra como esses cenários são organizados em fases preestabelecidas de atividades, por meio das quais os representantes das instituições executam tarefas e cumprem o mandato institucional. Nesse sentido, Roberts e Sarangi (2005) sugerem a identificação das fases de interações institucionais, examinando-se marcas linguísticas (por exemplo, mudança de variedade ou de estilo), paralinguísticas (por exemplo, pausas, tempo de fala, hesitações), prosódicas (por exemplo, entoação, acento, tom) e/ou não-verbais (direcionamento do olhar, distância entre os participantes, gestos etc.), sinais que a tradição em pesquisas na Sociolinguística Interacional (Gumperz, J.J. 2002) tem mostrado como pistas que as pessoas usam para fazer inferências.

Trabalhos no âmbito da saúde (Robinson 2013) e do contexto jurídico (Del Corona 2009; Sant'anna 2017) mapearam a estrutura organizacional de interações institucionais. Entretanto, até onde é do nosso conhecimento, não há pesquisas linguísticas que tenham focalizado a organização estrutural global em audiências preliminares no Juizado Especial Criminal¹. Nesse contexto de fala institucional, são julgados delitos e contravenções penais de menor potencial ofensivo. O conciliador procura solucionar os conflitos com a intenção de formalizar um acordo entre os envolvidos na ocorrência. Para tanto, o profissional da justiça necessita estar preparado para conduzir o encontro de maneira cordial, clara e objetiva. Dessa maneira, o estabelecimento de fases em que são cumpridas tarefas relativas ao fazer institucional é necessário em sua rotina. Interessa-nos, então, saber: quais as fases que compõem essa atividade de fala institucional?

Se esse encontro institucional é determinado, como sugere Maynard (1984), por uma meta maior, questionamos ainda: quais as ações desempenhadas pela profissional para alcançar seu mandato institucional? Dada a centralidade do uso da linguagem para a consecução do mandato institucional nesse contexto de fala-em-interação, propomos, ainda, uma terceira pergunta: como as fases podem ser interacionalmente distinguidas?

Para responder a essas questões, selecionamos uma audiência preliminar no Juizado Especial Criminal e realizamos um estudo de cunho qualitativo e interpretativo (Denzin e Lincoln 2000). Para efeito de análise, nos baseamos na Análise da Conversa de base etnometodológica (Sacks *et al.* 2003 1974), com o foco em estudos dedicados à análise da fala-em-interação institucional (Drew e Heritage 1992; Roberts e Sarangi 2005; Robinson 2013), aliando também conceitos da Sociolinguística Interacional (Gumperz 1999; Goffman 2002).

Focalizando o contexto institucional de audiências preliminares no Juizado Especial Criminal, pretendemos colaborar, numa perspectiva linguístico-interacional, com os trabalhos linguísticos que se dedicam à análise da fala em contextos institucionais no âmbito jurídico. Em termos aplicados, nosso estudo pode contribuir para a prática profissional de conciliadores, além de constituir material subsidiário para estudantes de Direito que podem obter conhecimento sobre as práticas de linguagem emergentes em um contexto institucional com o qual lidarão em sua vida profissional.

Sociolinguística interacional

A Sociolinguística Interacional (SI) é uma perspectiva de estudos linguísticos inspirada em diferentes tradições de pesquisa, como a antropologia, a sociologia e a psicologia. O fundador dessa abordagem, o antropólogo John Gumperz, buscava métodos de análise que fornecessem informações sobre a diversidade linguística e cultural dos ambientes comunicativos. Para essa vertente de pesquisa, a prática comunicativa não é apenas uma questão de codificação e decodificação individual de mensagens; interagir é envolver-se em um processo contínuo de negociação, tanto para inferir o que os outros pretendem transmitir quanto para monitorar como as próprias contribuições são recebidas (Gumperz 1999). Dessa forma, a SI concentra-se nas trocas de fala envolvendo dois ou mais atores como seu principal objeto de estudo, com o objetivo de mostrar como os indivíduos utilizam a conversa para atingir seus propósitos comunicativos em situações da vida real.

Essa abordagem considera que o conhecimento que vai além da informação lexical desempenha um papel fundamental no processo interpretativo. Nesse sentido, é por meio de traços presentes nas mensagens que os falantes demonstram e os ouvintes interpretam que atividade está acontecendo e como o conteúdo semântico deve ser compreendido. Esses traços são denominados pistas de contextualização e envolvem os sinais não verbais (olhares, gestos), os sinais paralinguísticos (altura do som da voz, ritmo de fala) e o conteúdo semântico das mensagens. As pistas de contextualização relacionam-se aos enquadres da interação, noção desenvolvida por Goffman (2002) a partir dos estudos de Bateson (2002)². De acordo com Goffman (1974), o enquadre refere-se à percepção da atividade que está sendo encenada em determinado momento da interação. Antes de compreender qualquer enunciado, os participantes se perguntam “o que está acontecendo aqui e agora?”; e isso é percebido a partir do comportamento dos participantes.

Desdobrando a noção de enquadre, Goffman (2002) propõe o conceito de *footing*, que representa “o alinhamento, a postura, a posição, a projeção do ‘eu’ de um participante

na sua relação com o outro, consigo próprio e com o discurso em construção” (Ribeiro e Garcez 2002: 107). Caracteriza o aspecto dinâmico dos enquadres, já que são modificados em uma interação.

Entendendo *footing* como um conceito complexo que envolve papéis discursivos, tom (brincadeira, sério), alternância de código, papéis sociais, etc., optamos por trabalhar neste estudo com a *estrutura de participação* da fala, conceito desenvolvido por Goffman (2002), cujas postulações incluem as relações discursivas presentes no formato de produção (relativo ao falante) e no formato de participação (relativo ao ouvinte), interessando-nos particularmente a primeira noção proposta pelo autor. Goffman decompõe os tradicionais conceitos de falante e ouvinte, tratando do falante enquanto *figura*, *animador*, *autor* e/ou *responsável*³ pelas elocuições que produz. Segundo o autor, os falantes podem empregar diferentes formatos de produção em relação a suas contribuições verbais, atuando como: a) *figura* – pessoa ou pessoas que são inseridas no discurso como personagens⁴; b) *animador* – apresenta-se como mero produtor de sequências de palavras; c) *autor* – quando seleciona as palavras e os sentimentos que estão sendo expressos, enquanto expressões de fatos, opiniões ou crenças; d) *responsável* – é a pessoa cuja posição ou ponto de vista está sendo expresso na elocução, sendo que, nesse caso, trata-se de alguém que possui um papel institucional socialmente referenciado. As noções de *footing*, de enquadre e de pistas de contextualização contribuem na identificação da transição entre as fases da audiência investigada.

Análise da conversa

A Análise da Conversa (AC) é uma vertente de estudos fundada pelos pesquisadores Sacks, Schegloff e Jefferson. Em um momento em que predominava a crença de que o uso da linguagem era caótico demais para ser sistematizado, o estudo seminal dos analistas da conversa, publicado em 1974, mostrou como detalhes da conduta interacional humana podem ser analisados precisamente por meio da gravação e da transcrição de dados de ocorrência natural.

Um dos aspectos fundamentais para os estudos da fala-em-interação é o da sequencialidade. Para essa abordagem, as ações desenvolvidas pela linguagem em interação social se organizam em sequências de turnos de fala produzidos por diferentes participantes. Ao produzir seu turno, o falante sempre leva em consideração o que o outro disse previamente, ou seja, a produção de um turno está relacionada ao turno que fora produzido anteriormente por outro interlocutor Sacks *et al.* (2003 1974).

A sistematicidade exibida na sucessão sequencial dos falantes nas interações evidenciou a existência da tomada de turnos organizada. Segundo Sacks *et al.* (2003 1974), a troca de turnos de fala sempre acontece, apenas um falante tende a falar por vez e os turnos são tomados com o mínimo de espaço ou sobreposição de fala possível. Portanto, a tomada de turnos seria uma forma básica para a organização da conversa. A noção de sequências também desencadeou outro conceito fundamental, o de pares adjacentes (Sacks 1992). De acordo com Sacks (1992), as falas dos participantes são “pareadas”, ou seja, aquilo que é dito em um turno de fala por um participante antecipa e limita as ações a serem produzidas no turno de fala seguinte do interlocutor. São exemplos de pares adjacentes os pares pergunta/resposta, convite/aceitação ou rejeição, cumprimento/cumprimento.

Embora Sacks *et al.* (2003 1974) tenham se baseado em conversas cotidianas, os autores destacam que os mecanismos observados também estão presentes em contextos ins-

titucionais, como é o caso do Juizado Especial Criminal. No entanto, a fala-em-interação nesses cenários pode apresentar outras especificidades. Alguns pesquisadores brasileiros se dedicam a analisar essas singularidades, utilizando a Análise da Conversa aplicada a atividades de fala específicas, tais como contextos do trabalho (Ostermann e Oliveira 2015), da saúde (Ostermann *et al.* 2013) e do âmbito jurídico (Del Corona 2009; Andrade e Ostermann 2017). No exterior, um dos primeiros estudos a sistematizar aspectos recorrentes em interações institucionais foi desenvolvido por Drew e Heritage (1992) que elencaram três características da fala institucional: (1) orientação para o cumprimento do mandato institucional; (2) restrições às contribuições aceitas; (3) inferência de enquadres e procedimentos.

Com relação à primeira característica, os autores afirmam que uma interação institucional envolve a orientação de pelo menos um dos participantes para algum objetivo convencionalmente associado à instituição em questão. Em outras palavras, os participantes organizam sua conduta pelas metas que buscam atingir. Maynard (1984), analisando o sistema de barganha judicial, cunhou a expressão “mandato institucional” para se referir à meta-fim a ser alcançada por pelo menos um dos participantes em um determinado encontro institucional. Para ele, esse participante possui o poder de regular a conversa, assim como o de definir os tópicos a serem tratados como relevantes ou irrelevantes para o objetivo do encontro. No caso do Juizado Especial Criminal, nosso contexto de estudo, o mandato institucional da conciliadora é arquivar o caso em prol da celeridade processual⁵.

A segunda característica da fala institucional evidencia as restrições sobre o que os participantes tratarão como contribuições permitidas para a instituição. Na audiência investigada, a conciliadora zela pela estrutura do evento, pois quando um dos participantes da audiência inicia uma contribuição que se distancia do seu mandato institucional, ela aumenta o volume e acelera seu ritmo de fala para tomar o turno e manter o piso conversacional.

Finalmente, a conversa institucional pode estar associada a estruturas e procedimentos inferenciais que são particulares de ambientes específicos. Por exemplo, nas audiências preliminares, a conciliadora sempre anuncia publicamente os nomes das partes envolvidas na ocorrência para que elas se apresentem à audiência. Nesses momentos, ela se posiciona junto à porta da sala e, com fala acelerada e volume de voz alto, lista os intimados. Dessa forma, essa prática interacional ganha contornos específicos por estar associada a procedimentos particulares do fazer da instituição.

Além dessas características, Drew e Heritage (1992) apresentam cinco aspectos analíticos com os quais é possível pesquisar a fala-em-interação de caráter institucional: (1) seleção lexical; (2) construção dos turnos; (3) organização de sequências; (4) epistemologia social e relações sociais; (5) organização estrutural global. Segundo os autores, é comum que representantes de uma instituição utilizem termos técnicos para sustentar a assimetria com relação aos clientes e afirmar sua posição de detentor do conhecimento. Com relação à construção de turnos, uma informação pode ser construída de maneiras distintas em uma interação institucional, a depender das ações empreendidas pelos participantes. Sobre a organização de sequências, Drew e Heritage (1992) observam que organizações conversacionais básicas, tais como reparo⁶ e interrupção, são usadas pelos participantes para gerenciar atividades específicas de cada função. Cliente e representante da instituição têm *status* diferente, o que caracteriza a epistemologia social e as relações sociais, pois é o profissional da instituição que possui o conhecimento sobre as atividades esperadas na-

quele contexto. Assim, tem direito a fazer perguntas, detém a pauta do encontro e decide quais tópicos serão discutidos. Finalmente, com relação à organização estrutural global, os autores apontam que muitos tipos de encontros institucionais são organizados em fases de atividades que são implementadas por meio de uma forma padrão. Em alguns casos, essa ordem pode ser prescrita por um cronograma, mas, igualmente, a ordem pode ser o produto de rotinas gerenciadas localmente⁷. Dentre as características das interações institucionais aqui apresentadas, a organização macroestrutural constitui nosso foco de análise. Esse não tem sido o lócus central das pesquisas analítico-conversacionais, a maioria das quais se dedica a uma descrição da organização de sequências individuais de ação e suas subpartes. Segundo Robinson (2013), esse tipo de análise ignora completamente como esses segmentos de fala podem ser parte de questões maiores. No entanto, embora seja fundamental identificar as fases que compõem um encontro institucional, essa tarefa não tem o intuito de classificar exaustivamente cada pedaço da interação, tampouco o de afirmar que essas fases ocorrerão sempre, e sempre na mesma ordem. O objetivo não é tentar encontrar regularidade na presença ou ordenação dessas fases, mas constatar como os indivíduos se orientam na organização de suas tarefas e também observar em que medida se afastam dessas orientações. Portanto, a organização estrutural global de um encontro não é um quadro fixo.

Pesquisas dedicadas ao mapeamento das fases de encontros institucionais vêm sendo desenvolvidas nos últimos anos no exterior e no Brasil. Nos Estados Unidos, com o foco na área da saúde, Robinson (2013) identifica as seguintes fases em consultas médicas de cuidados primários: abertura, apresentação do problema, coleta de informações, diagnóstico, tratamento e encerramento. Já no Brasil, há pesquisas no contexto jurídico, tais como os trabalhos de Del Corona (2009) e Sant'anna (2017). Analisando as características da fala-em-interação em audiências de instrução de um tribunal localizado na região Sul do país, Del Corona (2009) aponta fases/atividades na estrutura dessas situações de fala: a leitura dos autos; a comunicação ao réu sobre seu direito de recusar-se a depor; a checagem das informações pessoais do depoente; o estabelecimento do grau de parentesco entre o depoente e a vítima ou acusado; a checagem dos fatos ocorridos; a alocação dos turnos entre os participantes; e, por fim, o fechamento, com o estabelecimento dos procedimentos a serem tomados. Em trabalho desenvolvido a respeito das fases em atividades profissionais, Sant'anna (2017) mapeou cinco fases nas entrevistas de pré-mediação em uma Vara de Família do Estado do Rio de Janeiro: esclarecendo as regras do jogo, que é o momento da pré-mediação destinado a esclarecer aos participantes os objetivos do encontro; conhecendo os participantes, fase em que a mediadora faz um levantamento de informações sobre os participantes; historiando os conflitos, momento em que a profissional encoraja as partes a narrar suas histórias; entendendo o processo, quando a mediadora abre espaço para a construção das narrativas dos participantes; e combinando a próxima etapa, quando, ao fim do encontro, há a negociação do encerramento do encontro entre os participantes.

Ainda que os autores mencionados nesta seção não investiguem o Juizado Especial Criminal, visitar seus trabalhos nos proporcionou maior embasamento para a análise dos nossos dados.

Metodologia e contexto da pesquisa

Este estudo adota a abordagem qualitativa e interpretativa (Denzin e Lincoln 2000), por considerarmos que a principal tarefa do pesquisador é compreender o significado das ações

humanas e identificar o que os atores sociais estão fazendo ao usarem a linguagem. Quanto à estratégia de pesquisa, constitui um estudo de caso (Yin 2001). Essa perspectiva permite análises mais convincentes, uma vez que oferece a possibilidade de o pesquisador lidar com uma variedade de evidências (triangulação de dados), como documentos, registros em arquivos, entrevistas espontâneas, entrevistas focais e observações. Além disso, muitas das etapas metodológicas do presente trabalho, tais como a geração de dados das gravações e as transcrições, foram orientadas pela abordagem teórico-metodológica da Análise da Conversa (Sacks *et al.* 2003 1974).

Todos os materiais pertencem ao acervo do Projeto “O Português falado na Zona da Mata de Minas Gerais: constituição de um banco de dados de Audiências Preliminares no Juizado Especial Criminal”, coordenado pela professora Amitza Torres Vieira no Programa de Pós-Graduação em Linguística da Universidade Federal de Juiz de Fora. Para empreender o estudo, primeiramente, as pesquisadoras obtiveram a aprovação pelo Comitê de Ética em Pesquisas com Seres Humanos⁸. Depois, negociaram a entrada no Juizado Especial Criminal de uma cidade de pequeno porte da Zona da Mata de Minas Gerais e explicaram a todos os participantes das audiências a natureza do projeto. Os participantes aceitaram participar da pesquisa por meio da assinatura do Termo de Consentimento Livre e Esclarecido. A partir disso, as pesquisadoras iniciaram a geração dos dados entre os anos de 2012 e 2013, com a gravação em áudio das audiências em um aparelho analógico, juntamente com a elaboração de notas de campo e coleta das pautas dos casos processados nas audiências. Posteriormente, o material foi transcrito de acordo com as convenções do modelo Jefferson de transcrição na Figura 1 (conforme Loder 2008).

[início de sobreposição de fala	↑	Som mais agudo dos que os do entorno
]	final de sobreposição de fala	↓	Som mais grave do que os do entorno
(1.2)	Medida de silêncio em segundos e décimos de segundo	°palavras°	Som em volume mais baixo dos que os do entorno
(.)	silêncio de menos de dois décimos de segundo	>palavras<	fala acelerada
=	elocuções contíguas	_sublinhado	Ênfase em som
.	Entonação descendente	MAIÚSCULA	Som em volume mais alto do que os do entorno
?	Entonação ascendente	<palavras>	fala desacelerada
,	entonação intermediária	(())	Descrição de atividade não-vocal
:	prolongamento do som	(palavras)	transcrição duvidosa
-	Corte abrupto na produção vocal	()	Segmento de fala que não pôde ser transcrito

Figura 1. Convenções de Transcrição Jefferson

Com relação ao contexto investigado, os Juizados Especiais Criminais (JECrim) são órgãos do poder judiciário que julgam contravenções penais e crimes cuja pena máxima prevista não ultrapassa dois anos, como perturbação do trabalho ou do sossego, ameaça e lesão corporal. Antes de ser encaminhada ao JECrim, a infração é levada ao conhecimento da Polícia Militar, que prepara o Boletim de Ocorrência (BO) e o encaminha à Polícia Civil,

onde é elaborado o Termo Circunstanciado de Ocorrência (TC). Após esse procedimento, é designada a audiência preliminar, foco deste estudo.

A audiência preliminar consiste na oportunidade que os envolvidos nos processos têm para chegar a um acordo. Esse acordo é alcançado quando: 1) a vítima, no momento da audiência, opta por arquivar o processo, 2) a vítima sofre um prejuízo com o delito praticado pelo autor e aceita receber uma indenização, chamada composição civil de danos, 3) não há arquivamento ou composição de danos e o conciliador oferece ao autor do delito a possibilidade de prestar um serviço comunitário ou pagar uma prestação pecuniária a uma instituição carente. Quando nenhuma dessas ações é alcançada, o promotor de justiça oferece denúncia e designa a Audiência de Instrução e Julgamento, para a produção de provas e julgamento do crime.

A audiência preliminar escolhida para este estudo, denominada “A briga”, tem duração de 15min24s e aconteceu para apurar uma denúncia de lesão corporal em uma briga envolvendo quatro rapazes: Mauro, Ramon, Leo e Roger. Além dos autores do delito, estão presentes na audiência a conciliadora, Sonia, a advogada, Ana, e os estagiários de Direito Davi e Vitor. Mauro e Ramon são pai e filho e decidiram assinar um termo de desinteresse antes da audiência, o que significa que não tinham a intenção de levar o processo adiante. Leo e Roger, por outro lado, se apresentam à audiência. Na ocasião, a conciliadora, Sonia, aconselha as partes a aceitarem o arquivamento da ocorrência. Leo se mostra disposto a arquivar o caso desde o início, mas Roger é relutante. Por isso, a conciliadora lança mão de diversas sustentações para defender as vantagens do arquivamento. Dessa maneira, após vários turnos de fala, as partes envolvidas no delito concordam em arquivar o processo e o acordo é realizado pela conciliadora.

Análise dos dados

Participam da audiência “A briga” a conciliadora, Sonia; os estagiários de Direito, Davi e Vitor; e as partes envolvidas no caso, Leo e Roger. Essa audiência foi selecionada para este estudo por constituir dados prototípicos em termos de organização estrutural em audiências preliminares no JECrim. Identificamos, no total, quatro fases: abertura, apresentação do problema, proposta de arquivamento e fechamento. Devido ao escopo do trabalho, não é possível mostrarmos com detalhes todas as ações empreendidas em cada uma das fases da situação de fala em análise. Assim, algumas vezes suprimimos partes da transcrição, sem prejuízo para a análise. O Excerto (1) corresponde à fase *Abertura*, que ocorre no início do encontro e é orientada pelas informações do Termo Circunstanciado de Ocorrência (TC) que a conciliadora tem em mãos.

Excerto (1)

01	Sonia	Leandro Ferreira, Ramon Ferreira, Roger Monteiro, Mauro Ferreira
02		((ruído))
03		(15,0)
04	Sonia	bo:a ta::rde
05	Leo	boa tarde
06	Roger	“boa tarde”
07	Sonia	isso aqui tá perdi:do Vitor? ((aponta para documentos sobre a
08		mesa))
09	Vitor	é
10		(14,0)

A ação central desempenhada pela conciliadora no momento de abertura do evento é o apregoamento das partes, como podemos observar na linha 1: “Leo Ferreira, Ramon Ferreira, Roger Monte↑iro, Mauro Ferreira”. Após uma pausa de 15s, durante a qual mexe nos papéis à sua frente, Sonia realiza a ação de cumprimentar. Essa postura de polidez é verificável em interações institucionais, para além das interações cotidianas. A conciliadora apresenta a primeira parte do par adjacente cumprimento/cumprimento, “bo:ta:↑rde” (linha 4). A relevância condicional determina a ocorrência da segunda parte do par, que é constituída pelos cumprimentos de Leo e Roger, nas linhas 5 e 6.

Na linha 7, há uma breve digressão, pois Sonia se dirige a Vitor para lhe perguntar sobre alguns documentos que estão sobre a mesa. Depois da resposta do estagiário, na linha 9, segue-se uma pausa longa, de 14s, que marca a transição para a segunda fase da audiência – *Apresentação do problema*– conforme pode ser observado no Excerto (2).

Excerto (2)

11	Sonia	vocês quatro brigaram
12		(2,0)
13		ce↑rto?
14	Leo	humhum
15	Sonia	o porquê↑ não vem ao caso aqui
16	Leo	humhum
17	Sonia	é:: do jeito que foi lavrada a ocorrê:↑ncia (1,0) a gente entende
18		que foi lesões recíprocas o que são lesões recíprocas ↑QUEM bateu
19		apanhou QUEM apanhou também bateu,
20		(2,0)
21		porque aqui no caso só↑ quando há desproporção mui:↑to grande
22		entre o tamanho de um e de outro que a gente até entende que um
23		tenha só apanhado e o outro só batido
24		(2,0)
25		o que eu aconselho aqui a vocês como conciliador↑
26		(1,0)
27		arquivar isso
28		(1,0)

A primeira ação realizada pela conciliadora na segunda fase é a justificativa da audiência, que tem por função explicar aos participantes a razão pela qual foram convocados a participar do evento. Sonia a apresenta por meio de uma narrativa breve⁹: “vocês quatro brigaram” (linha 11). Essa informação também está no TC que a conciliadora tem em mãos. Diante da necessidade de confirmar a veracidade das informações apresentadas no TC, Sonia faz um pedido de confirmação: “certo?” (linha 13). Leo se autoseleciona e, por meio da expressão não lexicalizada *humhum* (linha 14), confirma. Desse modo, Sonia dá continuidade à audiência, explicitando não haver necessidade se discutir naquela ocasião os motivos que levaram as partes a brigar: “o porquê↑ não vem ao caso aqui” (linha 15). Nesse turno de fala, a conciliadora ratifica seu *status* de profissional ao mostrar conhecimento das atividades esperadas para aquele contexto de fala-em-interação. Nesse caso, a contribuição de Sonia orienta-se pela agenda tópica daquele contexto institucional, que não inclui averiguar as circunstâncias em que se deu o delito.

Após nova concordância de Leo, a conciliadora inicia a segunda tarefa prevista para essa fase: o esclarecimento das questões jurídicas. Em sua fala, ela evidencia que, como entre os rapazes envolvidos na briga não há desproporção física, entende-se que todos agrediram e sofreram agressões. A escolha lexical de Sonia por termos técnicos da área jurídica sustenta a assimetria com relação aos autores do delito e a coloca na posição de

detentora do conhecimento (Drew e Heritage 1992). É interessante observar que, nesses turnos de fala que esclarecem as leis, Sonia assume o papel de responsável (Goffman 2002). A pista linguística é o uso do termo “a gente”, dêitico pessoal que inclui no discurso tanto a conciliadora como a instituição que ela ali representa. Uma pausa de 2s na linha 24 sinaliza o fim da fase *Apresentação do problema*, pois, após esse lapso de tempo, a conciliadora inicia a proposta de arquivamento do caso, como pode ser observado nas linhas 25 a 27. Essa nova fase – *Oferecimento do arquivamento* – é a mais longa da audiência. Ela parece constituir o momento central do evento devido à sua relevância para o cumprimento do mandato institucional do encontro. A análise dessa fase foi segmentada em sete excertos (3 a 9).

Excerto (3)

25	Sonia	o que eu aconselho aqui a vocês como conciliador↑
26		(1,0)
27		arquivar isso
28		(1,0)
29		fazer como o::: (1,0)Ramon (1,0)o outro é o:::? (1,0)
30	Ana	[Mauro]
31	Vitor	[Mauro]
32	Ana	pai dele
33	Roger	é o pai

Uma das pistas que nos fez identificar esta nova fase no encontro institucional que investigamos foi a mudança de *footing* ocorrida na fala de Sonia. Na fase anterior da audiência, *Apresentação do problema*, a conciliadora assumira o papel de responsável (Goffman 2002). Na passagem dessa fase para *Oferecimento do arquivamento*, Sonia altera o papel que ocupava para assumir agora o papel de autora de seu próprio discurso (Goffman 2002). Ela deixa de falar apenas em nome de um “nós” para falar em nome de um “eu”, e o uso do pronome pessoal do caso reto “eu” aponta para essa mudança de alinhamento da conciliadora. Por outro lado, observa-se que, mesmo como autora, ela ainda se alinha à instituição, pois explicita seu papel institucional naquele encontro: “o que eu aconselho aqui a vocês como conciliador↑ (1,0) arquivar isso” (linhas 25-27).

Outra pista na identificação da fase *Oferecimento do Arquivamento* é a organização sequencial dos turnos de fala. Diferentemente da fase anterior, em que as ações conversacionais empreendidas pela conciliadora orientam-se para o esclarecimento sobre o delito cometido pelas partes, nesta fase, suas contribuições são argumentativamente orientadas.

Sonia inicia uma primeira ação nesta fase: oferecer o arquivamento. Para isso, apresenta sua posição¹⁰ no primeiro turno de fala da sequência: “o que eu aconselho aqui a vocês como conciliador↑ (1,0) arquivar isso” (linhas 25-27). Como primeira sustentação dessa posição, Sonia faz uso de analogia com a decisão tomada por Mauro e Ramon, as outras duas partes citadas no TC, que haviam consentido com o arquivamento em momento anterior à audiência (linha 29). A continuidade da argumentação da profissional da instituição a favor do arquivamento do caso pode ser observada no Excerto (4).

Sonia reformula sua posição na linha 36, quando diz “não (.) não tocar isso pra frente”. Em seguida, usa a conjunção explicativa “porque” como prefácio para a justificativa da sua posição. Também nesse turno a conciliadora utiliza um silogismo¹¹ para sustentar seu ponto de vista “se ele pagar uma cesta básica ou prestar um serviço você também vai te↑r (.) que pagar uma cesta básica(.) ou prestar um serviço↑ço” (linhas 36 39). Nesse

Excerto (4)

34	Sonia	é
35		(1,0)
36		não(.) não tocar isso pra frente >porque que< que vai acontecer↑
37		(2,0)
38		se ele pagar uma cesta bá:sica ou prestar um servi:↑ço você
39		também vai te↑r (.) que pagar uma cesta básica(.) ou prestar um servi:↑ço
40	Leo	então: deixa pra lá[mesmo]
41	Sonia	[nós] vamos esta↑r (.) trocando cebo::↑la
42	Davi	só que:: não tem possibilidade de prestação de serviço não
43	Sonia	ah é °esqueci° sempre esqueço que a prestação de serviço ta
44		suspense
45	Davi	seiscentos e vinte e do↓is
46		(15,0)
47		((conversa baixa))
48		(12,0)
49		((conversa baixa))

momento, Leo se alinha a Sonia e explicita sua posição, que também é a de arquivar o caso: “então: deixa pra lá[mesmo]” (linha 40). Em sobreposição ao turno de Leo, a conciliadora fecha essa sequência argumentativa com uma expressão popular “[nós] vamos esta↑r (.) trocando cebo::↑la” (linha 41). Assim, ela reafirma que seguir com o processo resultará na aplicação de uma mesma punição a todos os envolvidos.

Davi alerta que a possibilidade de prestação de serviço está suspensa, e, consequentemente, a única medida cabível, caso eles optassem por prosseguir o processo, seria o pagamento de uma cesta básica a uma instituição carente no valor de seiscentos e vinte e dois reais. Após, nas linhas 46-49, há um período com pausas longas e conversas baixas entre os participantes.

Excerto (5)

55	Sonia	Roge:r (2,0) levando isso adiante
56		(1,0)
57		o que o senhor lucra com isso?
58	Roger	ua:i()
59	Davi	seiscentos e vinte e dois ()
60	Vitor	e oh↑ (leva) um jeito lá
61	Sonia	mas vem cá↑ (1,0)
62	Roger	uai
63		(2,0)
64	Sonia	seiscentos e vinte e doi:↑s rapaz (.) pega uma namora:da vai pra
65		uma festa aí esquece o ocorrido
66	Leo	tenho muita fra↑lda pra comprar seiscentos e vinte e dois dá pra
67		comprar muita fra:lda
68	Sonia	seiscentos e vinte e dois então compra muita fra::lda
69	Leo	muita: fralda
70	Vitor	muita coisa()
71	Sonia	então (3,0) eu acho que a melhor solução aqui (.)
72	Leo	tá bom

Até esse momento, Roger não havia manifestado interesse em arquivar. Por isso, a conciliadora lhe faz uma pergunta que funciona como um pedido de informação argumentativamente orientado: “Roge:r (2,0) levando isso adiante (1,0) o que o senhor lucra com isso?” (linhas 55-57). No entanto, Roger reage com uma expressão característica

da variedade da fala da Zona da Mata de Minas Gerais, cuja entoação sugere que ele não sabe (ou não quer) responder: “ua:i” (linha 58). Na sequência, Davi adverte Roger sobre o valor a ser pago, seiscentos e vinte dois reais (linha 59). Após, Sonia sustenta sua posição com uma narrativa breve hipotética (Riessman 2001): “seiscentos e vinte e doi:↑s rapaz (.) pega uma namora:da vai pra uma festa aí esquece o ocorrido” (linhas 64 a 65). Leo continua mostrando-se a favor do arquivamento, alinhando-se assim à conciliadora e ao estagiário. Ele sustenta sua posição com uma evidência, quando afirma “seiscentos e vinte e dois dá pra comprar muita fralda” (linhas 66- 67). É somente na linha 72 que Roger parece aceitar a proposta de arquivamento: “tá bom”. Entretanto, Sonia continua a argumentar a favor do arquivamento, pois, como foi informado por essa participante em conversa informal com a coordenadora do projeto, Roger não aparentava estar satisfeito com o acordo proposto.

Excerto (6)

115	Sonia	outra co:↑isa
116		(1,0)
117		se toca pra frente(1,0)vai ser como se vocês tivessem
118		aceitado(.)vai ser não↓ vocês vão ter aceitado a proposta de
119		transação penal↓(2,0)cinco a:nos amarrados >aqui comigo<
120	Leo	não tem nada ()
121	Sonia	[nos próximos cinco anos]
122	Ana	[você vai tem que vir assinar↑] (tem que vir assinar)
123	Sonia	e você é cla:ro tem problema não eu tiro seiscentos e vinte dois
124		do bolso só pelo pra:ze↑r de saber que ele também vai tirar
125		seiscentos e vinte e dois do bolso (.) você não vai ganhar
126		dinheiro também não vai fazer falta pra ele [()]
127	Leo	[>eu tô<] eu tô DU:↑ro

No Excerto (6), a conciliadora continua sua argumentação, mostrando às partes, nas linhas 117-119, que, ao recusarem a proposta de arquivamento e, conseqüentemente, aceitarem a transação penal, não terão direito a esse benefício nos próximos cinco anos¹². Em seguida, nas linhas 123 a 125, Sonia atua como animadora da voz de Roger, sugerindo que sua intenção em prosseguir se dá somente pelo desejo de ver que Leo também será prejudicado. Ela conclui: “você não vai ganhar dinheiro também não vai fazer falta pra ele [()]” (linhas 125-126). Em sobreposição à fala de Sonia, Leo se manifesta, alegando não ter condições financeiras para arcar com o pagamento da prestação pecuniária: “[>eu tô<] eu to DU:↑ro” (linha 127).

No início do Excerto (7), Sonia não torna relevantes as contribuições de Leo, pois aumenta o tom de voz em sobreposição e inicia uma narrativa breve hipotética (linhas 133-135) que funciona como um prefácio para a formulação da seguinte ameaça: “não tem transa:↑ção comigo nos próximos cinco anos nã:↑o” (linha 137). Sonia explicita que, caso os autores se envolvessem em outro delito nos próximos cinco anos, a ameaça se concretizaria e eles estariam envolvidos em um processo crime “>eu ligo para o promotor, processo-crime, antecede:ntes<” (linhas 137 a 140). Em contraponto a essa possibilidade, ela apresenta o arquivamento como uma forma de os autores “limparem” suas fichas. Em seguida, na linha 146, Ana observa a necessidade de confirmar se os autores têm direito à transação penal, pois somente réus primários podem receber esse benefício. Em sobreposição no final da fala da advogada, a conciliadora toma o turno para informar que Davi fora buscar as fichas dos envolvidos para serem avaliadas.

Excerto (7)

127	Leo	[>eu tô<] eu tô DU:↑ro
128	Sonia	NÃ↑o (.) digamos não [é possível]=
129	Leo	[eu tô DU:↑ro]
130	Sonia	= saber o que vai acontecer contigo nessa vida
131	Leo	seiscentos e vinte dois [()]
132	Sonia	[o que que vai acontecê↑r] você não sabe
133		o dia de amanhã↓(.) vai que Deus me livre e guarde você: atropela
134		alguém na ru:a (.) acontece uma outra situação que você se veja
135		no:↑vamente envolvido numa ocorrência policial (1,0)
136	Ana	não tem [benefício não]
137	Sonia	[<não tem tran]sa:↑ção comigo nos próximos cinco anos
138		nã:↑o(.) >eu ligo para o promotor, processo-crime, antecede:ntes<
139		(.) agora, a partir do momento que eu archive↑i>a ficha de vocês
140		tá limpi↑nha aqui comigo< (.) não quero ver vocês aqui de no↑vo
141		(.) ma::s (1,0)sabe [que se vie::r]=
142	Leo	[que é igual]
143	Sonia	= é menos uma possibilidade de pagar uma cesta básica já não vai
144		ser um processo cri↓me
145		(3,0)
146	Ana	ainda teria que ve↑r também se tem direito né ao [benefício]
147	Sonia	[é isso que] o
148		Davi foi ver ainda se vocês tem dire:↑ito
149		(26,0)
150		((a conciliadora examina a documentação trazida pelo estagiário))
151		(4,0)
152	Sonia	você só tem i↓sso ((olha para Roger))
153		(3,0)
154	Sonia	você já tá no terce↓iro crime((olha para Leo))
155		(7,0)

Na linha 150, Sonia realiza outra ação: examinar as fichas criminais dos autores do delito para avaliar a possibilidade de realizarem a transação penal. Enquanto lê os documentos, dirige-se primeiramente a Roger, na linha 152, informando-lhe que aquela era a primeira ocorrência policial em que estivera envolvido. Em seguida, linha 154, olha para Leo e lhe comunica que seria seu terceiro crime de Leo. Embora a conciliadora não tenha verbalizado, Leo não teria direito a realizar a transação penal, pois não era réu primário. O silêncio de 7s. (linha 155) aponta para uma possível reflexão de Leo sobre essa impossibilidade. Ou seja, não havia outra opção para Leo a não ser concordar com o arquivamento do caso. A sequência que fecha a fase *Oferecimento do arquivamento* pode ser observada no Excerto (8).

Excerto (8)

156	Sonia	podemos arquivar↑r?
157	Roger	((concorda com movimento de cabeça))
158	Leo	((concorda com movimento de cabeça))
159	Sonia	°preenche a documentação↓o: vou pegar o termo de desinteresse dos
160		dois°
161		(8,0)
162	Sonia	e encerramos hoje, né?

No início do Excerto (8), a conciliadora pergunta se há aceitação do arquivamento proposto – “podemos arquivar↑r?” (linha 156) – e recebe uma ação responsiva corporificada (linhas 157 e 158), quando os autores confirmam o arquivamento, assentindo com

a cabeça. Nesta audiência, o acordo, construído paulatinamente após vários turnos argumentativos, foi celebrado nessa sequência com o par adjacente pergunta-resposta, em que a primeira parte do par realiza a ação de reiterar a proposta de arquivamento (linha 156) e a segunda parte do par (linhas 157 e 158) realiza ações de concordância com a proposta.

Após a concordância das partes com o arquivamento do caso, Sonia se orienta para a terceira ação desta fase: o arquivamento propriamente dito. Nas linhas 159-160, ela pede que Leo e Roger preencham a documentação para, em seguida, assinarem o termo de desinteresse, que está sendo impresso. Entendemos que a fase *Oferecimento do arquivamento* termina na linha 160. Depois disso, há uma pausa de 8s (linha 161) que marca uma mudança do enquadre institucional para o enquadre de conversa cotidiana, iniciada com “e encerramos hoje, né?” (linha 162). Nos turnos seguintes, linhas 162 a 234, enquanto os autores aguardam a impressão do termo de desinteresse para concretizarem o arquivamento, Sonia, Ana, Davi e Vitor iniciam uma nova fase cujos tópicos não se relacionam à meta institucional do encontro, tais como: a rotina do trabalho, o curso de graduação e o estágio de Davi, o trabalho no Rio de Janeiro e a profissão do pai de Ana. Essa nova fase, conhecida na literatura como *small talk*, cumpre funções específicas dentro dos ambientes institucionais (Coupland 200). Essa fase requer um estudo mais detalhado, portanto, suas características e implicações não serão exploradas neste trabalho.

Depois de abordarem assuntos que não se orientam para a meta institucional do encontro, os participantes retornam ao enquadre institucional, encaminhando o *Fechamento* do evento.

Excerto (9)

235	Ana	termo de desinteresse para conciliação
236		((barulho da impressora))
237	Ana	assinar os dois aqui
238		(34,0)
239		((os rapazes assinam o documento))
240	Ana	obrigada
241	Leo	de nada
242	Roger	obrigado
243		((barulho de porta se fechando))

As linhas 235 a 237 constituem contextos implicativos de fechamento, isto é, consistem no término do fornecimento das instruções, as quais são seguidas pelas partes, que assinam o documento. Na linha 240, Ana oferece uma partícula de fechamento, a primeira parte do par adjacente agradecimento/assentimento. No turno seguinte, Leo “aceita a proposta de fechamento” ao oferecer a segunda parte do par: “de nada”. A sequência então é concluída com Roger oferecendo mais um elemento finalizador, o qual não é respondido pela advogada Ana. A gravação termina com o barulho da porta da sala se fechando.

Considerações finais

Os profissionais de uma instituição têm uma meta-fim que precisa ser alcançada antes do encerramento da interação (Maynard 1984). Para lidar com essa meta maior, os profissionais tendem a desenvolver uma rotina de tarefas no trabalho. Cada instituição organiza seus eventos em diferentes fases que, embora recorrentes, estão sujeitas a mudanças a cada nova interação (Drew e Heritage 1992). Pensando nisso, este artigo buscou compreender o evento audiência preliminar no Juizado Especial Criminal, mapeando suas fases, as ações

realizadas pelos interagentes em casa fase e os recursos linguístico-interacionais usados pela conciliadora para alcançar seu mandato institucional.

Nossa análise identificou as fases de *abertura* e *fechamento*, que são comuns em interações institucionais. Identificou também uma fase que se assemelha a outros contextos institucionais: *apresentação do problema*. No entanto, também encontramos uma fase específica do evento investigado: *oferecimento do arquivamento*.

Para alcançar o mandato institucional, a profissional desempenha ações distintas em cada fase do evento. Na *abertura* da audiência, as ações realizadas pela conciliadora são o apregoamento dos autores do fato delituoso e os cumprimentos. Já na segunda fase dessa audiência, *apresentação do problema*, a conciliadora justifica os motivos que levaram as partes àquele encontro. Em seguida, ela solicita a confirmação das informações apresentadas no Termo Circunstanciado e esclarece as leis que envolvem o delito. Realizadas essas ações, Sonia desempenha, na fase *oferecimento do arquivamento*, as ações de propor o arquivamento, examinar as fichas criminais dos autores, confirmar a aceitação dos termos do acordo e celebrar o arquivamento. Por fim, no fechamento do evento, a advogada das partes fornece-lhes as últimas instruções e agradece.

Quanto às marcas linguístico-interacionais que diferenciam as fases da audiência preliminar, notamos que, na *Abertura*, a principal estratégia mobilizada pela representante da instituição é o par adjacente cumprimento/cumprimento. Na fase *Apresentação do problema*, predomina o discurso explicativo. A profissional orienta-se para a justificativa da audiência por meio de narrativas breves. Há ainda a formulação de perguntas de confirmação de informação e o esclarecimento das leis. Na fase *Oferecimento do arquivamento*, predomina o discurso argumentativo. Para defender sua posição de que o arquivamento seria a melhor solução, Sonia utiliza como argumentos: analogia, silogismo, evidências, narrativa hipotética e, por fim, uma ameaça. Nessa fase, há também a elaboração de perguntas de pedido de informação e de confirmação dos termos do acordo pela profissional. Já o arquivamento propriamente dito é realizado por meio do par adjacente pergunta/resposta. Finalmente, na fase de *Fechamento*, ressaltamos o uso do par adjacente do tipo agradecimento/ assentimento e os tópicos implicativos de fechamento. Vale ressaltar que, além das estratégias linguístico-interacionais apresentadas, notamos que as pausas igualmente podem marcar a passagem de uma fase para a outra. Também Schegloff (2007) mostra que, em situações nas quais o tipo de organização estrutural global fornece fala continuamente sustentada, a ocorrência de um silêncio pode tanto constituir o limite de uma sequência como realizar o encerramento de uma conversa.

Dessa forma, este estudo demonstrou, a partir de dados reais de fala, como se organiza uma audiência preliminar no Juizado Especial Criminal e quais ações são desempenhadas nesse evento, podendo contribuir para a formação dos estudantes da área do Direito e para a prática profissional dos conciliadores. Ademais, a pesquisa abordou um contexto ainda pouco estudado no âmbito da Análise da Conversa, constituindo uma fonte documental importante para os estudos da fala-em-interação institucional. Ressaltamos, contudo, que nossos resultados são válidos tão e somente para o contexto investigado, necessitando de mais pesquisas que os confirmem em outros encontros do gênero.

Notes

¹Vieira e Marques (2013) nomearam brevemente as fases de uma audiência preliminar no Juizado Especial Criminal, contudo, o objetivo do estudo foi investigar os papéis desempenhados pela juíza naquela situação institucional.

²Em seu artigo “Uma teoria sobre brincadeira e fantasia”, Bateson afirma que os enquadres operam de maneira análoga a uma moldura de quadro, pois assim como a moldura delimita e direciona o olhar do espectador, o enquadre contém um conjunto de instruções para que o ouvinte possa entender uma dada mensagem.

³O termo usado por Goffman é “*principal*”. Traduzimos “*principal*” por responsável, seguindo a tradução de Ribeiro e Garcez (2002).

⁴Segundo Goffman (2002: 137), *figura é “alguém que pertence ao universo sobre o qual se está falando, não ao universo no qual a fala ocorre”*.

⁵Embora o objetivo do Juizado Especial Criminal seja promover a conciliação entre as partes, a meta-fim da conciliadora, identificada discursivamente, é promover o arquivamento do caso, conforme resultados de estudos realizados em dados de audiências nesse órgão (Miranda 2019; Machado 2019)

⁶O reparo é um mecanismo utilizado pelo interagente para solucionar problemas de escuta, produção e entendimento na fala-em-interação (cf. Schegloff *et al.* 1977).

⁷Ao estudar sequências de fechamento em variadas atividades de fala, Schegloff (2007: 186-187) também aborda a organização estrutural global, mostrando que a forma básica da sequência de fechamento é composta por três turnos: 1) o turno inicial, qualquer que seja a forma que assuma, serve de fato para propor o possível fechamento da sequência ou do tópico em andamento na conversa precedente; 2) o destinatário de tal turno pode comprometer-se a colaborar no fechamento e encerrar o tópico/sequência ou resistir a obedecer; 3) qualquer resposta não colaborativa pode, de fato, abortar o fechamento de sequência.

⁸O Projeto foi aprovado pelo Comitê de Ética em Pesquisa com Seres Humanos da Universidade Federal de Juiz de Fora (CAAE 03965712.5.0000.5147, Parecer nº 153.335).

⁹De acordo com Riessman (2001: 697), narrativas breves são histórias breves, com tópicos específicos, organizadas em torno de personagens, cenários e de um enredo. Segundo o autor, elas podem ser curtas, ou muito curtas.

¹⁰Na análise das sequências argumentativas encontradas nos dados, baseamo-nos nos três componentes da argumentação propostos por Schiffrin (1987): posição, disputa e sustentação. O primeiro componente corresponde a uma ideia sobre as situações, estados, eventos e ações no mundo com a qual o falante se compromete. Já a disputa compreende as oposições que podem ser direcionadas a qualquer uma das partes da posição. O último componente da argumentação é a sustentação. Segundo a autora, formas de sustentação diferentes, como a exemplificação pessoal, a narrativa, a analogia, e o apelo à autoridade podem ser interpretadas como validando uma posição. Um falante pode sustentar uma posição por meio da explicação de uma ideia ou pela justificativa de um compromisso.

¹¹De acordo com Toulmin (1958), o plano estrutural do argumento pode ser descrito pelo clássico silogismo “Se D, então C”. Nesse modelo, raciocinamos com base em fatos, “D”, e dele chegamos a conclusões, “C”.

¹²Implicitamente, Sonia alerta as partes que qualquer envolvimento posterior em outros delitos os levará à justiça comum, pois não serão considerados primários.

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A escuta de narrativas de violência doméstica em entrevistas de mediação familiar judicial

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Abstract. *Telling their side of the story is a central practice for parties in mediation sessions. The way third parties, often said neutral and impartial, listen to these stories can have consequences within and beyond these interactions. In this paper, we examine narratives of violence produced in pre-mediation interviews. The case involves a divorced couple disputing the custody of their children. Drawing upon studies in talk-in-interaction and narrative, we analyzed, how the mediator deals with reports of domestic violence during the interaction and record her observations about these violent events on a report that will be read by the judge in the case. We aim to contribute to the understanding of listening by third parties in mediation. The results reveal the massive use of narrative accounts with implications for the custody decision. We observed also a lack of parity in the ways that the mediator listen and deals with the reports produced by each of party.*

Keywords: *legal family mediation; interviews; listening; narratives; talk-in-interaction.*

Resumo. *Uma prática central na mediação é o relato das partes sobre seu lado da história. A escuta dessas narrativas por uma terceira parte, dita neutra e imparcial, pode ter consequências durante e além da interação. Neste trabalho, examinamos um caso de narrativas de violência, produzidas em entrevistas de pré-mediação, realizadas, separadamente, com um ex-casal, num caso de disputa de guarda e tutela antecipada, requerido pelo pai. Analisamos, à luz dos estudos de fala-em-interação e da narrativa, como a mediadora lida com os relatos de violência doméstica durante a interação e no registro de suas observações relatadas ao juiz do caso. Objetivamos contribuir para o entendimento da escuta de terceiras partes na mediação. Os resultados revelam uso maciço de prestações de contas narrativas com implicações para o julgamento da guarda. Quanto à escuta da mediadora, observou-se a falta de paridade, no relatório, em termos do que tornou relevante na entrevista de cada disputante.*

Palavras-chave: *mediação familiar judicial; entrevistas; escuta; narrativas; fala-em-interação.*

Introdução

Em uma sociedade cada vez mais complexa, o aumento de casos de conflitos interpessoais tem promovido a busca de atividades técnicas de resolução de disputas por meio de mediações, judiciais ou extrajudiciais. Nesses encontros, uma terceira pessoa, dita neutra e imparcial, o mediador, tenta ajudar as partes a chegarem a uma possível solução de seus problemas. Uma prática central nessa atividade é o relato de cada parte sobre seu lado da história. A escuta do mediador nesse contexto é tão importante que há modelos de mediação, como a *mediação narrativa* (Cobb 1993), que se baseia na intervenção do mediador sobre esses relatos.

Outro locus privilegiado de escuta de narrativas⁴ é o de entrevistas com cada parte, antes das sessões conjuntas. Para Moore (1998), trata-se de um método de coleta de informação que possibilita ao mediador entender melhor a dinâmica do conflito e mapear os interesses individuais. É, nesse contexto, que propomos investigar a escuta pela mediadora de narrativas de violência doméstica, produzidas por um ex-casal, em um caso envolvendo pedido de guarda e tutela antecipada, requerido pelo pai, de dois filhos menores de idade, que viviam com a mãe. Os relatos não são versões diferentes de um mesmo fato, mas sim narrativas de diferentes episódios de violência doméstica, experienciadas, tanto pelo homem, quanto pela mulher.

O contexto dessas escuta é especialmente interessante porque, pela lei da mediação (Lei 13.140), na ocorrência de crime de ação pública, o mediador é orientado a interromper a atividade, quando sabedor da notícia de um crime. É um desafio, portanto, para a mediadora lidar com essas narrativas quando elas emergem. Outro traço peculiar dos dados é o seu contexto histórico. Na época em que os dados foram gerados (2008), a mediação judicial era incipiente no Brasil, logo alguns procedimentos diferem dos de hoje. A mediação não culminava com uma ata formal, mas sim com um relatório.

No caso em exame, o juiz que presidia a vara de família desses processos pediu à assistente social do fórum um estudo social do caso, devido à recorrência de litígio entre o ex-casal e, para um melhor embasamento de sua convicção em suas decisões futuras. A profissional, entusiasta e estudiosa da mediação, pediu ao juiz, então, permissão para aplicar a mediação ao caso, o que foi deferido. Comprometeu-se a entregar ao juiz, ao fim de três meses, um relatório com o registro de suas observações relativas a cada entrevista e de eventuais acordos alcançados, a serem ratificados em audiência de conciliação.

Partindo do princípio de que agimos pela linguagem, e à luz da abordagem teórico-metodológica da Análise da Conversa, pretendemos aqui contribuir para os estudos sobre a escuta da mediadora, de um modo geral e, especificamente, em casos de relato de violência doméstica. Para tanto, analisamos como essa escuta é realizada durante a interação e registrada no relatório enviado ao juiz. Em termos aplicados, pretendemos oferecer um melhor entendimento sobre a complexidade do processo de escuta e sua relação com os objetivos da mediação.

A seguir, apresentamos uma breve revisão da literatura sobre narrativa e sobre escuta ativa. Na sequência, introduzimos os pressupostos teóricos e metodológicos, os resultados de análise e as considerações finais.

Estudos de narrativa

Definir narrativa é um desafio, pois o termo abarca diferentes perspectivas de estudo (Ingraham 2015). As narrativas são consideradas um modo de pensar, uma forma de se entender o mundo, não inferior ao pensamento científico lógico-formal, e não apenas uma materialidade da linguagem (Bruner 1986). Neste trabalho, consideramos que “histórias contêm um incidente problemático central ou evento iniciador, seguido por várias ações e reações” (Stewart e Maxwell 2010: 29), e ocorrem no universo microsocial dos encontros sociais, em ambientes (presenciais ou virtuais), em que as pessoas estão fazendo uma atividade conjunta (Biar *et al.* 2021).

No campo da linguagem, estudos pioneiros são os de Labov e Waletzky (1967) e Labov (1972). Por meio de entrevistas sociolinguísticas, foi solicitado aos entrevistados que contassem uma história de perigo vivenciada por eles. Analisando essas narrativas, os autores definiram a narrativa como uma técnica de relato de uma experiência passada de teor reportável, que tem um ponto, isto é, uma razão para ser contada, e uma estrutura, combinando uma sequência verbal de orações e uma sequência temporal de eventos.

Quando duas cláusulas ordenam-se temporalmente ocorre uma narrativa mínima. Em narrativas mais longas, foram identificados os seguintes elementos: resumo inicial (que sumariza o que vai ser contado); orientação (que contextualiza o evento); ação complicadora; avaliação (informação sobre a carga dramática ou o clima emocional da narrativa, usada para indicar o ponto); resolução; e a coda, um fecho de caráter avaliativo sobre os efeitos dos eventos no narrador, ou como acrescenta Linde (1993), como o mundo é ou, em seus aspectos morais, como deveria ser. Esse modelo é chamado de estruturalista.

Já a Análise da Conversa (AC) não objetiva analisar esses elementos específicos em uma narrativa, mas sim descrevê-la como um objeto sequencial, executado nos turnos de fala, em mais de uma elocução (Sacks 1992), como fruto do uso de métodos pelos participantes para criarem inteligibilidade uns para os outros do que fazem. A estrutura de uma narrativa é vista como contingente, localmente condicionada, na e pela interação, através do trabalho ativo dos interagentes. As narrativas são sensíveis ao contexto de produção e, sobretudo, veículos de ação (Sacks 1972, 1974; Jefferson 1978; Goodwin 1984).

No contexto institucional, a interação é moldada pelos objetivos das instituições e de seus participantes (Drew e Heritage 1992). Logo, as formas e funções da narrativa são sensíveis a cada contexto. Sell e Ostermann (2015), por exemplo, mostram como o mandato institucional do conselheiro tutelar, em entrevistas com crianças vítimas de abuso sexual, orienta as suas perguntas, de modo a extrair da criança respostas que ajudem a construir uma narrativa escrita do evento convincente para fins judiciais, e que possa ensejar medidas protetivas da criança e de punição ao culpado, revelando, assim seu envolvimento moral.

Stokoe (2010) analisa como homens presos, acusados de violência contra a mulher, negam as acusações em interrogatórios policiais. Um dos formatos é embutir a negação das acusações de violências em longas prestações de contas narrativas. A análise de dados não mostra sequencialmente como surgiram as narrativas, mas a autora argumenta que foram motivadas por perguntas dos policiais, em turnos anteriores. O estudo associa as narrativas ao trabalho de categorização de pertença na intersecção com questões de gênero.

No contexto específico da mediação, Stewart e Maxwell (2010: 32)⁵ mostram que os disputantes “apresentam sua identidade criada na melhor luz possível, e formulam a

identidade da outra parte, na pior luz possível”. Segundo Cobb (1993), os disputantes, nesse contexto, constroem teorias opostas de responsabilidade para os eventos ou atividades narrados⁶.

Uma materialidade da narrativa importante nos nossos dados são as prestações de contas narrativas, para Stewart e Maxwell (2010: 36), “semelhantes e às vezes intercambiáveis com narrativas”⁷ (2010: 36). Socialmente, prestamos contas aos outros por nossos comportamentos (Garfinkel 1967), através de descrições, explicações cotidianas ou auto-relatos sobre atividades cotidianas (Antaki 1988). Entendemos as prestações como ‘o uso da linguagem para construir interacionalmente significados preferidos para eventos problemáticos’⁸ (Buttny 1993: 21).

O ferramental conceitual-analítico reunido acima sobre narrativas e prestações de contas narrativas iluminarão nossa análise de dados, que terá como foco a perspectiva interacional. As diferentes perspectivas revisadas, se relevantes na análise, poderão ser integradas, conforme sua produtividade explicativa na análise de uma narrativa.

A escuta (ativa) na prática profissional

Analizamos aqui a escuta da mediadora de narrativas de violência doméstica nas entrevistas de pré-mediação. Na literatura de mediação, Azevedo (2016: 109), manual de referência na formação de mediadores judiciais, aborda as *habilidades de escuta* do mediador, listando-as em um formulário para acompanhamento das mediações por mediadores em treinamento e formadores de mediadores, na forma de perguntas de um check-list de verificação pós-mediação (pontos de interrogação adicionados):

“Não interrompeu? Esperou o relato completo da história? Concentrou-se? Escutou ativamente? Entendeu as questões? Identificou interesses e sentimentos? Formulou questões abertas? Reformulou asserções para identificação de preocupações subjacentes? Captou informação suficiente? Recontextualizou? Auxiliou cada uma das partes a ouvir a outra? Demonstrou paciência?”

As *habilidades* listadas são muito distintas, e envolvem diferentes processos: mentais (concentrar-se), cognitivos silenciosos (entender as questões, identificar interesses e sentimentos), de espera física e talvez de silêncio (esperar o relato completo sem interromper); ações verbais específicas (formular questões abertas, reformular asserções, recontextualizar), e menos específicas (auxiliar a ouvir). Na lista, menciona-se a escuta ativa, mas como ela se difere das outras ações verbais? Haveria formas de escuta menos ativas? Silêncio performa escuta? De que tipo?

A escuta *ativa*, entretanto, parece ser o que mais caracteriza a habilidade profissional do mediador de escutar. Azevedo (2016: 125) considera-a uma *técnica de gestão do conflito*, mencionando vários termos que materializam a escuta ativa: recontextualização, reenquadramento, escuta dinâmica, parafraseio, e reformulação com conotação positiva, sem maiores detalhes sobre as diferenças dos termos. Almeida (2014: 79-80) considera a escuta ativa uma *ferramenta da comunicação* da mediação, mais ainda, uma forma de “intervenção primordial nos diálogos colaborativos”. O termo é usado de forma muito similar a Azevedo (2016), e igualmente sem nenhuma definição formal. Quando trata de sua operacionalização, Almeida (2014: 90) apresenta as *perguntas* como forma de escuta ativa, sem entrar em detalhes de sua composição. Perguntas podem assumir diversos formatos (Stivers 2010) e com funções bem específicas no discurso institucional, em uma

sequência interacional (Ehrlich e Freed 2009). Os estudos de base linguístico-interacional podem ajudar a qualificar melhor esses termos da mediação ligados à escuta.

Como fenômeno interacional, a escuta ativa foi descrita na mediação através da prática de formulação, entendida como um método dos interagentes para explicitarem seu entendimento da fala do outro (em parte ou no todo), em um próximo turno de fala, não necessariamente o próximo, submetendo esse entendimento à confirmação do outro, que (des)confirmará essa nova versão, em uma estrutura de par adjacente. Basicamente, a formulação é feita através de três operações: deleção, inserção e transformação do conteúdo do que foi dito pelo outro (Ostermann e Silva 2009).

Stokoe e Sikveland (2016) mostraram como medidores de problemas de vizinhança na Grã-Bretanha ouvem as reclamações (narrativas) dos problemas dos disputantes, e em seguida efetuam resumos do problema, propondo preferencialmente que as duas partes estejam implicadas em um mesmo problema, com peso igual para os dois lados; na sequência, formulam uma pergunta a uma ou ambas as partes, focada na solução do problema. Os autores mostram que essa é uma forma sutil de os mediadores transformarem um problema em possibilidade de solução, sem arriscarem sua neutralidade.

Garcia (2019) investiga a atuação do mediador na escuta ativa das posições das partes na disputa, problematizando exatamente sua neutralidade, ao formulá-las. A autora apresenta dados de julgados especiais e mediações de divórcio, em três tipos de mediação (linear, narrativa e transformadora – ver Almeida *et al.* (2016)). Propõe haver incursões mais intrusivas do mediador na fala do outro, quando, por exemplo, ele imprime conotação positiva a uma fala que era negativa, apaga culpabilização e acusação, depreende valores não afirmados, expressa medo, crenças, objetivos etc. não ditos explicitamente, ou ainda propõe bases comuns de crença entre os disputantes. Para ela, essas formulações não são neutras, e podem afetar a autonomia dos disputantes.

A escuta do mediador é, pois, um trabalho complexo. Depreende-se que uma escuta ativa estará, necessariamente, ligada a operações na fala do outro, com maior ou menor grau de intrusão, o que acarretará em implicações para a neutralidade do mediador e autonomia dos mediandos. O lugar do silêncio como forma de escuta na mediação permanece uma questão ainda nebulosa.

A Análise da Conversa

A Análise da Conversa (doravante AC) é uma abordagem microssociológica teórico-metodológica surgida em meados da década de 60, nas aulas de Harvey Sacks na Universidade da Califórnia, Irvine (Sacks 1992), e sua posterior colaboração com Emanuel Schegloff e Gail Jefferson. Parte da ideia de que a interação social, e, por conseguinte, a vida cotidiana, constitui uma ordem local própria (Goffman 1983), o lócus de fabricação do tecido social, por muito tempo negligenciada nos estudos sociológicos (Goffman 1964).

A AC descreve as ações sociais realizadas pelos participantes em suas contribuições conversacionais na interação, tais como convidar, parabenizar, abrir uma audiência, etc., em dados do tipo naturalístico. Formalmente, examinamos as estruturas e práticas (verbais e não verbais), i.e. os métodos, que os interagentes utilizam para darem sentido a suas ações através das ferramentas fornecidas pela organização sequencial (Schegloff 2007).

Consideramos o turno de fala a unidade básica de trabalho (Sacks *et al.* 2003). Aqui, examinamos os turnos de fala na mediação, um tipo de fala denominada de institucional,

em que os participantes estão orientados para mandatos institucionais no cumprimento de suas tarefas (Drew e Heritage 1992).

A AC não parte de construtos teóricos *a priori*, mas sim considera em suas análises o modo como os participantes se orientam para uma dada ação, em transcrições detalhadas da fala-em-interação, o que pode ser descrito a partir da forma como uma ação é formada na interação, explorando os detalhes de seu formato (o desenho), e sua posição específica no fluxo das trocas conversacionais (sequencialidade) (Ferraz de Almeida 2019; Drew e Sidnell 2013; Levinson 2013). Assim, um turno de fala representa o entendimento do falante do que foi dito antes, e projeta expectativas para o próximo turno, em termos de próxima ação relevante. Essa relação expressa o que Heritage e Jefferson (1984) denomina de arquitetura da intersubjetividade.

Metodologia e Contexto de Pesquisa

Nosso corpus inclui gravações em áudio de entrevistas de pré-mediação, peças escritas de um processo judicial, e notas de campo de observação não-participante, gerados em vara de família do interior do Rio de Janeiro, em 2008. Eles integram o corpus de mediação do grupo de pesquisa Interações em Contexto Institucional, coordenado pelo segundo autor. A pesquisa possui aprovação por comitê de ética em pesquisa em seres humanos (CAAE 52663216.1.0005257, CEP-UFRJ). Adotamos o modelo Jefferson (2004) para a transcrição básica e de Hepburn (2004) para o tratamento do choro (ambos anexos). Todos os nomes usados são fictícios.

O caso de disputa de guarda dos filhos analisado é protagonizado por Arminda e Luan, 29 e 30 anos, respectivamente, à época um ex-casal, que viveu em união estável por quatorze anos, daí resultando dois filhos, Maria Gabriela (11 anos) e Vitor (5 anos). Quando das entrevistas de mediação, o casal estava separado há cerca de 2 anos, Vitor já morava com Luan, que era autor de duas ações na justiça contra Arminda, uma de guarda e posse da filha com pedido liminar de antecipação de tutela, e outra de regulamentação de visita da filha, que morava com a mãe, na casa da avó.

Além desses documentos, integram o processo judicial laudos periciais, um boletim de ocorrência, um relatório de estudo psicológico, e um relatório de estudo social. Os dois relatórios narram uso abusivo de álcool por Luan, culminando em episódios de violência física contra Arminda, e diversas separações e reconciliações do ex-casal. Usaremos aqui parte do relatório social que remete às entrevistas de pré-mediação.

A mediação foi levada a cabo em duas entrevistas de pré-mediação (uma com cada parte, separadamente), e cinco sessões conjuntas. Focamos aqui nas duas entrevistas de pré-mediação. É praxe o poder judiciário primeiro ouvir o requerente, e depois o requerido, porém, por dificuldades de agenda, a mediadora conversou primeiramente com Arminda, e depois com Luan.

Nossa busca nos dados deu-se por momentos, em que encontramos narrativas de violência, nas duas entrevistas. Chegamos a três longos segmentos analíticos, dos quais derivamos os seis excertos abaixo, como segue: os excertos 1, 2 e 3 advêm do segmento um, da entrevista com Arminda; na entrevista com Luan, extraímos da segunda segmentação os excertos 4 e 5; já o excerto 6 provém da terceira segmentação. Apresentamos as narrativas na ordem cronológica em que ocorreram: primeiro, as de Arminda, depois, as de Luan.

Analisamos também um pequeno extrato do relatório elaborado pela mediadora para o juiz, em que reporta suas observações sobre as entrevistas individuais. Partindo do princípio de que documentos são locus legítimos de construção de sentido, e não apenas de espelhamento de realidade (Drew 2006), vemos aqui a possibilidade de cruzamento entre o que analisamos na interação e a seleção feita pela mediadora por escrito ao juiz.

As narrativas de Arminda: “*e falou que ia botar fogo comigo dentro e as criança dentro*”

Os três excertos abaixo mostram narrativas de Arminda em torno de um episódio de violência vivido por ela, o de Luan “*botar fogo comigo dentro e as criança dentro*” (excerto 1), e seus desdobramentos imediatos: a ida ao conselho tutelar (excerto 2) e a busca de socorro na polícia (excerto 3). No conjunto, essas narrativas funcionam como uma grande prestação de contas de uma fala anterior sua - “*com certeza ele vai: negar tu:do.*” (não mostrada aqui), em resposta à proposta da mediadora de levar as queixas de Arminda sobre o comportamento de Luan no cuidado aos filhos à sessão conjunta com ele. Começamos com a narrativa do fogo (linha 1):

Excerto_1_2ªEPM_Armin_H_ narrativas_violência_doméstica

001 Arminda igual teve uma vez el- teve uma vez lá em casa,
002 (0.8) que ele:: (.) foi, (0.5) botou:- lá em casa
003 na:- (.) >tinha< até um- (.) tinha o qua:рто, (0.5)
004 o corredor, (0.8) aí tem o banheiro, uma cozinha.
005 (0.2) e uma varanda na frente.
006 (1.8)
007 Arminda aí ele foi, (.) botou Óleo, nas minhas coisa
008 >todinha.<
009 (0.2)
010 Arminda óleo diesel.
011 (0.8)
012 Arminda jogou óleo diesel >em tudo.<
013 (0.2)
014 Arminda na rou::pa, jogou em tudo?
015 (0.2)
016 Arminda depois abriu a botija de gás? (0.8) e falou que ia
017 botar fogo comigo dentro °e as criança dentro.°
018 (0.5)
019 Arminda e que ia acabar com nossa vida, também,=<duma vez.
020 (2.2)

Arminda entra no mundo da narrativa com a expressão - “igual”, anunciando primeiramente tempo e agente(orientação) na primeira elocução - “teve uma vez el-”, auto-interrompida e reformulada para tempo e espaço (com repetição do tempo) - “*teve uma vez teve uma vez lá em casa,*”; depois, introduz o agente (Luan), entre pausas - “(0.8) que ele:: (.)”; continua a descrever a ação, usando construção verbal que finaliza a elocução em curso, mas ainda não indica a ação principal - “foi,”; segue-se nova pausa, e Arminda continua a descrever a ação - “(0.5) botou:-” (linhas 1-2), auto-interrompida também. Esse formato de produção do turno de fala marca a ação como despreferida (Pomerantz 1984), no caso, delicada.

Arminda introduz um referente da narrativa - “>tinha< até um- (.) ” (um objeto? um cômodo da casa? linha 3), se autointerrompe, e narra o cenário maior em que se deu a narrativa, descrevendo a planta da casa, dos fundos para a frente - “tinha o quarto, (0.5) o corredor, (0.8) aí tem o banheiro, uma cozinha. (0.2) e uma varanda na frente.” (linhas 3-5). Por um lado, essa descrição calibra o domínio epistêmico da mediadora (Bristol e Rossano 2022), que desconhece a casa; por outro lado, empresta à narrativa maior dramaticidade, criando suspense. Pela descrição, depreende-se que somente havia uma entrada/saída da casa: “na frente”.

Após longa pausa (“(1.8)”, linha 4), Arminda prossegue a narrativa, com a expressão - “aí”, introduzindo as próximas ações de Luan - “aí ele foi, (.) botou Óleo, nas minhas coisa >todinha.< (0.2) óleo diesel. (0.8) jogou óleo diesel >em tudo.< (0.2) na rou::pa, jogou em tudo? (0.2)” (linhas 7-12). Ela utiliza a prática de reescalonamento (de Paula, 2022) duas vezes: do elemento de combustão - “botou Óleo,” reescalonado para “óleo diesel.”, implicando maior poder destrutivo; dos objetos atingidos, três vezes (re)formulados - “em tudo.< na rou::pa, jogou em tudo?”, atingindo extensão máxima - “em tudo?”. Arminda descreve, pois, a preparação por Luan de um cenário com alto poder de destruição.

A ação complicadora narra a ameaça verbal de Luan - “depois abriu a botija de gás? (...) e que ia acabar com nossa vida, também,=

Nessa parte da narrativa, fatos importantes são apresentados por Arminda, abrindo-se muitos momentos relevantes na interação para alguma ação verbal responsiva da mediadora, o que não ocorreu (note-se os silêncios nas linhas 9, 11, 13, 15 e 18). A ausência de reações verbais ao longo dessa sequência narrativa sugere que seu trabalho interacional, neste momento, é o de suprimir essas respostas, permanecendo em silêncio.

No próximo excerto, contíguo ao anterior, Arminda narra a busca de ajuda no conselho tutelar e sua conversa com o agente da instituição, como desdobramento imediato da cena com Luan (linha 21):

Excerto_2_2ªEPM_Armin_H_ narrativas_ violência_ doméstica

020 (2.2)
021 Arminda aí a mãe foi- nós foi lá no conselho tutelar,
022 (.)
023 Arminda conversamos com o ruan,
024 (0.5)
025 Arminda <né.
026 (.)
027 Arminda lá do conselho tutelar de bureal.
028 (.)
029 Helena †ãhã::.
030 (1.2)
031 Arminda aí ele falou comigo.=°assim.°
032 (0.2)
033 Arminda "minda,"
034 (.)
035 Arminda "eu não posso:: (0.2) >ir lá."
036 (.)
037 Arminda "né. porque aqui faz parte de outro coisa.=mas a
038 gente pode acionar o s- conselho tutelar de entre
039 rios,"
040 (0.8)
041 Arminda ai eu perguntei="mas o que que vai acontecer."
042 (0.2)
043 Arminda >>aí ele falou.<< (0.5) "eles vão pegar teu filho,"
044 (.)
045 Arminda que ele deixou meu filho, preso lá:,
046 (.)
047 Arminda °nessa° casa,
048 (0.2)
049 Arminda aí >ele falou<="vão pegar teu fi:lho, (0.2) e vai
050 levar pro abrigo."
051 (0.8)
052 Arminda "lá, em entre rios, e vai deixar lá até ele
053 resolver."
054 (0.8)
055 Arminda ai eu fiquei com medo,=°né°,
056 (.)
057 Arminda deles pegar meu filho e deixar ali,
058 (0.2)
059 Arminda °.hh .hhh° ((começa a chorar))
060 (3.0)
061 Arminda .HHH
062 (2.0)
063 Arminda .huhh ~eu não consigo,~ (.). (.huh) ~ficá longe
064 de:les.~ HUUU
065 (1.2)
066 Arminda .shih
067 (0.2)
068 Arminda .HH ((engole o choro))
069 (1.2)
070 Arminda .HHH ((engole o choro))
071 (0.2)

Após longa pausa (linha 20), Arminda narra a próxima ação nesse episódio e seus sujeitos, iniciada como- "aí a mãe foi-", mas substituída, em autorreparo no mesmo turno (Schegloff *et al.* 1977), por - "nós foi lá no conselho tutelá" (linha 46), indexicalizando uma busca conjunta, com parente próximo, de ajuda em instituição ligada aos direitos de crianças e adolescentes, ou seja, para os filhos. A conversa com o agente institucional é narrada via discurso reportado - "aí ele falou comigo.=^oassim.^o (0.2) 'minda,' eu não posso:: (0.2) >ir lá." (linhas 31-35), com ele usando referência à pessoa (Sacks e Schegloff 1979) para referir-se a ela- " 'minda,' " de forma abreviada, uma redução de seu primeiro nome, mostrando proximidade entre eles. Essas elocuições narram também a impossibilidade de ajuda, feita pelo agente com prestação de contas (jurisdicionais) - "né. porque aqui faz parte de outro coisa.=", com oferta de ajuda alternativa - "mas a gente pode acionar o s-conselho tutelar de entre rios,"" (linhas 37-39).

Uma oferta de ajuda projetada estruturalmente como resposta aceitação ou recusa (Schegloff 2007). Ao invés disso, Arminda insere uma pergunta, voltada para as consequências da decisão - "ai eu perguntei='mas o que que vai acontecer.' (linha 41). Como na cena anterior, esse recurso empresta à narrativa um caráter dramático, criando suspense. A resposta do agente é narrada sem rodeios - "eles vão pegá teu filho,"" (linha 43), formulando a situação de ela ficar sem o filho. Nesse momento, Arminda fornece prestação de contas que pode explicar sua ida ao conselho tutelar - "que ele deixou meu filho, preso lá:, (.) nessa casa," (linhas 46 e 48), e, no aqui e agora com a mediadora, atribuir ao pai a ação de submeter o filho a riscos.

Arminda retoma a narrativa, elaborando mais detalhes das consequências para ela: o destino do filho - "e vai levar pro abrigo." (linhas 50-51), a distância - "lá, em entre rios,"" (linha 53), o tempo da permanência - "e vai deixar lá até ele resolver." (linhas 53-54). Após isso, narra sua avaliação da situação - "ai eu fiquei com medo, =^oné^o, (.) deles pegar meu filho e deixar ali↓" (linhas 56 e 58), entrando na atividade de chorar nas linhas 60-71, que atinge maior intensidade, quando expõe seus sentimentos em relação aos filhos - ".huhh ~eu não consigo,~ (.) (.huh) ~ficá longe de:les.~ HUH" (linhas 64-82).

A narrativa de Arminda dramatiza, então, sua busca de ajuda institucional com parente próximo, seus sentimentos de mãe com a solução possível apresentada, e constrói a imagem de Luan promovendo risco aos filhos. Essa situação expressa o dilema moral (Williams 1965) de proteger os filhos ficando sem eles versus ficar com eles mantendo-os em risco com a presença do pai.

No excerto três, Arminda narra a busca de ajuda institucional na polícia da cidade, que participou do atendimento a ela (linha 1):

Excerto_3_2ªEPM_Armin_H_narrativas_violência_doméstica

001 Arminda aí eu fui, aí a mãe chamô os policial de entre rios
002 também.
003 (0.5)
004 Arminda °os policial daqui, eu num me lembro, quem, o nome
005 deles.°
006 (0.8)
007 Arminda aí eles foi lá em casa,
008 (0.5)
009 Arminda aí conversô comigo,
010 (.)
011 Arminda conversou com luan >também?<
012 (1.2)
013 Arminda aí ele falou com o luan, ">se ela dá queixa de tu,
014 luan,< (0.5) dessa vez tu va- tu vai: se dá mal,"
015 (.)
016 Arminda falou com ele.
017 (0.8)
018 Arminda aí ele pegô >conversô comi:go, que tava com a
019 cabeça quen:te, que tinha acontecido muita coisa,<
020 aí ele começa ((>sabe:|<)) (.) falá um montão de
021 coisa,
022 (0.5)
023 Arminda que tava com a cabeça muito quen::te,
024 (0.2)
025 Arminda aí que fez isso, que não ia fazê ma::is,
026 (0.5)
027 Arminda aí depois ele acalmô.
028 (.)
029 Helena <e as crianças::.
030 (.)
031 Arminda aí as criança (.) >ficou em casa.<
032 (0.2)
033 Arminda aí depois eu fiquei em casa,=aí ele ajudou a limpar
034 as coi:sa.
035 (0.5)
036 Arminda ai depois ele limpô: as coisa, >falando que não ia
037 fazer isso mais,<=depois saiu:|
038 (0.5)
039 Arminda °foi embora.°
040 (2.2)
041 Arminda .hh aí ele: (.) ficô tranquilo também mais uns
042 tempo.
043 (2.5)
044 Arminda mas >é sempre assim.< °ele° sempre::, fica
045 assim.=>apronta, apronta:,< (.) e:, (2.2) °sempre
046 sai vitorioso.°
047 (2.5)
048 Arminda °sempre foi assim.°
049 (2.2)
050 Arminda só: que:m? (.) convive mesmo, os vizinhos, (0.8)
051 >mas ninguém quer dá as cara,< °entendeu.° ninguém
052 quer::-

Arminda narra como se deu a busca de ajuda - “aí eu fui, aí a mãe chamô os policial de entre rios também.” (linhas 1-2), ou seja, sua mãe foi o agente; o tipo de atendimento prestado (visita domiciliar) - “aí eles foi lá em casa,” (linha 7), e a forma como isso se deu (provavelmente esclarecimentos) - “aí conversou comigo,” (linha 9) - “conversou com luan >também?<” (linha 11), nessa ordem, primeiro vítima, depois agressor. Do ponto de vista jurídico, o fato em si já havia ocorrido, não cabendo mais prisão em flagrante, apenas orientação jurídica. A esse respeito, Arminda destaca, em fala reportada, a conversa dos policiais com Luan - “>se ela dá queixa de tu, luan,< (0.5) dessa vez tu va- tu vai: se dá mal,”” (linhas 13-14). Os policiais advertem Luan formulando uma hipótese - “se ” - e consequências negativas (genéricas) - “tu vai: se dá mal,”, usando advérbio de repetição - “dessa vez ” e referência à pessoa informal- “tu”. Talvez esse uso da voz da polícia como autoridade relate, também, indiretamente, suas esperanças de que a violência não se repita.

Arminda narra, então, o pedido de desculpas de Luan, após a saída dos policiais, feito em conversa - “aí ele pegô >conversô comi:go,”, explicando seu estado anterior usando argumento psicológico de excepcionalidade - “que tava com a cabeça muito quen::te,”, com causas externas a ele - “tinha acontecido muita coisa,”. Em contraste com as elocuições anteriores, no passado, a próxima é narrada no presente do indicativo - “aí ele começa ((sabe↓)) (.) falou um montão de coisa,”, implicando prática habitual de Luan nessas situações, culminando em promessa - “que não ia fazê ma::is,” (linha 25). Arminda fecha a descrição avaliando o estado psicológico de Luan - - “aí depois ele acalmô..” (linha 27).

Até aqui, a mediadora manteve-se em silêncio, manifestando-se agora pela primeira vez, com uma pergunta - “<e as criança::” (linha 29), em formato que não usa verbo, portanto, não aponta uma direção de ação, apenas elege o tópico da conversa, ficando a cargo do respondente fazê-lo, no caso, Arminda opta pela descrição da localização física das crianças - “aí as criança (.) >ficôem casa.<” (linha 31).

Arminda descreve a volta à certa normalidade na vida doméstica, com Luan lidando (adjuvantemente) com os danos causados por ele - “aí depois eu fiquei em casa,=aí ele ajudou a limpar as coi:sa. ai depois ele limpou: as coisa,” (linhas 33-36). Relata sua renovação de promessa durante a tarefa instrumental - “>falando que não ia fazer isso mais,<” (linhas 36-37), e saída dele de cena - “=depois saiu↓” (linha 37), “foi embora.” (linha 39). Encerra, avaliando o estado psicológico de Luan numa faixa temporal - “.hh aí ele: (.) ficou tranquilo também mais uns tempo.” (linhas 41-42).

Arminda avalia, no tempo presente, os efeitos sobre ela - “mas >é sempre assim.< (...) e:, (2.2)°sempre sai vitorioso.”. (linha 45-46). O termo “vitorioso” evoca seu antônimo, derrota, que talvez expresse o sentimento de Arminda diante de sua relação com o ex-marido. A coda dessa narrativa - “°sempre foi assim.” (linhas 48) expressa sua descrença em mudanças, e explica a razão de ser dessas narrativas.

Essas narrativas mostram Arminda e Luan lidando com o acionamento institucional da polícia e seus efeitos, à época. Interacionalmente, Arminda usa a fala reportada e prestações de contas narrativas das ações de Luan; a mediadora acompanha, majoritariamente, em silêncio, realizando apenas uma pergunta, quando provavelmente entende que a narrativa do conflito tenha chegado ao final, marcado pela descrição do marido tendo se acalmado Seguem as narrativas na entrevista com Luan.

As narrativas de Luan- “a senhora vê aquela morena, a senhora não sabe o que ela é, não.”

Luan narra três episódios distintos de violência vividos por ele, apresentados em três excertos. O título da seção - “a senhora vê aquela morena, a senhora não sabe o que ela é, não.” refere-se à imagem negativa de Arminda construída por Luan (no excerto 6), trabalho realizado em todas as narrativas, seja nas de violências de Arminda com fogo (excerto 5), ou de violências da família de Arminda (excerto 4), originada abaixo na fala da mediadora (Figura 4, linha 1).

Em momento anterior (não mostrado aqui), Luan narrava ameaça de morte que recebeu da família de Arminda, e a reação de sua filha. A mediadora retoma o assunto, formulando o sentimento de sua filha com a defesa pessoal dele - “e além do mais o senhor disse que: a marília gabriela fica preocupada, (.) com a defesa do senhor.” (linhas 1-3), o que indiretamente pode ser entendido como um pedido para que o interlocutor fale mais respeito do assunto. A ação responsiva de Luan consiste em prestar contas do sentimento da filha - “= ela que me protegê de qualquer jeito” (linha 4.), em fala engatada (Schegloff 1998) à mediadora, construindo a imagem de alguém em risco e digno de esforço de proteção - “de qualquer jeito”, ou seja, como pai um querido.

Após micro-pausa, Luan insere um prefácio que projeta a expectativa de que uma história emocionante será contada - “portanto uma coisa que eu num- num vô esquecer nunca.” (linhas 6 e 7). Luan especifica a “coisa” inesquecível - “<que ela falô pra mim” (linha 9) <e o garoto também (linha 11). Ainda se localizando no presente, Luan oferece garantias de veracidade, baseada nos filhos - “pode perguntá a ele que: (.) eles vão contar” (linha 13).

Luan volta ao mundo narrativo e reporta a fala da filha, narrando a reação da garota à suposta ameaça de morte - “eles falaram< “se for matá meu pai, (0.2) vai ter que matá eu também.” (linhas 15 e 16), um ato heróico de um filho oferecendo a própria vida em salvação da do pai. Na sequência, Luan descreve o cenário dessa conversa com os filhos - “eles tavam dentro do carro, junto” (linhas 18 e 20), e tem início a ação corporificada do choro (linha 22). Voltando ao tempo presente, Luan realiza a coda, anunciando o fim da narrativa - “isso eu num vô- (0.2) (...) eu não vou esquecer disso” (linhas 24 e 25), enfatizada - “nunca↓” (linha 27).

Luan chora ainda e volta ao passado para avaliar o episódio, entre choros - “^{oo}.shih^{oo} ~ fiquei muito- fiquei muito triste,~ (...) que eles não vão fazer,” (linhas 29-32), e repete a avaliação - “mas eu fiquei muito triste com isso” (linha 34), reiniciando a coda - “eu não vô esquecê de: (.) eu ouvi meu filho falá isso comigo” (linha 36), que destaca o ato heróico do filho em defesa do pai.

Somente na linha 39 é que a mediadora se pronuncia, emitindo uma partícula mínima - “ãhã,” (linha 39), que não reivindica mais do que reconhecer uma narrativa em andamento. Luan continua a narrativa, introduzindo a cena dramática do abraço dos filhos - “os dois: meabraçarem e: (...) tentando me defender. (.)” (linhas 40-44).

Em sua narrativa, marcada pela dramaticidade, Luan projeta a identidade de bom pai, que desfruta do amor e da proteção incondicional dos filhos, em contraste à imagem violenta da família de Arminda. Embora o trabalho da mediadora pareça ser o de apenas ouvir a narrativa da parte em silêncio e eventualmente emitir partículas mínimas de recebimento, é sua intervenção no início do excerto que ocasiona a construção da narrativa.

Excerto_4_2ªEPM_Luan_H_narrativas_violência_doméstica

001 Helena = <e além do mais o senhor di:sse que: a marília
 002 gabriela fica preocupa:da, (.) com a defe:sa do
 003 senhor. =
 004 Luan = ela quer me protegê de qualquer jeito.
 005 (.)
 006 Luan porta::ndo, (.) <portanto uma coisa que eu num- num
 007 vô esquecê nunca!
 008 (0.2)
 009 Luan <que ela falô pra mim.
 010 (.)
 011 Luan <e o garoto também.
 012 (.)
 013 Luan <pode perguntar a ele que:: (.) eles vão con|tá.
 014 (.)
 015 Luan >eles falaram< "se for matá meu pai, (.) vai ter que
 016 matá eu também."
 017 (.)
 018 Luan <e eles tavam dentro do carro.
 019 (.)
 020 Luan junto.
 021 (.)
 022 Luan ~isso eu num vô~~((começa a chorar))
 023 (0.2)
 024 Luan ~pode ter certeza que::~ ~ °°.shih°° >passá o tempo
 025 da minha vida,< que eu não vou esquecer disso.~
 026 (.)
 027 Luan °nunca|°
 028 (3.2)
 029 Luan °°.shih°° ~fiquei muito:- fiquei muito triste,~
 030 (.)
 031 Luan >~eu cheguei a falar com eles que isso é mentira,
 032 que eles não vão fazê::,~< .shih
 033 (.)
 034 Luan ~mas eu fiquei mui:to triste, com isso|~
 035 (1.2)
 036 Luan eu não vô esquecê de:: (.) eu ouvi meu filho falá
 037 isso comigo.
 038 (.)
 039 Helena =°°†ãhãm.°°
 040 os dois: (0.2) me abraçaram e:: >>falaram isso daí
 041 comigo.<<
 042 (2.2)
 043 Luan (>pronto.<) aí falei com eles, "se eles ~fo::r (.)
 044 te matá:,~ (0.8) >tem que matá eu também.<"
 045 (0.5)
 046 Luan eu falei "~poxa, meus~ fi(h)lh(h)os ((chorando)),
 047 (0.5) tentando me defendê." (.)
 048 (.)
 049 Helena °°é:[::°°
 050 Luan [<fiquei muito-
 051 (0.2)

No excerto (Figura 5), Luan narra a conduta violenta de Arminda, acusando-a de violência patrimonial perpetrada por fogo. As narrativas surgem em resposta a uma pergunta da mediadora (linhas 1-2).

Dessa vez, a mediadora solicita diretamente prestação de contas sobre um tema específico da relação do ex-casal – “»por que quando vocês« (...) o senhor se afastou:” (linhas 1-2). Luan responde com fala engatada, com uma confirmação “isso.”, transformando a pergunta em afirmação, e adiciona a prestação de contas – “=>porque ela brigava comigo direto” (linha 3), responsabilizando Arminda. Em seguida, produz uma pequena prestação de contas narrativa – “=eu num:- ela já chegava na rua?<” “ela já vinha brigando.” (linhas 3, 4 e 6), categorizando Arminda como alguém que briga sem motivo.

Na sequência, Luan inicia referência a Arminda - “<ela- óh-” (linha 8), na posição de sujeito de alguma descrição, abandonada em prol de outra pequena narrativa - “as minhas coisa, (0.2) >ela queimou< tu:do.” (linhas 8-9); “tu:do, tudo.” (linha 11), usando formulação de caso extremo (Pomerantz 1986), construindo a imagem máxima de destruição patrimonial de seus bens pessoais, responsabilizando Arminda. A mediadora insere uma pergunta do tipo sim ou não – “em outra época?” (linha 13), propondo cronologia anterior à atual. Luan responde, nomeando um evento conjugal como referência de tempo – “antes, d- da gente se separar assim” (linha 15), sem indicar cronologia exata, e formula uma coda, que servirá para as narrativas a seguir, em que descreve Arminda como agente de diversas perdas patrimoniais que sofreu - “»quando tava acontecendo (isso com ela,<) >ela queimou minhas coisas tu:[do.< ” (linhas 15-17). Destacamos alguns elementos ilustrativos desse trabalho de construção de imagem e algumas ações da mediadora.

Neste momento, em sobreposição a Luan, a mediadora insere um continuador – “[ãhãm.” (linha 18), recebendo (minimamente) sua narrativa. Após uma pausa de 0,5 segundos, Luan começa a especificar algumas perdas sofridas: – “.hh minhas roupa↓” (linha 21); “os banco de carro do meu pai:” (linha 23), e formula uma justificativa que projeta sua identidade como alguém orientado para o bem estar da família - “>eu tinha comprado um carrinho velho,< »lá uma Brasília« pra gente,” (linhas 23-25). Luan expõe, em formato de conclusão, prejuízos financeiros – “fiquei sem carro e sem dinheiro. tudo,” (linha 31-32), novamente formulando de forma extrema suas descrições.

Em seguida, Luan usa fala reportada de Arminda, construindo a imagem de alguém que se vangloria publicamente do mal causado ao ex-marido – “»ela ainda botava fogo (...) queimei mermo.”” (linhas 33-35). Após a narrativa da perda patrimonial do - “aparelho de som de carro” (linha 38), que termina com uma descrição extrema de conduta violenta de Arminda – “ela queimô tudo↓” (linha 41), e após longa pausa (linha 42), a mediadora passa recibo de seu entendimento da narrativa – “(∞)enten[di.∞)” (linha 43), sem expandir sua fala.

Luan expande sua descrição, quantificando sua perda patrimonial – “tudo. dois mil (...) muito tempo,” e reitera a ação violenta - “ela queimou tudo,” (linhas 44-46). Nas linhas 47-48, a mediadora introduz pergunta mais específica sobre a cronologia – “[isso foi em que] ano? [senhor luan:.”. A resposta de Luan - [a a: isso já tem: bem (...) vai fazer três já que a gente tá separado.” (linhas 50-57) não atende ao formato pedido na pergunta (Raymond 2003) - o ano específico, deixando a resposta aberta a inferências.

Excerto_5_2ªEPM_Luan_H_narrativas_violência_doméstica

001 Helena >>por que quando vocês<< rompe:::ram a união de
002 vocês, (0.2) o senhor se afastou:::u.
003 Luan Isso.=>porque ela brigava comigo direto.=eu num:-
004 ela já chegava na rua?<
005 (.)
006 Luan ela já vinha brigando.
007 (.)
008 Luan <ela- óh- as minhas coisa, (0.2) °>ela queimou<
009 tu:do.°
010 (2.8)
011 Luan tu:do, tudo.
012 (.)
013 Helena em outra época,?
014 (0.8)
015 Luan antes, d- da gente se separar assim, >>quando tava
016 acontecendo(isso com ela,<<) >ela queimou minhas
017 coisas tu:[do.<
018 Helena [ãhãm.
019 (0.5)
020 Luan .hh ((inspiração provocada por reação
021 alérgica/gripe)) minhas roupa!
022 (3.0)
023 Luan os banco de carro do meu pai; eu tinha- >eu tinha
024 comprado um carrinho velho,< >>lá uma Brasília<< pra
025 gente,
026 (0.8)
027 Luan eu tive que vender, (.).hh ((inspiração provocada
028 por reação alérgica/gripe)) praticamente, (.).da-
029 dada=>>(pro cara que eu vendi pra ele me pagar)<<
030 >cem reais por mês, e até ontem ele não me pagou
031 nada,< e:: (0.2) °fiquei sem carro e sem dinheiro,°
032 tudo porque,?- (.).>>ela ainda botava fogo, e ainda
033 chegava na rua com os colega, e ainda falava
034 assim,<<="nã:o, eu queimo mermo, >queimei mermo.<"
035 (0.5)
036 Luan e: (0.2) >eu tinha um aparelho de som de carro em
037 casa,< que eu fui comprando as- peça por peça, >>(eu
038 falava)<< (0.2) um sonho de um dia comprar um carro
039 pra gente:, (.).e montar um som,
040 (0.8)
041 Luan <ela queimou tudo!
042 (3.0)
043 Helena (°°enten[di.°°)
044 Luan [tudo. dois mil e quinhentos reais que eu
045 tinha de som (há/em) muito tempo, ela queimou tudo,
046 [(e só) ficou lá-]
047 Helena [isso foi em que] ano?
048 (.)
049 Helena [senhor luan:.
050 Luan [a a: isso já tem: bem: (0.8)° o quê?=já tem,° >vai
051 fazer uns três anos já;< que queimou tudo porque:
052 .hh ((inspiração provocada por reação
053 alérgica/gripe)) ela::- (0.2) foi antes da gente
054 separar ainda,=vai fazer três já que a gente tá
055 separado.
056 (0.8)
057 Luan aí::- (3.2) só tem lá a frente dos- do aparelho
058 ainda. (.).que a minha filha tirou,
059 (0.8)
060 Luan a frente. >os banco do carro do meu pai também,< que
061 as vezes eu saía pra trabalhar com roçade::ira, eu

062 deixava o banco do carro em casa, ia só: com um:
063 banco, (0.5) >pra eu botar as ferramentas,< as
064 máquina, tudo dentro.=>quando eu cheguei: tava tudo
065 queimado também,<=tinha queimado tudo.
066 (0.5)
067 Luan °eu tive que comprar outro banco, pra poder botar
068 no ca:rrro,°
069 (1.2)
070 Luan do meu pai,
071 (.)
072 Luan >>>eu não podia nem deixar o carro do meu pai, que
073 ela vinha cá,=ela queria queimar o carro do meu pai
074 també::m†<<<
075 (0.2)
076 Luan e minhas roupa, ela queimou tudo,
077 (.)
078 Luan o que eu tenho hoje,? (.) foi tudo o que eu fui
079 conquistando. <eu nem tenho nada direito ainda
080 assim.
081 (.)
082 Lua as roupa.
083 (.)
084 Luan eu nem tenho direito ainda,
085 (0.8)
086 Luan porque::, muito difícil.=eu não consegui, (.) (eu)
087 é: conquistá tudo.
088 (0.2)
089 Luan <mas o que eu tinha na casa queimou- o fogo foi tão
090 forte, (.) que chegou a arrancar o pi:so:.
091 (3.2)
092 Luan parece que: juntaram tudo,
093 (.)
094 Luan sei lá, eu sei que >quando eu cheguei lá,< (0.5) só
095 tinha uma alturinha assim de cinza:,
096 (1.5)
097 Luan °queimaram tudo.°

Destacamos ainda a construção de imagem feita por Luan de sua situação hoje- “o que eu tenho hoje,? (.) foi tudo o que eu fui conquistando. <eu nem tenho nada direito ainda assim. ” (linhas 78-80), em que se projeta como homem batalhador.

No próximo excerto (6), Luan descreve ações violentas de Arminda envolvendo risco de danos corporais. Momentos antes (não mostrados aqui), a mediadora perguntara a Luan se ele “já foi de briga”, o que ensejara uma narrativa de briga com os irmãos de Arminda. Nas linhas 1-5, a mediadora formulava seu entendimento dessa história.

Destacamos a categorização das brigas do casal pela mediadora como - “desentendimento”(linha 3), um termo menos pesado, confirmada por Luan - “[é,]” (linha 6). A mediadora, sobrepondo sua fala à dele, expande sua pergunta, reformulando-a com re-escalamento - “[desentendi]mento assim com agressão físi[ca.]” (linhas 9-10), sem indicar agente e paciente. Luan confirma de forma enfática- “[é↓]” (linha 11), e de forma acelerada descreve o comportamento geral de Arminda em brigas, como protagonista de violência - “>pô:xa:., ela entra de faca em cima, a senhora não tem noção↓=ela parte pra cima.<” (linhas 11-13). Luan expande sua fala, continuando a construir a identidade de Arminda como uma pessoa cuja imagem pública e a conduta na vida íntima são inconsistentes - “>se a senhora vê aquela morena, a senhora ã sabe o que é n(h)ã(h)o↓.<” (linhas 15-16), e, conseqüentemente, construindo sua imagem como vítima de violência da ex-esposa. Essa fala é a coda para as narrativas anteriores e para a narrativa que ele irá construir nas próximas linhas.

Na linha 18, Luan descreve Arminda como pessoa capaz de violência física - “ela parte pra cima memo. qué batê:↑”. Na seqüência, insere uma micronarrativa de uma briga, reportando fala própria, construindo sua imagem como alguém controlado, que ainda tentava controlá-la em tal situação - “e eu segurava ela, arminda.< para com isso. (...) você também não pode me batê?,”” (linhas 19-21). Além disso, Luan apresenta-se como pessoa conhecedora e respeitadora das leis, e por implicatura, que não agiria com violência.

A mediadora permanece em silêncio em vários momentos (linhas 22, 24). Luan expande sua narrativa, reportando instrumentos de agressão usados por Arminda - “e era, faca, pau, qualquer coisa que ela achar.” (linha 25), construindo-a como descontrolada. Em engatamento de turno, a mediadora insere pergunta sobre a regularidade/intensidade dos episódios de violência - “=sempre: foi assim, se[uluan:.]” (linha 27), buscando entender o histórico de violência do casal. Luan, em sobreposição parcial, avaliava ainda sua narrativa - “[te:m que:] sair fora dela↓” (linha 28), categorizando Arminda como risco para ele, vítima dela.

A pergunta da mediadora, na linha 27, era do tipo sim/não, mas Luan foge desse formato, produzindo nova narrativa - a narrativa da tentativa de ataque à faca por Arminda - “>então ” (linhas 30-49), que se estende até o final do excerto, narrando Arminda como violenta - “ela começ- meteu: a faca, a faca, hh” (linhas 40-41). Dessa vez, ele se descreve como vítima de tentativa de homicídio, e entra aqui um novo personagem - sua filha, que o salva - “e a gabi que defendeu.< a gabi entrou no meio e eu corri,” (linhas 42-43). Essa narrativa se encerra com ele construindo sua saída de casa em decorrência da violência da ex-esposa - “>eu falei “ô gabi pode ficar (lá) que eu vou embora.”<”, o que implica a construção de sua identidade como pessoa pacífica, que evita brigas. Isso é seguido da descrição da ação efetiva correspondente - “aí eu corri dela e fui embora↓” (linha 43). A

Excerto_6_2ªEPM_Luan_H_narrativas_violência_doméstica

001 Helena [ah:, en]tendi,
002 eles quiseram bater no senhor por causa du:m
003 desentendimento [do]=
004 Luan [é.]
005 Helena =senhor com a dona ar[min]da.
006 Luan [é,]
007 (.)
008 Luan foi [até: perto-]
009 Helena [desentendi]mento assim com agressão
010 físi[ca.]
011 Luan [é,] >pô:xa,
012 ela entra de faca em cima>=a senhora não tem
013 noção,=ela parte pra cima,<
014 (.)
015 Luan >se a senhora vê aquela morena, a senhora não sabe
016 o que ela é (h)nã(h)o, meu, <
017 (0.5)
018 Luan ela parte pra cima mermo. quer bater:† .hh e eu
019 segurava ela>="arminda.< para com isso. para com
020 isso. cê num- (0.2) eu num tenho o direito de te
021 bater, você também não pode me bater?,"
022 (0.8)
023 Luan e tal,
024 (0.5)
025 Luan e era, faca, pau, qualquer coisa que ela achar. >ela
026 entra em cima da gente, <=
027 Helena =sempre: foi assim, se[u luan:.]
028 Luan [te:m que:] sair fora dela,
029 (0.8)
030 Luan >então=teve um di:a. que eu cheguei em c- da última
031 vez agora, >quando eu-< (.) >que abandonei< a casa
032 e saí: >(sabe)< >cheguei em casa achei ela com uma
033 toalha enrolada no pulso: assim ó:<
034 (1.2)
035 Luan um lençol,
036 (0.8)
037 Luan aí eu:. (1.0) >(dis- conferi†)<
038 (0.5)
039 Luan mas quando eu fui >pra perto dela assim,< era a faca
040 que tava na mão dela, ela começ- meteu: a faca, a
041 faca, hh >e a gabi que defendeu.< a gabi entrou no
042 meio e eu corri, >eu falei o gabi "pode ficar (lá)
043 que eu vou embora."< aí eu corri dela e fui embora,
044 (0.5)
045 Helena coitadinha da gabi, °né.°=
046 Luan =é. >aí eu peguei e fui embora. (aí deixei ela aí,)
047 falei a:, (eu vou: é) saí fora, (negócio de briga:)
048 isso aí não presta não.< aí peguei e saí fora.
049 deixei-

mediadora emite avaliação, afiliando-se, nesse momento, com a criança – “coitadinha da gabi, né.” (linha 45).

Na resolução da narrativa, Luan descreve sua saída da casa – “é. >aí eu peguei e fui embora.” (linha 42), como pessoa moralmente consciente, e a narrativa encerra-se com fala reportada de diálogo interno de avaliação da situação e desfecho – “(aí deixei ela aí,) (...) isso aí não presta não.<” ” (linhas 46-48), e cena final de sua saída – “ai peguei e saí fora. deixei”.

Nessa narrativa, Luan volta-se para construção da imagem de Arminda como agressora, e de sua autoimagem como vítima dela. A função da mediadora aqui é inserir perguntas sobre o comportamento violento do ex-casal, mostrar acompanhamento da narrativa, e, nesse caso, afiliar-se com a criança.

O relato da escuta ao juiz

Segue abaixo a parte do relatório da mediadora ao juiz, como desfecho do estudo social de caso (apagamos os nomes), que contém sua escuta das entrevistas individuais e incide sobre os dados de interação analisados aqui; evidentemente, o juiz baseou-se no relatório completo:

Entrevista com o requerente e a requerida

O sr [redacted], trinta anos, informou-nos ter sido companheiro da sra [redacted] por catorze anos, estando a três rompido o relacionamento. No início dos nossos contatos o requerente reorganizara sua vida afetiva com uma nova companheira e os filhos dela.

Inicialmente relatou-nos os **desentendimentos havidos no período da união** e que justificavam o afastamento. Ressaltou o seu descontentamento de estar afastado da filha [redacted], onze anos, e o seu desejo de educá-la também.

A sra [redacted], vinte e nove anos, entrevistada em separado, de sua parte, comentou sobre o uso contumaz de álcool do ex-companheiro e a conseqüente violência física, o que a fez decidir-se pelo rompimento do relacionamento que, segundo ela, já era entrecortado por idas e vindas.

Reputa o presente pedido ao fato de ela ter requerido o pensionamento alimentício dos filhos a cerca de nove meses, que nunca fora pago anteriormente.

No período das entrevistas iniciais, [redacted] vivia na companhia paterna e [redacted] na materna, na casa dos avós maternos. A mãe informou a sua preocupação de conviver com o pai agressivo.

A mediadora segue a ordem processual, relatando, primeiro, sua conversa com o requerente, Luan, embora tenha escutado, primeiro, Arminda. Não há menção explícita aos relatos dos episódios de violência vividos por ele. Seus relatos foram registrados como *desentendimentos* : “O Sr. Luan (...) inicialmente relatou-nos *os desentendimentos* havidos no período da união e que justificaram o afastamento.”, um termo genérico e mais brando, frequentemente utilizado pela mediadora para caracterizar os eventos violentos narrados por Luan (ver excerto 6 acima). Nesse sentido, o que é tornado relevante pa-

rece ser a razão para a separação e o afastamento do ex-marido. Quanto à conversa com a Arminda, a mediadora torna relevante a questão da violência, estabelecendo relação de causa e efeito sobre as ações do Luan: “A sra. Arminda (...) comentou sobre o uso contumaz de álcool do ex-companheiro e a consequente violência física, (...)”. A mediadora inclui ainda outra informação: “A mãe [Arminda] informou sua preocupação de [nome do filho] conviver com *o pai agressivo*.” Considerando-se que o caso envolve questão de guarda, diferenças de relato podem ter implicações para o julgamento.

Discussão final

Dada a centralidade da narrativa em atividades de mediação, propusemo-nos examinar a forma e função dessas narrativas no contexto de entrevistas de pré-mediação e a escuta da mediadora na interação e no relatório que registra suas observações das entrevistas, para embasamento da convicção do juiz em suas decisões futuras.

Embora ambos disputantes relatassem a violência doméstica sofrida, houve variação quanto à forma da narrativa. Na primeiro exemplo, Arminda narra uma ameaça de violência, predominantemente, psicológica. O cenário que abre a narrativa é de terror, no qual Luan colocaria fogo em sua casa e na própria família. A narrativa da ida ao Conselho Tutelar mostra Arminda como mãe que não abre mão dos filhos e, por esse motivo, aprisionada pelo agressor. A narrativa da conversa com os policiais ratifica essa condição de mulher prisioneira, fadada a conviver com um agressor incorrigível e livre de punição. O relato também é marcado por expressões de choro, especialmente em momentos em que a maternidade é tornada categoria relevante.

Diferentemente de Arminda, Luan constrói narrativas curtas de violência doméstica patrimonial das quais é vítima. Embora o narrador atribua a alguns bens valor simbólico que transcende a perda financeira, ele apresenta-se emocionalmente mais distante dos fatos narrados. Além disso, em seus relatos, Luan não se apresenta nem como vítima nem como prisioneiro da agressora. Sua saída de casa representa a liberdade de interromper o ciclo da violência. Apesar das variações na forma de narrar, ambos disputantes responsabilizam o outro pela violência, o que pode fornecer evidências com consequências para o julgamento da guarda dos filhos.

Sobre a escuta da mediadora, observamos também algumas diferenças na escuta das narrativas de Arminda e de Luan. Nas de Arminda, talvez por serem narrativas longas, a mediadora manteve-se, de um modo geral, em silêncio. A ausência de material em vídeo das entrevistas nos impede de verificar se a escuta ativa deu-se por alguma ação corporificada, como gestos com a cabeça ou com as mãos. Considerando-se apenas o áudio, o silêncio da mediadora sugere a exibição de uma postura de terceira parte neutra e imparcial.

Nas narrativas de Luan, vimos uma escuta mais ativa, com intervenções que variavam entre a emissão de partículas mínimas de recebimento e a construção de pedidos de informação, mas nem por isso menos neutra ou imparcial. Os pedidos de informação feitos a Luan tinham por objetivo ajudar-lhe a colocar em ordem os fatos, conhecer as razões para determinadas ações, enfim, entender melhor o que estava sendo relatado.

No processo de escuta de narrativas de violência doméstica no contexto de entrevistas pré-mediação, o trabalho da mediadora parece consistir em: não se alinhar nem se afiliar interacionalmente com as descrições contidas nas narrativas de cada uma das partes, e

topicalizar elementos julgados relevantes, mas até então ausentes na narrativa até aquele determinado momento.

Já no registro da escuta por escrito no relatório, observou-se que não houve paridade, no que se refere aos casos de violência relatados pelas partes. Nas observações sobre a entrevista de Arminda, são tornados relevantes o alcoolismo do ex-marido e a violência doméstica. No caso de Luan, apenas a causa da violência: desentendimentos. Não cabe aqui levantar hipóteses sobre o que levou a essa diferenciação, mas é impossível não nos deixar de perguntar sobre as consequências dessa seletividade nas eventuais decisões tomadas pelo juiz posteriormente.

Em termos aplicados, descrevemos a escuta ativa como atividade processual, desenvolvida nos turnos de fala, interacionalmente. Esse tipo de estudo pode ajudar a desenvolver metacôsciência sobre: o processo de escuta na mediação e os filtros que podem orientá-la, os desafios de alinhá-la ao mandato institucional da mediadora, a problemática do silêncio e seus significados na interação. Por fim, as transcrições podem servir de base para a formação profissional continuada.

Notes

¹Esta pesquisa é apoiada pela Coordenação de Aperfeiçoamento de Pessoal de Nível Superior (CAPES). Pereira (2022) relata outra pesquisa, com foco distinto, dos dados usados aqui.

²Esta pesquisa é apoiada pelo Conselho Nacional de Desenvolvimento Científico e Tecnológico (CNPq - 317339/2021-4).

³Esta pesquisa é apoiada pelo Conselho Nacional de Desenvolvimento Científico e Tecnológico (CNPq - 305428/2021-7), e pela Fundação de Amparo à Pesquisa do Rio de Janeiro (FAPERJ - E -26/010.000114/26 APQI).

⁴Ao longo do artigo, preferimos o termo narrativas para não haver a contação de histórias ou estórias inventadas.

⁵“present their created identity in the best, and their formulation of the other party’s identity in the worst, possible light”.

⁶Ver Cobb (1993) para discussão dos elementos da narrativa na mediação, muito similares aos clássicos.

⁷“similar to, and sometimes interchangeable with, narratives”.

⁸“the use of language to interactionally construct preferred meanings for problematic events”.

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‘You may now speak to your lawyer’: When interpreters mediate judges’ information to the accused

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Abstract. *This paper concerns interpreter-mediated courtroom hearings in Denmark. Based on audio-recordings, we analyse the contributions of judge and interpreter, and we focus on if, how and by whom the non-Danish speaking accused is informed about the possibility to speak with a lawyer in private. Although legally trivial, this information is crucial to the accused as it concerns his/her legal rights and options. We show how the informational sequence unfolds interactionally; we argue that the work of judge and interpreter is collaborative; and we discuss the potential of our sociolinguistic / interactional perspectives to inform the legal professionals. Here we are concerned with a wide-spread understanding of quality in legal interpreting. Rather than regarding ‘quality’ as equal to ‘correct’ and ‘accurate’ translation and focusing on the work of the interpreter in isolation, we suggest that it is necessary to consider context, aims, addressees and functions of the interpreting activity. We argue that the interpreter’s work facilitates better understanding for the accused, and at the same time, a more streamlined courtroom interaction.*

Keywords: *Interpreter, Judge, Informing, Courtroom Interaction, Sociolinguistics.*

Resumo. *Este artigo trata de audiências mediadas por intérpretes na Dinamarca. Com base em gravações de áudio, analisamos as contribuições do juiz e do intérprete e focamos em se, como e por quem o acusado que não fala dinamarquês é informado sobre a possibilidade de falar com um advogado em particular. Embora juridicamente trivial, esta informação é crucial para o arguido, uma vez que diz respeito aos seus direitos e opções legais. Mostramos como a sequência informacional se desenvolve interacionalmente, argumentamos que o trabalho do juiz e do intérprete é colaborativo e discutimos o potencial de nossa abordagem sociolinguística/interacional para informar os profissionais do direito. Estamos preocupados com uma compreensão amplamente difundida de qualidade na interpretação jurídica. Em vez de considerar a “qualidade” como tradução “correta” e “exata” e focar no trabalho do intérprete isoladamente, sugerimos que é necessário considerar*

o contexto, os objetivos, os destinatários e as funções da atividade de interpretação. Argumentamos que o trabalho do intérprete facilita o melhor entendimento do acusado e, ao mesmo tempo, possibilita uma interação mais ágil no tribunal.

Palavras-chave: Intérprete, Juiz; Informar, Audiências Criminais, Sociolinguística.

Introduction

In this paper, we discuss how judge and interpreter inform an accused who does not speak the language of the court about the opportunity to speak to a lawyer in private during so-called preliminary statutory hearings (Danish *Grundlovsforhør*) in Denmark. This is *important* information, as the defence lawyer may assist the accused by providing essential insight about legal rights and options. It is also likely to be *new* information to the accused, and not the least to an accused with non-Danish background, whereas it is part of a routinized script for the legal representatives (judge and prosecutor). Based on audio-recordings of the public part of interpreter-mediated courtroom hearings in Denmark, we show how the informational sequence unfolds interactionally. This sheds light on how the professional participants position themselves, each other, and the accused in relation to the legal institution. Our analyses also illustrate with great clarity the essential role of the interpreter in what Wadensjö (1998) termed a communicative *pas-de-trois*, here involving judge, accused and interpreter. In this paper, we focus on the contributions of judge and interpreter, as these two participants share the responsibility of communicating the information about the lawyer to the accused. Also, we are more interested in the official part of the court meeting than in the information a lawyer may share with a client in private conversations. Furthermore, we do not have access to these private conversations.

Courtroom hearings are institutional, interactional activities, conducted according to a specific interaction order and with very specific linguistic practices – summarized through the label *Legalese*. The Danish-speaking judge is responsible for ensuring legal justice, maintaining order in court, allocating the floor, informing participants about upcoming activities, and making a final decision on the plausibility of the charges. In the data presented, the accused is explicitly addressed by the judge, but it is done only through an informational speech act concerning courtroom procedures, and silence is the preferred and (largely) actual response. The interpreter speaks both Danish and the 'foreign' language and is tasked with facilitating understanding so that a non-Danish speaking accused gets "at least the same opportunity [to understand] as a speaker of Danish", as stated in interpreting guidelines for the court (Domstolsstyrelsen 2006). What this means is not entirely clear. Nobody knows what Danish speaking accused persons understand, and the term 'understanding' is problematic when applied in situations where the participant who is supposed to 'understand' remains mostly silent (Karrebæk and Sørensen 2021; Pavlenko *et al.* 2019). Furthermore, although all lay participants may need guidance in order to follow and participate in court cases, those who do not speak the language of the court are even further removed from those that control the information flow and the interactional floor, and they may need more or different assistance (Angermeyer 2022). We show that the interpreter takes responsibility for helping the accused by doing more than translating, i.e. elaborating and contextualizing, and we also argue that this is in fact what the judge expects.

We have two aims with this paper. 1) To demonstrate and analyse the interactional and linguistic work that judge and interpreter do to inform the accused about the upcoming private conversation with a lawyer; work we see as collaborative and basically helpful to the accused. 2) To tease out the perspectives of a legal vs. sociolinguistic approach (in particular) in relation to the main interest of the legal system: quality in legal interpreting or *tolkekvalitet* 'interpreter/interpreting quality' (Institute for Human Rights 2015; National Audit Office 2018). This is important because the notion of quality is largely misguided and this for various reasons. One is that 'interpreting quality' is solely assigned to the interpreters and their skills in translating so-called accurately between two languages. As sociolinguists, we analyse interaction and discourse in context, address who the participants are, what relations they have, what actions they perform, how these are carried out, why and with what consequences. In contrast, legal institutions are looking primarily for assessments in terms of right or wrong, good or bad, truth or falsity. This paper tries to open the conversation between these two traditions in line with other recent work in language and law (D'hondt and May 2021). We do not discuss the ethical implications of our insights, but we believe that the analyses are relevant for a discussion of how the different participants should act in court, i.e. taking an ethical stance.

Theoretical Section

Sociolinguistic and interactional perspectives on courtroom interaction

Institutional interaction is characterized by a special interaction (Drew and Heritage 1992; Goffman 1983) order. Activities often have a pre- (and well-) defined goal which for the preliminary statutory hearing is to decide whether the charges are sufficiently strong to lead to a trial, and whether the accused should remain in custody. The participants' identities are defined in relation to the institution, here judge, accused, assigned defence lawyer, prosecutor, and all participants are mostly addressed and referred to with institutional labels. In court, there are many constraints on adequate and appropriate contributions (Drew 1992; Drew and Heritage 1992) and institutional identities come with very specific rights and constraints. The judge allocates turns. An accused has even more limited access to the floor than other participants, as s/he can only speak when addressed. Preferred or relevant response types are often severely limited, both because of the strategic work of lawyers (more below) and because of the very schematic order of the court meeting. Legal language in general is characteristic in terms of speech acts (Philips 1998), epistemic types (Mortensen and Mortensen 2017), and lexicon and syntax (Pavlenko 2008), and it is infamous for being difficult to understand for non-professionals. Moreover, experienced (and professional) participants share an inferential framework, and legal representatives may be very implicit when communicating with other professionals acquainted with rules and practices (Drew 1992; Karrebaek and Sørensen 2021), including the type and order of activities. Legal professionals act comfortably in relation to this whereas lay participants (accused, defendants and witnesses) are mostly unaware of courtroom rituals, including the procedures, preferred behaviour, ordinary activities (Angermeyer 2009) and expected discursive style (Ainsworth 2008; Conley and O'Barr 1998; Fielding 2013). Non-native speakers of the language of the court may have even greater difficulty than native speakers, which can lead to violations of their rights as many studies have shown in relation to Miranda rights (Ainsworth 2008; Berk-Seligson 2009; Brière 1978; Pavlenko 2008; Pavlenko *et al.* 2019). Lay persons can overall be seen as "ritual outsiders" (Elsrud *et al.*

2017: 684) and they rely on guidance. Thus, epistemic asymmetry between professional and non-professional participants in court constrains the possibilities for participation.

Legal professionals enforce the law and verbalize their roles in various ways. Based on interactional style, Conley and O'Barr (1990) and Philips (1998) identify different types of judges and relate the communicative style to the judges' ideological understanding of their professional role. Regardless of whether this is conscious or not, judges clearly do not conform to a stereotype of the "impassive arbiter" (Conley and O'Barr 1990: 111). The discursive choices of the legal professionals also affect the possibilities for lay participants. In cross-examination, the lawyer's lexical choices may influence witnesses' answers to factual questions (Heritage and Clayman 2010). Lawyers may try to manipulate the perception of the case by correcting or substituting witnesses' word choices, confusing or intimidating witnesses through formal or technical legal language (Eades 2006; Drew 1992), or drawing on what is presented as institutional categories in giving evidence (Goodwin 1994).

As paid professional participants, judge, prosecutor, and defence lawyer share an institutional perspective. Lay participants, on the other hand, are involved as individuals. Participating in a court meeting may happen only once in their life (Drew 1992: 44) and the consequences may be dramatic – imprisonment, deportation etc. Elsrud *et al.* (2017) takes up the asymmetry. A young man interviewed after his first trial reflects on this. He felt poorly understood by the legal representatives, and although he recognizes that for the lawyers and the prosecutors "it is just a job", it seems to him as if they are merely "playing a game" (Elsrud *et al.* 2017: 676). The legal participants' relaxed attitude shows that the court hearing is a routine, and this makes the young man feel even more alienated and excluded (Angermeyer 2021). Fielding (2013) similarly shows how lay participants get frustrated and confused when presenting accounts in court, as they are asked to do this in ways that differ greatly from social interaction in other settings and even from prior stages in the criminal process (see also Conley and O'Barr 1998). In sum, legal professionals may make the courtroom more or less accessible and comprehensible to lay participants. This is important as a study of courtroom interpreting will always *also* be a study of the legal representatives' language and interactional style.

Courtroom interpreting

Interpreting includes translation and coordination (Wadensjö 1998). Since one-to-one renditions are impossible due to semantic and structural incommensurability between languages, as well as to the nature of spoken discourse, interpreters often use *expanded* and *substituted renditions* through which they provide additional information and, in some cases, rephrase the source utterances in the rendition (Wadensjö 1998: 107). This differs from many interpreting guidelines (Rigspolitiet 2020; Indiana Supreme Court 2020) where a verbatim norm – or a norm of denotational / referential identity (Haviland 2003) - is often articulated. *Interpreting is interaction* (Wadensjö 1998) and *mediation*. When interpreters ask participants to stop, repeat or clarify, it exceeds translation as the interpreter assumes an independent speaker role in the participation framework. Interpreters may modify the content of (source) utterances through expansions, substitutions, and meta-commenting (Baraldi and Gavioli 2014; Kirilova and Højland 2022; Lee 2009; Mason 2006; Pavlenko *et al.* 2019). This may be to protect different participants' face (Hale 2004; Jacobsen 2012); it may be because languages are incommensurable, and reformulations and changes therefore necessary; because specific terms are untranslatable or do not correspond

to conventionalized lexical items in a target language; or because it creates better opportunities for understanding to unpack or disambiguate what is said. Interpreters' modifications are systematic. Karrebæk and Sørensen (2021) show how interpreters articulate semantic dimensions which are merely implied by the prosecutor. They also tailor their contributions to specific audiences. Angermeyer (2015) shows that interpreters may maintain first-person pronouns when translating into the language of the legal representatives but change the pronouns when addressing lay participants in the minority language – substituting e.g. “I” with “the judge” and “the foreigner” with “you” (Ng 2018). This often goes unnoticed by courtroom professionals who tend to believe that verbatim translation is the best, and thus expect interpreters to keep the deictic centre when using shifters. In fact, interpreters also do so to a larger extent when addressing the legal representatives.

It may be the interpreter alone who decides to do a modified rendition, based on an analysis of the source utterance in context, which institutional, interactional, and cultural functions it serves, and to whom it is (primarily) addressed. Alternatively, such decisions may result from collaborative efforts, they may be imposed by the physical context or something else.

Methodology, context, and data

We draw on a broad qualitative sociolinguistic framework, aligned with linguistic ethnography (Rampton *et al.* 2016) and interactional sociolinguistics (Rampton 2017). We consider language practices and linguistic ideologies as related to societal and social questions, such as the rule of law and the recognition and understanding and evaluation of professional identities (here: interpreter, judge). We pursue our interest through analyses of interactional sequences where two participants (interpreter and judge) demonstrate their understanding of appropriate discursive conduct in a courtroom by making information available to the accused.

We base our analysis on a unique corpus of audio-recordings of the official part of interpreted preliminary statutory hearings (Danish *Grundlovsforhør*) in Denmark. The preliminary statutory hearing is a pre-trial procedure which occurs within 24 hours after a person has been detained by the police on a provisional charge in a criminal case, in accordance with The Constitutional Act of the Realm of Denmark (71, 3, 1953)¹. In addition to a judge, a prosecutor and a court-appointed defence lawyer are present, and if the accused does not speak the language of the court (Danish), the court provides interpreter assistance - for the accused to exercise the right to defence and for the court to have access to the perspective of the accused. A preliminary statutory hearing is usually rather short (15-20 minutes). The public part consists of two parts. In the first, the judge asks the accused to confirm name and date of birth and in most cases the judge introduces what is going to happen. The prosecutor then states the provisional charges and requests legal action. Subsequently, the accused is offered an opportunity to go into a separate room with the court-appointed defence lawyer to discuss the case. Most often this is the first time the accused and the lawyer meet, and it gives the accused the opportunity to ask questions and get legal advice. This conversation constitutes a break in the collective activity and in our data, it lasts around 10 minutes. We do not have access to this private conversation between the accused, interpreter, and defence lawyer. Upon the return of the lawyer and the accused, the lawyer announces their position on the charges. The dominant activities in the second part comprise that the prosecutor reads the documentation produced by the police,

and that the accused is questioned. Towards the end, the accused is offered a possibility to speak to the court but in our data, this is done extremely rarely (see Karrebæk, Under review). The judge finally presents a decision.

Language in the Danish preliminary statutory hearing is formal and specialized. Numbers are abundant (paragraph numbers, dates, and times), and much spoken discourse is text read aloud or dictated (Chen 2021). Most activities are procedural, and discourse is highly routinized. The accused speaks very little, and only when prompted by the judge and occasionally by the interpreter (although see Karrebæk, Under review). Both the judge and the interpreter act as socializing agents and institutional gatekeepers (Angermeyer 2015; Maryns 2009) by suppressing uninvited contributions. The format of the preliminary statutory hearing differs from other types of courtroom hearings where the accused is given more time to participate by e.g. answering questions and clarifying evidence. This setting is arguably even more constraining for the accused than other types of hearings. Yet, this is not our goal to discuss here.

All judges in Danish courts hold a law degree. They are expected to abide by the law and act impartially and independently of the executive power (cf. The Association of Danish Judges²). In contrast, most interpreters learn the trade on the job as there is currently (2022) no national education or certification of interpreters. Interpreting guidelines issued by the legal authorities (Domstolsstyrelsen 2006) address the role of the interpreter from a normative perspective, with verbatim translation represented as an ideal, and do not consider context-sensitive translation.

Our corpus consists of audio-recordings of 32 preliminary statutory hearings from a large court in Denmark (recorded between April 2019 and July 2019).³ A judge to whom we had been introduced helped us contact the president of the court, the president gave us a general permission and communicated information about our project to all the judges. We collected informed consent from all speaking participants at every single recording session (including judges), and all participants are anonymised. Two researchers were present at every recording session. We recorded the hearings with two microphones, one placed in front of the judge, one in front of the accused and interpreter. Data were subsequently stored on a secure university server. Judges, prosecutors, and defence lawyers may be male or female, and we use gender appropriate pronouns. Our recordings were transcribed by the researchers and various language consultants with whom we worked closely; they are acknowledged before each transcription. For transcription conventions, see the end of the paper. Table 1 shows the distribution of languages in the hearings. In this article, we focus on 27 of the recordings, excluding those in Polish, Filipino and Somali, and one Arabic case which does not include a conversation with the lawyer.

In most cases, we were unable to obtain additional information about the specific interpreters we met, such as their interpreting experience, education etc. An estimate from the National Audit Office (2018) claims that out of the 2944 interpreters employed by the National Police (i.e., interpreters used in courts and by the police), 77% were so-called “mother tongue interpreters” with no documentation of language competences in the foreign language(s) they were hired for. Regarding the linguistic competences of the legal representatives (judge, prosecutor, defence lawyer), we have reasons to believe that they only rarely have competences in other foreign languages used than English, Swedish and Norwegian.

Languages	Number of recordings
Albanian	4
Arabic	8
Arabic and Spanish (one court meeting in two languages)	1
Dutch	1
English	6
Farsi	1
Filipino	1
French	1
Norwegian	1
Polish	2
Romanian	3
Somali	1
Spanish	1
Swedish	1

Table 1. Languages in the recordings of preliminary statutory hearings

All examples are translated into English. We have tried to catch the idiomatic quality while staying as closely as possible to the relevant semantic distinctions. Where it is relevant, we discuss linguistic details. It is important to point out that the translations reflect *our* semantic and pragmatic choices and although somehow comparable to the courtroom interpreters' translations, we have had much more time to work closely with them. We also had access to what occurred later and before in the situation.

To arrive at more general conclusions about interpreted hearings, we have created a collection of comparable sequences. In a prior publication, we looked at sequences where the prosecutor is the main legal professional speaker, the prosecutor primarily addresses the judge and defence lawyer, and the topic is highly procedural – although extremely important to the accused (Karrebæk and Sørensen 2021). As the interpreter's task is affected by e.g. the accused's participant role, the legal professional speaker, the speech acts, and potential legal consequences of the utterances, we wanted to focus on a sequence that differed on these aspects. This paper builds on a systematic analysis of the 27 cases, from which we have selected a smaller number of typical or particularly illustrative examples. Our comparison shows patterned behaviour; thus, we look at what is 'normal' vis a vis 'extraordinary'. In our conclusion, we discuss the consequences of the interpreters' practices, and how our analysis of practice informs an understanding of quality of courtroom interpreting.

Analyses

The judge may refer to the accused's conversation with a lawyer three times during the hearing. The first follows immediately after s/he has verified the name, the date of birth, and sometimes the time of arrest of the accused. This first mention is a statement that informs the accused that s/he will get to talk to the lawyer later during the meeting. We refer to this sequence as INF. The second mention follows the prosecutor's presentation of the charges. Here it is part of a directive: the judge prompts the accused and the lawyer (and interpreter) to leave the room for their private conversation. We refer to this as PROMPT. The third possibility happens when the accused, the lawyer and the interpreter return to

the courtroom after their conversation. This contains both a statement and a directive – first, the judge asserts that the accused and lawyer have returned, then s/he asks for the accused's position on the charges. The judge does not refer to the conversation with the lawyer at all three possible slots in all cases, and the way the judge articulates the event varies in terms of what information is included. We focus on the first and the second possibility of addressing the confidential talk (INF and PROMPT). These include new, relevant and important information for the accused, and they point forward in the court meeting. Therefore, it is important that the accused understands.

The judge's tasks

In this section we focus on the work done by the judge in the INF sequence; we return to the interpreter. The sequence is usually initiated by the judge introducing the defence lawyer, and in 21 out of our 27 cases the judge adds that the accused will get an opportunity to speak to the lawyer. See below how this may unfold.

Example 1

Participants: JUD: judge (m); INT: interpreter (m)

Languages: Romanian/Danish, Transcribed by Astrid Lovelady

- 01 JUD: herren her det er jeres (0.3) [forsvarer]
the gentleman here that's your (0.3) [defence lawyer]
- 02 INT: [el este] apărătorul
[he is] the defence lawyer
- 03 (0.7)
- 04 JUD: han er uafhængig af myndigheder
he is independent of authorities
- 05 INT: n-are treabă cu autoritățile[le]
he has nothing to do with the authorit[ies]
- 06 JUD: [og ham får] I lov til at tale alene
[and you will be allowed] to talk to
him alone
- 07 med [lige om lidt]
[in just a moment]
- 08 INT: [imediat după xxx] să vorbiți cu domnul separat
[right after xxx] you will speak to the gentleman
separately¹

Example 1 begins with the judge's introduction of the defence lawyer: “the gentleman here that's your defence lawyer” (*herren her det er jeres forsvarer*; 1.01), using the rather formal *herren* 'the gentleman' and a 2. pers. pl. pronoun because there are two accused persons present. He adds a deictic adverbial *her* 'here' which is often done in the introductory sequence, probably originally accompanied by a head turn or a hand gesture in the direction of the lawyer. Then follows an explanatory comment about the defence lawyer's affiliation to the court, namely that he is “independent of authorities” (*uafhængig af myndigheder*). Thirdly, the judge describes the upcoming conversation as private: the accused will get the opportunity (or “be allowed to”) speak to the lawyer “alone” (*alene*).

And fourthly, he indicates an approximate time frame: it will happen “in just a moment” (*lige om lidt*).

Example 1 illustrates a typical way for the judge to introduce both the lawyer and the private conversation. To the legal representatives, this is a routine part of the statutory hearing whereas to most accused the judge presents new and important information. This is an *assigned* lawyer whom the accused has not met before (the accused knows the lawyer in advance in only one of our recordings), so the explicit identification is relevant. The opportunity to speak to the lawyer concerns the possibility of being informed about legal rights and legal options as well as of being heard by the court (Elsrud *et al.* 2017). None of the accused in our data are Danish citizens, and they are unlikely to be familiar with Danish legal procedures, making it even more vital to inform them properly (Elsrud *et al.* 2017). The judge takes this responsibility seriously; in 24 of the INF sequences the accused is informed by the judge that a lawyer has been *appointed*. In 21 of these cases, the judge further specifies that there will be time to *speak* with the lawyer; in three cases only the *presence* of the lawyer is mentioned. In these three cases, the accused may already have spoken to the lawyer or may have requested a specific lawyer. In one case, the defence lawyer introduces himself and the upcoming conversation, and in two cases the lawyer is simply not introduced (see Figure 1 1).

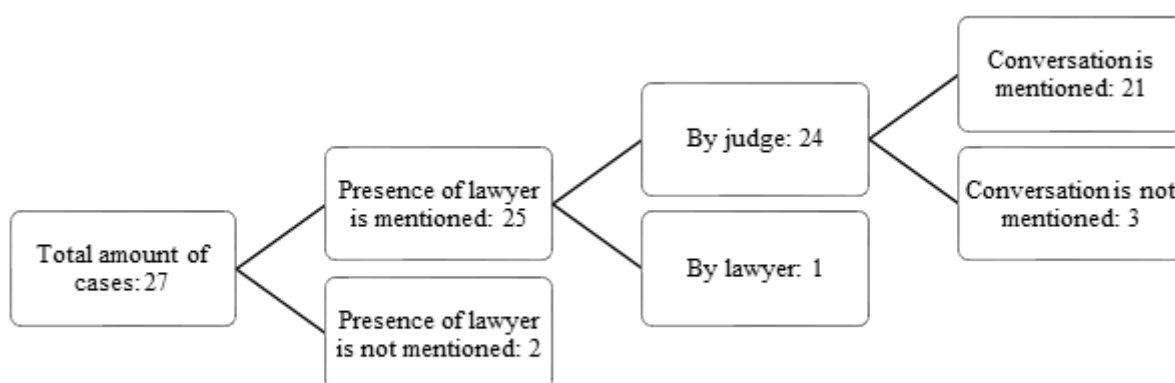


Figure 1. Mentioning the lawyer

An additional comment about the judge’s contribution is relevant. By assuming responsibility for following procedures, informing about them, and enforcing them, the judge performs the role of chairperson, and s/he ensures equality before the law. S/he also ensures that the meeting progresses smoothly. This is part of the so-called ethical code of judges. The judge also acts to create authority through this. Authority results from the judge’s institutionally assigned tasks, the diligence with which the judge carries these out, the concern shown for the ethical principles, *as well as* the respect shown by the other participants to the judge. This includes how they orient to the judge’s right to control the

floor and distribute speaker rights. This is indirectly announced in the INF sequence which we discuss below.

Example 2

Participants: JUD: judge (f); INT: interpreter (m)

Languages: Danish/Albanian

Transcription: Paulina Bala and Bjorn Bisha

- 01 JUD: >så skal vi lige høre< hvad det er (.) du er (.) sigtet for
then we are going to hear what it is that you are charged with
- 02 og så får du mulighed [for at]
and then you get the opportunity [to]
- 03 INT: [skal jeg trykke]
[should I press]
- 04 (.)
- 05 JUD: så får du mulighed for at tale med øh forsvareren
then you get the opportunity to speak to eh the defence lawyer
- 06 herovre som er beskikket for dig lige ba [gefter\]
over here who is appointed for you right af[terwards]
- 07 INT: [domethanë] sot do të bisedojm
se për çfar arsye jeni arrestuar
[so today] we will speak about
the reason you were arrested
- 08 dhe më ndej do të kesh mundësi do me thanë fillimisht ta
then you will have the opportunity first
- 09 lexoj prokurori se për çka je këtu më ndej
to hear from the prosecutor why you are here and then
- 10 pra avokati do kesh mundësi në një dhomë tjetër të bisedosh
speak to the lawyer in a separate room
- 11 bashkë\< (.) dakort
together (.) understand
- 12 JUD: vær så god
here you go
- 13 INT: xxx

Right before Example 2, the judge has explained to the accused that the purpose of the meeting is to determine if he should remain in custody. Subsequently, the judge outlines what is going to happen. First thing on the list is to inform the accused and the court about the charges: “then we are going to hear what it is that you are charged with” (line 01)⁴. This is an announcement of an upcoming activity *as well as* of speaker rights: the floor will now be allocated to the prosecutor. Then the accused is told that there will be an opportunity to consult a lawyer: “and then you will get the opportunity to talk to uh the defence lawyer over here right afterwards” (line 05). Again, an announcement of an upcoming activity *and* a new participation framework. This time the accused is informed

that he will be able to assume the speaker role. Finally, the judge gives the floor to the prosecutor with *værsågod* “here you go”, and by informing about upcoming activities and distributing speaking rights to the other participants at specific, designated points during the court meeting, the judge performs as an institutional authority. To speak when one does not have an allocated slot, or without the judge allowing it, is inappropriate; it is rarely done, and when so, it is rarely acknowledged. Thereby the other participants validate and co-construct the judge's authority position. We return to this point in example 5.

The interpreter's task: Translating and creating understanding

As shown, the judge takes the responsibility for providing general information to all participants, and it is the interpreter's task to make this information available to the accused. The interpreter renders it in the language of the accused and sometimes adjusts it so that it becomes understandable in context. In this section, we investigate such renditions. First, despite the routinized character of the INF and PROMPT sequences, there are differences between the information presented in the cases. Observant readers may have noticed that in Example 1 the judge says that the lawyer is ‘independent’, whereas this is not mentioned in Example 2. We have found the following five themes in the INF and PROMPT sequences: 1) the identification of the lawyer; 2) the lawyer's affiliation; 3) the accused's opportunity to talk to this lawyer during the court hearing; 4) the location of the conversation; 5) the participants in this conversation. All themes are not necessarily addressed in any single sequence or in both the INF and the PROMPT sequence in the same case. It also varies when and how they get introduced, the degree of details provided, and the type of work that the interpreters do. Example 3 is particularly illustrative:

Example 3 Participants: JUD: judge (m)⁵; INT: interpreter (f)

Language: Danish/French

Transcription: Paulina Bala and Solvej Hellestøj Sørensen

- 01 JUD: herren her det er din advokat
the gentleman here that is your lawyer
- 02 INT: à votre gauche est assis l'avocat
to your left sits the lawyer
- 03 qui est commis pour votre défense
who is appointed for your defence
- 04 JUD: han er uafhængig af myndigheder
he is independent of authorities
- 05 INT: il ne dépend pas des autorités policières ou judiciaires
he does not depend on the police or legal authorities
- 06 JUD: og ham får du lov til at tale i enerum med lige om lidt
and you will get to speak to him in a private room in a moment
- 07 INT: avec lui nous irons dans une pièce voisine juste après
we will go with him to an adjacent room right afterwards
- 08 pour discuter et de savoir (.) quelle suite aura votre défense
to discuss and to know (.) what your defence will result in

In this example the interpreter expands or substitutes almost every part of the judge's message. First, the judge informs the accused that the person at the other table "here" (*her*) is "your lawyer" (*din advokat*). The interpreter elaborates the specific placement through a spatial adverbial when she says that the lawyer sits "to your left" (*à votre gauche*). The expanded rendition is probably used since the interpreter speaks after the judge and the judge's deictic (hand) gestures are therefore no longer available as a means of identification. The interpreter also specifies the function of the lawyer and that he has been provided by the court ("appointed for your defence"; *commis pour votre défense*). The accused rarely find a lawyer on their own (the preliminary statutory hearing falls within 24 hours after detainment), so the expanded rendition explains where the lawyer comes from. The judge then states that the lawyer is independent of the authorities which the interpreter renders as he is independent "of the police or the legal authorities" (*autorités policières ou judiciaires*). This expands on what 'authorities' involve, and it implies that the defence lawyer is not employed by the court, therefore he is impartial, or at least orienting towards the needs and possibilities of the accused - in addition to being loyal to the court. The judge continues: "and you will get to talk to him in a private room in a moment", using 2nd prs.sg. ('you', *du*), and making it clear that it is a confidential conversation. This is rendered as "we will go with him to an adjacent room right afterwards" (*avec lui nous irons dans une pièce voisine juste après*). The interpreter includes herself as a participant in the upcoming conversation by using 1st prs.pl. ("we will go", *nous irons*). Pronominal changes are common and occur primarily when the interpreter speaks in the foreign language (Angermeyer 2015; Ng 2018). In the example, the pronominal change clarifies to the accused that the interpreter will be present when the accused speaks with the lawyer in private. As the lawyer and the accused speak different languages, the interpreter enables the exchange of information, and her presence is vital but cannot be taken for granted. Another pronominal change happens in line 1-2 where the interpreter switches from 2nd prs. sg. to 2nd prs.pl., that is, from a colloquial form of address widely used in Danish (also in court) to the polite form in French. This shows the interpreter's awareness of different norms of politeness. In line 08-9, the interpreter expands "to talk" (*at tale*) into "to discuss and to know [...] what your defence will result in" (*pour discuter et de savoir [...] quelle suite aura votre défense*). Thereby she clarifies the aim of the talk with the lawyer – it is an opportunity to discuss a serious situation and to know (*savoir*) more about the case and its consequences. Finally, the judge's "in a private room" (*i enerum*) is rendered as "in an adjacent room" (*dans une pièce voisine*). There is no conventional equivalent in French to Danish *enerum*, a term often used when describing private conversations about sensitive matters. In the paraphrase, the element of privacy is less salient, but it is clarified that the room of the conversation is different from the room in which they find themselves now, implied by "adjacent to".

To sum up, the interpreter in Example 3 maintains the overall pragmatic meaning of the judge's message but adds many details. The reasons for the modified renditions seem to be 1) lexical: an equivalent to *enerum* does not exist in French; 2) pragmatic: to use the appropriate term of address (in French, 2nd prs.pl.); and most importantly, 3) contextual: to express explicitly what the judge merely implied, thereby orienting to assumptions about the accused's (lack of) knowledge about legal procedures (also Karrebæk and Sørensen 2021; Mason 2006).

Although Example 3 is particularly illustrative of interpreter expansions and substitutions, we see modifications and facilitating work in many other cases. Pronominal changes that demonstrate the participation of the interpreter in the private conversation are very general (cf. Example 5 to which we turn in a moment). Although not shown in Example 1, in this case address terms are changed into more formal and polite ones by the interpreter. The judge uses “you” (I), 2. prs.pl., which the interpreter modifies to a polite plural form *dumneavoastră* (2 prs.pl.). At the same time, the interpreter in Example 1 draws on a *less* formal register than the judge, e.g., by translating that the lawyer “is independent of authorities” (*uafhængig af myndigheder*) into “he has nothing to do with the authorities” (*n-are treabă cu autoritatile*), using the Romanian noun *treaba* ‘work, business, activity’ which is much more commonly used and less tied to formal contexts than *uafhængig* ‘independent’. In this way, the translator converts a rather formally articulated turn into everyday language. It is possible that the interpreter does not have access to a formal register in Romanian. However, he is efficient and does not express surprise, hesitation, or confusion, and thus appears experienced, and we find it plausible that the substituted renditions are intentional. This would equal Mason’s and Wadensjö’s findings that interpreters may choose a less formal register than the source utterances to facilitate understanding (Mason 2006; Wadensjö 1998). In the example, the polite address term ensures that the translation of the source utterance will still be formal and therefore appropriate in relation to the legal context. In addition to a change in pronouns to signal formality and politeness, another general observation is that several interpreters do not include the private nature of the conversation in the translation. As mentioned, the French interpreter (Example 3) uses “an adjacent room” for *enerum* “private room”. The Romanian interpreter (Example 1) conveys *alene* “alone” as “separately”. As there are two accused, this may mean that they should speak one by one with the lawyer rather than together but separate from the other courtroom participants. In Example 2, the judge does not mention the privacy aspect, but the interpreter adds that the conversation will take place “in a separate room”.

Independent contributions by the interpreter

In addition to examples of expanded and substituted renditions, our corpus contains examples where interpreters add information not mentioned by the judge in the immediate context. We refer to this as independent contributions. Example 4 shows how the prosecutor ends her presentation of the charges as part of a PROMPT sequence. The first 13 lines concern the possibility of getting a video mediated connection if there is a need to extend the detainment, and it is addressed to the court, i.e., to judge and defence lawyer. This sequence is interesting in itself, as the request is most often conveyed using implicature, which we have analysed elsewhere (Karrebæk and Sørensen 2021). We have included what happens immediately prior to the PROMPT sequence to situate it better.

In line 17, the judge acknowledges that the prosecutor has finished her turn (“yes thank you”), and with “please” (*værsgo*) she invites the next activity to begin. This is the conversation between accused and lawyer, and “please” implicitly prompts them to leave the room; in Danish *værsgo* (or *værsgod*) encourages somebody to (do) something. The interpreter makes it explicit what the lawyer and the accused are supposed to do: he invites the accused to “**go talk** with your lawyer”, clarifies that he will participate in the conversation (“**let's go**” and “**we go talk**”), and adds that the conversation takes place in at a different place (“(we go to) **another** room”) (lines 18-19). Although one

Example 4

Participants: JUD: judge (f); INT: interpreter (m); two accused persons

Language: Danish/English

Transcription: Paulina Bala

01 PRO: [(...) skal jeg bede om en fristforlængelse kan ske via et
[(...) I ask that an extension of custody can happen through a
02 (.) videolink]
(.) videolink]
03 INT: [but if not possible (.) then ask the eh]
04 could be made by a videolink ↗
05 (.)
06 PRO: [det vil ske fra retten i CITY]
[that will happen from the court in CITY]
07 INT: [so to speak videolink]
08 INT: so you can see the court h in from the jail on a big screen ts
09 and they can see you (.) on the screen sitting in the court↘
10 if you should be extended some time more↘
11 PRO: det vil [ske fra retten i CITY]
that will [happen from the court in CITY]
12 INT: [after thirteen days (.)
13 PRO: fordi anholdte bliver [overført til PLACE]
because the arrested will be transferred to [PLACE]
14 INT: [only if you must stay here] longer time
15 than this
16 PRO: xxx
17 JUD: ja (.) [tak værsgo]
Yes (.) [thank you please]
18 INT: [okay let's go talk] with your lawyer okay
19 we go to another room

may question the fluency, coherence and idiomatic quality of the interpreter's English translation, this interpreter is very experienced, and he demonstrates that he is aware of courtroom practices. He explains what *videolink* refers to, namely that the accused will participate in a new meeting (if an extension is necessary) from the prison where he can see the court, and "they can see you" (line 09). Also, he tells what will happen next in the PROMPT sequence without the judge articulating this. As already shown, the judge may refer to the conversation with the defence lawyer and its private character in a more explicit way, and this is the case in both the INF and the PROMPT sequence. The judge in Example 4 introduced the lawyer's presence, name, and function in the INF sequence, which took place shortly before, but she left it out in the PROMPT sequence. In the INF, the defence lawyer added "we will talk together in just a little while" (*vi taler sammen lige om lidt*), and the judge confirmed ("before you get the opportunity to speak to the lawyer..."). Rather than adding something absolutely new, the interpreter re-circulates given information and does so at a point where it becomes relevant to the accused.

In Example 4, it is the interpreter who explicitly prompts the accused to leave. This information is offered by the judge in 16 out of 27 PROMPT sequences, in four cases it is the defence lawyer, and in four cases both the defence lawyer and judge. In the three last cases, none of the legal representatives informs the accused that the conversation with the lawyer will happen now⁶; see table 2.

Announced by	Number of cases
Judge	16
Judge and defence lawyer	4
Defence lawyer	4
Interpreter only	3
Total number of cases	27

Table 2. Announcing that the conversation will take place now (PROMPT)

While in three cases the interpreter is taking the sole responsibility for informing the accused about the conversation with the lawyer, there are four cases, where the judge or lawyer announce it, but the interpreter says it before them. Two of these involve the same Arabic interpreter; see Example 5:

After pressing the charges, the prosecutor signals she is done, and the judge holds the floor again: "and that was that/it". The interpreter expands: "that was her speech" (*hāda kān kalāmhā*), verbalizing the discursive activity where there the charges were pressed ("the talk"), and pointing to speaker ("her") who pressed the charges. After a short pause (0.4 sec), the interpreter states: "now we will talk with the defence lawyer" (line 06). The judge mentioned the conversation with the lawyer in the INF sequence but has not re-introduced it – yet – and so the interpreter demonstrates familiarity with courtroom procedures. In overlap, the accused asks "how" (*kif*). This is not picked up or responded to, and as such it has no sequential consequence. The judge subsequently states, in a formal register, "then there will be an opportunity to speak with your lawyer" (line 08). As the interpreter has already announced this conversation, she does not translate the judge's turn. The scratching of chairs suggests that some of the participants rise.

Examples 4 and 5 are similar in that it is the interpreter rather than the judge who takes the initiative to prompt the accused to leave the room. In Example 4 the judge does not

give an explicit prompt at all. This may be because the judge understands the interpreting language (English) and therefore knows that the accused has already received the necessary information; the judge can choose not to repeat it. The judge's choice not to repeat may reflect an orientation to the informational task as collaborative: It is important that the accused gets the information, not who says it. We return to this. In Example 5, the accused speaks Arabic, and the judge does not know what the interpreter has said. The judge issues the prompt after the interpreter.

Before our last example, we return to the uninvited contribution by the accused: *kīf* "how" (line 07). This illustrates three points. First, as the contribution is not taken up by the interpreter, she validates the judge's authority by acknowledging that it is him who needs to assign the turn. This is general practice among court interpreters (Angermeyer, 2009; Karrebæk, Under review) and although we have no other examples in the INF and PROMPT sequences, we have numerous examples elsewhere in our corpus. Second, this contribution shows that the accused is not aware of what is going to happen, and therefore it will matter to him what is said by the judge and the interpreter. Third, we have wondered about the relative scarcity of self-initiated turns from the accused. This may be due to an understanding and experience of the courtroom as a power-infused, hierarchical, unknown, overwhelming, and perhaps frightening setting to lay participants. Most lay people are silenced merely by entering a court, and this may be even more characteristic for foreigners charged with a crime who depend on the services of an interpreter. As the setting is intimidating, and as the cases may have serious consequences for the accused, this makes the informational and explanatory tasks of the professional participants even more vital. In our data, we find that judge and interpreter seem very intent on helping the accused within the constraints and aim of the institution. This simultaneously shows that the lay participants are perceived as 'ritual outsiders' (Elsrud et al., 2017) in the (legal) context. We return to this in the final discussion.

Concluding discussion: Cooperation in Court

In this paper, we have showed how a non-Danish speaking accused is informed about the possibility to speak to a legal expert in private. From a legal perspective this is relatively uninteresting information (as long it is delivered) because it has no consequences for the questions of evidence, responsibility, and guilt, which are central to the legal participants. Yet, providing the accused with relevant information in an adequate way is a question of attending to his or her legal rights, as it has been argued by other scholars, most significantly in studies of the delivery of the Miranda rights to non-English speakers (e.g., Pavlenko et al., 2019). In other words, legal rights and the rule of law are also interactional and sociolinguistic issues, and it is important to investigate it as such.

We compared two sequences in 27 different cases and identified a pattern. We showed that the judges demonstrated diligence in informing the accused. However, they did not always include all the relevant information, and already presented information was not necessarily repeated when it became relevant later in the court meeting. The interpreters on the other hand conveyed what was (probably) intended by the judge, yet unknown to or not (easily) inferable by the accused who were not intimately acquainted with the formal procedures. The consequences of this work include that interpreters may facilitate better understanding for the accused, providing them with necessary and relevant information, and at the same time, a more streamlined courtroom interaction, anticipating questions from the accused to understand the implicit part of judges' messages. In addition to

considerations of efficiency and equality before the law, a streamlined court meeting would also make the interpreters appear more professional. As all court interpreters work as freelancers, they are very concerned with securing future bookings, so professionalism in the eyes of the court is always an important (additional) consideration. We wish to underline that to us the interpreters walked a fine line as mediators, and that they most probably created better opportunities for both legal participants and the accused.

We presented our analysis to a few stakeholder judges, and their reaction was rather dismissive. To them, it did not give insight into what really mattered in interpreter-mediated courtroom hearings, namely interpreter / interpreting quality (*tolkekvalitet*). In their opinion, quality had to do with 'correct' and 'precise' translations of words, and the onus was on the interpreter. We agree that to do a good interpreting job, it is central to be highly competent in the languages involved. Yet, we need to consider more than 'accuracy' and 'correctness' to assess what an interpreter does, and it is not the interpreters alone who are responsible for what is eventually conveyed and understood by the accused. In interpreter-mediated hearings, the relation between judge, message, and accused is not straight-forward at all. The presence of an interpreter requires considerations of what information is presented by whom, and what information is taken up and by whom. We believe that it is important that the legal system understands that there is a difference in the orientation by the judge and the interpreter, and that the interpreter helps to uphold the courtroom's institutional interaction order; the interpreter and the court collaborate. This seems to be sensed (if not declaratively known) by judges, yet on a normative and explicit level they do not routinely pay respect to this and they may even present an opposite understanding. The interpreter orients to the overall goal of the court meeting, and the judge relies on the interpreter's insight and ability to work both in parallel to the judge and in extension of this.

We do not argue that independent work from interpreters is always commendable, nor that all the interpreters in our data do an equally good job. For instance, some are less experienced than others, and therefore less capable of unfolding more implied messages. As there is currently no national training or certification, many learn about courtroom practices through practice. This is unfortunate. We also have one example where an interpreter gives independent advice to two accused in what ends up as an asylum case, saying that they should be careful to align their stories, and that they should be aware that what they are going to present will be consequential for the outcome of their asylum case. This is a serious but also deviant, even extreme case. It is illustrative of some of the ethical problems interpreters are confronted with, and it certainly exceeds what we normally expect from an interpreter. In the rest of our cases, the interpreters convey the pragmatic meaning *in addition to* the semantic meaning of the judge's turns, and thereby act as loyal to the court *in addition to* being interested in creating understanding. To assess quality in interpreting, it is necessary to consider the context, expectations, activities, and the needs of both lay participants and professionals. And it is the court as an institution that needs to find out what constitutes good interpreting. This, however, entails an understanding of what job the court leaves the interpreter with, and unpacking this is a task that sociolinguists and discourse analysts have expertise in (cf. D'hondt and May 2022).

Transcription key

ACC: Accused; JUD: judge; INT: Interpreter; PRO: prosecutor

PRO:	speaker
(1.4)	pause in seconds
(.)	pause under 0.3 seconds
PRO: forlæn[gelse]	overlapping speech
INT: <u>[cer] sa fi</u>	
°ja°	softer than preceding talk
=	latched on preceding talk
>talk<	fast speech
<talk>	slow speech
<u>Talk</u>	emphasis
der begæres video	ordinary font = Danish talk
<i>video is requested</i>	<i>italics</i> = translation of original talk
<u>herën tjetër</u>	underlining = non-Danish language

Notes

¹Retrieved from https://www.ft.dk/-/media/sites/ft/pdf/publikationer/engelske-publikationer-pdf/grundloven_samlet_2018_uk_web.ashx, (1.12.2021)

²Retrieved from <https://www.dommerforeningen.dk/english/ethical-principles-for-judges/>, see also The Council of Europe's recommendation (R 2010) 12 of 17.12. 2010.

³Although video-documentation would have been preferable, it was almost impossible just to get audio recordings. Only very few scholars in Denmark have been lucky to get authentic court room data (Mortensen and Mortensen 2017).

⁴The restart is caused by the interpreter's interruption; he asks if he should turn on a microphone on the table. This is ignored by the judge,

⁵The same judge as in Example 1.

⁶These three cases all have the same legal representatives and interpreter. They also concern the same type of offence.

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Remembering Dr Janet Cotterill (1968–2022)

Chris Heffer, Frances Rock, Michelle Aldridge and Lise Fontaine

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It is with great sadness, but many memories, that we write to commemorate the life and work of our colleague Dr Janet Cotterill. Her vigour and drive were illustrated by her significant achievements in her inspirational career, since Janet was instrumental in helping to shape the development of forensic linguistics as we know it. Through her writing and scholarly activities, she helped to define the foci of those who followed and, through her inspiring teaching and planning, she co-founded the first master's level programme in forensic linguistics in the world at Cardiff University. Finally, through her compelling personality, she enthused many students and colleagues to develop their own work and lives in and around the field of language and law.

Janet's academic career in forensic linguistics, whilst sadly cut short, was nonetheless dynamic. Having completed a BSc (hons) in modern languages (1991) at Aston University and then an MA in applied linguistics at Liverpool University (1993), she worked in translation and interpreting in France and Egypt and as an EFL teacher in Tokyo, Japan. She began reading for a PhD under Professor Malcolm Coulthard's supervision at the University of Birmingham in 1998. Even before starting the PhD, Janet had secured a full-time lecturing post at Anglia Polytechnic University (APU, now Anglia-Ruskin University). During her doctoral studies, she would drive the two to three hours to Birmingham from Cambridge on Fridays for supervision sessions and to attend the regular forensic linguistics research group that Malcolm had set up. It was at those sessions that Frances and Chris both met her. The sessions were also attended by Tim Grant (another of Malcolm's PhD students), Krzysztof Kredens and Sonia Russell (visiting the University), Jess Shapero and Alison Johnson (now May) (doctoral contemporaries) and Sue Blackwell (then a member of staff at Birmingham) among others. Often Malcolm would bring a 'live' spoken or written forensic text to analyse and we were always struck by the speed and acuity of Janet's forensic observations.

Unlike most PhD students in the UK, Janet flew through her degree, despite simultaneously holding down the full-time lectureship and undertaking extensive exam board marking in Cambridge. She also assumed a lot of 'voluntary' work. For example, with Chris and Frances, she initiated and organised a PhD conference each summer at Birmingham and served as an integral part of Malcolm's organisation team when he hosted the 4th

Conference of the (then) International Association of Forensic Linguists at the University of Birmingham in 1999. She also contributed to the organisation of the Conference of the International Association of Dialogue Analysis in the same year at Birmingham and ran the British Association of Applied Linguistics' 33rd Annual Conference in 2000 at APU. She co-edited substantial collections arising from the latter two events (Coulthard *et al.*, 2000; Cotterill and Ife, 2001). Janet passed her PhD with flying colours in 2002 and published her thesis on the language of the OJ Simpson criminal trial as her influential *Language and Power in Court: A Linguistic Analysis of the O.J. Simpson Trial* (Cotterill, 2003) in the following year.

By 1999, Janet had secured a post as Lecturer at Cardiff University, and she would rise quickly through the ranks to Senior Lecturer in 2004, then Reader only two years later. In 2002, she had already established the world's first MA in Forensic Linguistics (now in its 20th year) which she taught with Michelle Aldridge who joined Cardiff in 2003. Early students on the course who were inspired by Janet include Nicci MacLeod (now at Aston), Samuel Larner (now at Manchester Metropolitan University), and Mark Griffiths (now at Cardiff University). Several of Janet's ex-MA and PhD students have since gone on to work directly in the legal system, including Marisa Jenkins and Silke Boak (nee Kirschner). Mark recalls Janet's 'insight, vision, creativity and determination' which converted her first MA students into her early doctoral supervisees. These qualities were, Mark recalls, 'a huge influence on the academic, professional and social direction of my life and many others, not least in injecting some self-belief into us and opening a fascinating field of study and work'.

With Malcolm Coulthard, Janet administered and taught on Summer Schools in forensic linguistics at the University of Birmingham (from 2000). In 2004, she organised a conference on Forensic Linguistics/Language and Law at the beautiful Gregynog Hall in mid-Wales and following the success of that 'dry run', she successfully bid for and organised the impressive 7th IAFL Conference at Cardiff University in 2005. She also managed to convince her School to take on another forensic linguist. Both Chris and Frances applied for the post and, such was the enthusiasm that Janet had created around forensic linguistics, that the school was persuaded to take on both of us.

Unfortunately, almost immediately after this expansion, in late 2005, Janet was diagnosed with multiple sclerosis. The vigour and drive mentioned at the beginning of this piece were illustrated yet again by her response, her consultant noting that he 'had never had a more determined patient'. Whilst Janet remained supportive of forensic linguistics at Cardiff, her presence on campus gradually grew more infrequent as her condition worsened. However, she remained active within the forensic linguistics community for some years more, attending conferences, in Sfax, Tunisia, for example, giving a presentation to colleagues in Cardiff in November 2014 and only formally retiring from Cardiff in November 2017.

Janet was a major influence on the International Association of Forensic Linguists (now IAFL) and was President of the Association in 2007–9. During her tenure she strove to broaden the reach of the Association by increasing involvement from colleagues in mainland Europe. She also guest edited issue 7(1) of the *International Journal of Speech, Language and the Law* in 2000 and was an editor of the publication from 2002 to 2006, a crucial time in the journal's history. She was also a member of the editorial board of the *International Journal for the Semiotics of Law*. In 2004, she guest-edited volume

25, issue 4, of *Applied Linguistics*, presenting a collection of papers on forensic linguistics to a wider audience. Janet's editing work extended to books too. In 2002, she edited the discipline-shaping collection *Language in the Legal Process*, whilst 2007 saw the publication of a further timely and influential collection, *The Language of Sexual Crime*. She was on the Editorial Board of the Oxford University Press monograph series *Oxford Studies in Language and Law*.

Janet undertook case work alone and with colleagues at a time when linguistics was still very much finding its way into legal proceedings. This work was broad in its coverage and pioneering in its focus, taking in topics as diverse as terrorism, risk assessment and authorship analysis.

Janet was extremely productive in terms of publications, and she distinguished herself particularly in the areas of trial language (e.g. Cotterill, 2002, 2004, 2005, 2007b), rights communication (Cotterill, 2000), language and sexual violence (Cotterill, 2007a) and media representations of crime (Cotterill, 2011). She published several of her PhD chapters while still a university student (e.g. Cotterill, 1998). She was a pioneer in research on trial communication, combining close forensic analysis with a critical approach to discourse analysis. She also drew on, and contributed to, scholarship in corpus linguistics, systemic functional linguistics and language and gender. Her research focused on a wide range of discursive phenomena including metaphor, intertextuality, semantic prosody, collocation, vagueness, representation, resistance, power and persuasion. Even after she had become unwell, she continued to write and her work earned her an entry in the *Encyclopaedia of Applied Linguistics*, written by Perkins (2012). It is telling that her work continues to be widely cited today.

Those who remember Janet personally will likely think of her intense and sometimes complicated presence, charisma, ambition and compelling enthusiasm. Chris recalls her drafting conference papers, articles and chapters with astonishing speed, sometimes in a single sitting, whilst Frances remembers being amazed that she reported doing this in front of her favourite soap opera! She built networks and made powerful connections and her quick mind and sense of humour were memorable. Those who have recalled Janet remarked 'I looked up to Janet and her fierce intellect and sharp mind' and 'she had many very wonderful qualities'. She enjoyed both 'gadding about', as co-editor of the *IJSL*, Peter French, fondly reminisced, and getting things done. She is also remembered for revelling in her multilingualism: she spoke French and her CV also records German, Spanish, and Japanese as at her disposal. Her abilities in darts and knock-about tennis have been fondly recalled. Her great love, however, was her scholarly activities. Writing in 2012, she told colleagues that the thought of resuming her work with them was 'sustaining', concluding, characteristically: 'I will do everything I possibly can to be back with you all'. This promise lives on in her publications and legacy.

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