# Notes

## Chapter 1

[i] **Exercise 1.1**
Possible translations:
(a) *I wonder if I could take that paperwork back from you.*
(b) *Did you prepare a two page antecedent form listing the previous convictions of the accused John Frederick Smith?*
(c) *Your honour I'm sure that the lawyer for the defence will agree that it was in fact the eighth of May.*
(d) *She's got three girls? (Sorry, remove that question from the record) three children?*
(e) *As I already told you Jane, I'm asking questions about some green plant stuff which was in the glove box of a car that Detective Sergeant Miller and I searched today.*

[ii] **Exercise 1.2**
In Sections 6 and 7 of Chapter 3 and Section 2 of Chapter 7, we will examine recent sociolinguistic work on communicating legal rules to lay people. It might be good to return to this exercise at the end of Chapter 3 and again after Section 2 of Chapter 7.

## Chapter 2

[iii] The example of a lawyer's utterance made for the record in Chapter 1 is in Exercise 1.1 (d).

[iv] **Exercise 2.1**
(i) – (d); (ii) – (a); (iii) – (c); (iv) – (e); (v) – (e); (vi) – (b).

## Chapter 3

[v] **Exercise 3.2**
Extract 3–i: Question (1) – prosodic; (3) – prosodic; (5) – narrow WH; (7) – narrow WH; (9) – grammatical Yes/No; (11) – narrow WH; (13) – narrow WH; (15) – grammatical Yes/No; (17) – grammatical Yes/No; (19) – broad WH; (21) – broad WH.
Extract 3–ii: Question (1) – confirmatory tag; (3) – confirmatory tag; (5) – imperative; (7) – grammatical Yes/No; (9) – grammatical Yes/No; (11) – prosodic; (13) – grammatical Yes/No; (15) – checking tag; (17) – prosodic; (19) – prosodic; (21) – prosodic; (23) – prosodic; (25) – prosodic; (27) – prosodic; (29) – prosodic.
Extract 3–i is examination-in-chief, containing a high number of WH-questions which invite the witness to tell parts of the story in his own words. In comparison, Extract 3–ii – from the cross-examination in this case – contains no WH questions. It does contain several tag questions, which are common in cross-examination and rare in examination-in-chief. The

Yes/No-questions in Extract 3–i (numbers 1, 3, 9, 15 and 17) must all have elicited information which was not contested in this case, or they would not have been allowed.

[vi] Answer (18) shows that the witness took the Yes/No question in question (17) as an invitation to provide explanation. Note also that Heffer (2005: 117) found that expert witnesses 'appear to interpret polar questions as requests for explanation rather than confirmation'.

**[vii] Exercise 3.3**

The features of powerless style are: hedge *sort of*, hesitation *uh* and intensifiers *even* and *very*. In American English *quite* would be an intensifier, while in Australian and New Zealand English it would be a qualifier.

**[viii] Exercise 3.4**

This example comes from Drew (1992: 510–512). The conflicting facts from the witness's testimony are that the defendant had called this witness a number of times, but she had an unlisted phone number and had not given him her number. The puzzle was how the defendant could have got her phone number. The implied *unless* clause was something like *unless you have lied and you did in fact give him your number*. This would then have contributed to the story being built by the defence that the witness had been giving encouraging signs to the defendant about an amorous relationship. Note that the puzzle was not explicitly stated, so that the witness was not offered the chance to find a solution for it. The lawyer's pauses before the questions in this puzzle were increasing in length, starting at 0.4 seconds, then to 0.8 and 1.2 seconds. Such pauses can serve to emphasise a cross-examining lawyer's disbelief (see Matoesian 1993: 144). Then at the conclusion of the puzzle generation, while providing no opportunity for the witness to solve it, the lawyer waited a long 10.2 seconds before changing topics. Other examples of this strategy found in Drew (1992) show similar pauses at the end of the puzzle generation.

**[ix] Exercise 3.5**

Sentence 1 includes two example of triplets in *se sentian, se sustenan, se fundan* **(**'are based on, are supported by, are built on'), and *viciada de animosidad, de bronca, de resentimiento* ('vitiated with animosity, anger, resentment'). Sentence 2 includes an example of direct speech animating the witness saying *'¿Qué te pasa con mi hermano?'* ('what's your problem with my brother?'). Sentence 2 also uses the historical present tense in most of the verbs, a strategy used to place the addressee at the scene of the story.

**[x] Exercise 3.6**

There are several unclear linguistic features in this part of the Californian instruction. It is written in negative terms, saying what reasonable doubt is not, rather than what it is. It is expressed in an impersonal way, starting with a passive verb ('is defined'), and never directly addressing (as 'you') the people who must be convinced 'beyond reasonable doubt', that is the jury. The third sentence has a complex structure incorporating two subordinate clauses, and four 'of' prepositional phrases. The final embedded clause contains an abstract nominalisation, a structure which typifies written legal language. Here, the 'pivotal term' (Tiersma 1999: 195) is 'abiding conviction', a noun phrase which combines an adjective not used in everyday talk ('abiding') with an abstract

noun intended in its less commonly used sense to mean belief. ('Conviction' is more commonly used to refer to a guilty finding made by a court.) Tiersma (2006: 26–28) provides a discussion of the rewriting of this particular Californian jury instruction in plain English. Teachers might like to compare the rewritten versions there with those produced by students in part (d) of this exercise. Tiersma suggests (p. 27) that 'beyond reasonable doubt' can be explained as 'you must be firmly convinced, based on all the evidence that I admitted during the trial, that the fact is true' [e.g. that the defendant is guilty]. Those who want to spend more class time on the language of jury instructions will find Tiersma (2006) a useful resource. For further discussion of linguistic issues involved in the 'beyond reasonable doubt' instruction see also Dumas (2000), Heffer (2006, 2007, 2008), Tiersma (1993, 1999: 193–196, 2001b) and Wierzbicka (2003).

[xi] **Exercise 3.7**

Unlike the explanation of the 'beyond reasonable doubt' standard which students worked on in Exercise 3.6, this example does not take the form of a written legal text to be read. From the start it is personalised, presented as comments from an embodied judge *I* to members of the jury *you*. It is contextualised and signposted (e.g. *before I go on to ... , I told you this ... at the start*). While it is legally impossible for jury instructions to be given interactionally, this example incorporates a number of features of conversational style, including discourse markers *now* and *of course*, and mostly quite short sentences. It also uses the hypothetical example *Imagine if you were mistaken for someone else ...* , the rhetorical question (*How, then, does the prosecution succeed in proving ... ?*), and reiteration, as in *But they do need to convince you ... and they need to convince you ....* See Heffer (2006) for further analysis of this example.

[xii] Figure 3.2 reproduces Heffer's (2005: 177) diagrammatic representation of the legal definition of handling stolen goods:

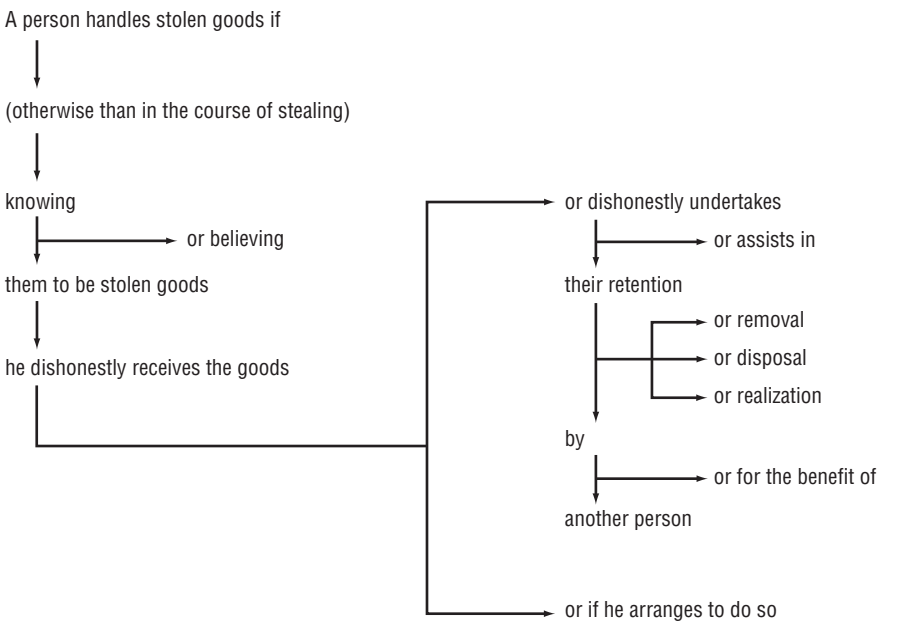



**Figure 3.2** Handling stolen goods (Heffer 2005: 177)

[xiii] **Exercise 3.8**

Some of the features of narrative discourse in jury instructions are:

- signposting the explanation, e.g. *let me just move on then, now*;
- addressing jury members directly, e.g. *you are considering, you need to consider*;
- expressing intersubjective awareness, e.g. *a bit more complicated* [than the previous section of the statute she had explained];
- narrative past tense: *received, took*;
- appealing to shared cultural schemas: for example the elegant hat was found in the Marks and Spencers store, and the local pub is a place where someone says *look what I have just nicked*.

Some of the features of paradigmatic discourse are:

- the use of hypothetical examples, starting with *if* (e.g. *if you were standing in Marks and Spencers*) and using conditional verbs such as *would* (e.g. *you would have to be* ...);
- the logical structure *If you were ... If you were not ... So*;
- timeless present tense: *handles, receives*.

For full discussion of this example see Heffer (2005: Chapter 6).

## Chapter 5

[xiv] **Exercise 5.1**

Questions (a)–(d) were taken from Brennan (1995), and question (e) from Walker (1999). In question (a) the second pronoun *that* stands for the first main clause *you told us that you don't remember*. The process of retrieval required by this anaphoric reference is made more complex by the embedding of one clause *you told us that you don't remember* in another almost identical one *do you remember saying that*?

The main complexity in Question (b) is the passive construction *when you were first helped on the bike by Mr Brown* in the subordinate clause.

Question (c) is an example of what Brennan (1995: 76) calls a 'multi-faceted question', in which 'a series of propositions are put and it is not clear to the listener which "question" should be answered'.

Question (d) is also a multi-faceted question, which asks two similar questions *you had a bruise, did you not?* and *do you remember this*?, namely that you had a bruise. But they are not the same question. A witness could answer *No I didn't have a bruise*, for example if she is certain in the knowledge that she did not have a bruise. Or she could answer *No, I don't remember* (whether or not I had a bruise). Thus, a *no* answer to this multi-faceted question would be ambiguous, although a *yes* answer would effectively work in answer to both propositions. Another complication in this question is the use of the formal tag *did you not?* which could well be confusing to a child, given that it sounds so different from the usual contracted tag *didn't you?*

Question (e) is also a multi-faceted question, questioning two different propositions *do you recall going to the hospital?* and *will you tell us why you went to the hospital?* Both of these questions have the form of a Yes/No-question, but what would an answer of either *yes* or *no*

mean to this multi-faceted question? Further, although the second question within this utterance has the form of a Yes/No-question, it is a question type typically intended to be understood as a WH-question, here *why did you go to hospital?* (in Danet *et al.*'s 1980 terms, it is a 'requestion', see Figure 3.1 in Section 4.1 of Chapter 3). As if these grammatical complexities are not enough, the word *recall* is not likely to be familiar to a child as young as the one asked this question.

[xv] **Exercise 5.2**

Anglo people, whether lawyers, judicial officers or others, vary in their reactions to this example. Some say that it was such a long pause that they felt the witness must have been trying to *make something up*. Others say it was such a long pause that his answer after the pause must have been genuine (almost an opposite reaction). It is interesting to compare the witness's answer before and after the pause. Before the pause he gave a formulaic apology. But after the pause, his answer was a personal, honest-sounding explanation which could be helpful to a typical defence strategy of suggesting that the most appropriate sentencing should include alcohol rehabilitation rather than a prison sentence. If this witness's lawyer had not allowed the 6.7 second silence, his answer could have sounded insincere, *Uh well- yeah- I am- sorry*. Instead the witness indicated that not only was he sorry, but he had thought about the reasons for his actions. The judge in the case sentenced him to attend a live-in alcohol rehabilitation programme. It is important to point out that the very long 6.7 second silence would not be allowed by many lawyers. The lawyer in this case had many years of experience with Aboriginal witnesses.

## Chapter 6

[xvi] **Exercise 6.1**

The exchange is between magistrate and witness, and not between lawyer and witness. Another difference from trials is that the function of this hearing is not to develop opposing stories in order to determine guilt and innocence. Rather, its aim is for the magistrate to determine why the defendant has failed to make required maintenance payments, and what action to take in response. In this extract the magistrate is directly rebuking the witness, who is arguing with the rebuke. In this way, the exchange resembles other authority-based rebuke–resistance arguments, such as between a teacher and a student, or a parent and a child. If a defendant used such argumentative retorts in a trial as this defendant has used, they may well be threatened with contempt of court. The defendant's use of the argumentative discourse marker *well* at the beginning of Turn 4 and the challenging tag questions in Turns 2 and 4 are typical of lawyer talk in trials, not defendant talk (or talk of any witness).

[xvii] **Exercise 6.2**

Judge X in Extract 6–ii exemplifies the procedure-oriented judges. In determining whether the defendant had been coerced to plead guilty, he asked very specific questions, even naming the defendant's lawyer (in Turn 7). Another way in which this judge personalised the questions was by talking specifically about himself (Turn 5), and asking directly about what the defendant thought (Turn 9). Judge Y in Extract 6–iii, on the other hand, asked only two

questions to determine whether the defendant had been coerced to plead guilty. Although these two questions use the second person pronoun *you*, they are long and formulaic, and provided no opportunity for the judge to assess whether the defendant understood them.

[xviii] The questions in Turns 3 and 5 are prosodic Yes/No-questions, and the question in Turn 1 is a confirmatory tag question.

[xix] **Exercise 6.4**

Question (a): the main linguistic mechanism for attributing non-agency to the defendant is the agentless passive construction *where your pants are removed*. This could be rephrased to attribute agency to the defendant by making it an active construction *where he removes your pants* (keeping the historical present tense of the original question). Another possibility is to keep the original passive construction, and add the defendant as agent, with *where your pants are removed by him*. To attribute agency to the complainant, the question would have to be rephrased as *where you remove your pants*, or the very clumsy *where your pants are removed by you*.

Question (b): This question also exemplifies the agentless passive *arms ... being held by one hand*. To attribute agency to the defendant, this question could be rephrased with the defendant as the subject of an active verb as in *Was he still holding your arms with one hand in the same position crossed over and above your head?*. Or the defendant could be added as the agent within the original passive sentence, as in *And were your arms ... being held by him with one hand*. It would seem impossible to attribute agency to the complainant with this question!

[xx] **Exercise 6.5**

In the rape trial Extract 6–v above, the cross-examining lawyer's assumption was that the complainant had no objective grounds to be afraid of the defendant because he had never said anything threatening or *mistreated* her *physically in any way*. Similarly, in this Extract 6–x from the abduction case, the questions in Turns 11 and 13 imply that the police did not say anything threatening to the boys, and those in Turns 17 and 31 imply that the police did not use any physical force. In both cases the lawyer was defining the complainant's experience in relation to the defendant(s) – the rape complainant's *subjective fear* of him, and the abduction complainant's assertion that the police had *forced* him and his friends into the cars. We saw that the complainant in the rape case attempted to contest the lawyer's definition of threatening behaviour by saying *He never uttered any threats*. If she had been able to negotiate the meaning of threatening behaviour, she might have explained that a person can feel threatened, even when nothing has been said. Similarly, David tried to explain why he felt *forced* by the police, by saying *They told us to jump in the car*. It might well be argued that the power imbalance between the three Aboriginal boys and six armed police officers in the context of Aboriginal experiences of police violence, especially against young people, in itself constituted either a threat, or force, or both – although this is hardly the analysis which we can expect from a 13-year-old witness in cross-examination in an adult court, in answer to the question *tell us how [the police forced you to get in the car]?*. His answer to this question (Turn 8) *they told us to jump in the car* was arguably the beginning of this explanation. In its customary Australian English usage, the verb *force* does not necessarily imply the overt use of physical force. The *Macquarie Dictionary* gives its first ('commonest') meaning as 'to compel; constrain, or oblige (oneself or someone) to do something', with the

notion of the use of overt force coming in only from its third commonest meaning, namely 'to bring about or effect by force'. (The second meaning given is 'to drive or propel against resistance'.) It would be quite plausible for the witness to be using the expression *they forced me [to get in the car]* in the same way as I might say *the police officer forced me to pull over to the side of the road* (where in the latter case no overt force was used, but I felt I had no choice because of the situation, and my understanding of police powers).
It is worth noting that in this extract there is only one WH-question (Turn 7). One of the ways in which the lawyer in this extract was able to insist on his definition of the word *force* was by asking Yes/No-questions, which here seriously limited the ability of the 13-year-old witness to give his own explanation. (Following the discussion in Section 4.1 of Chapter 3, the form of the questions alone is not sufficient to restrict a witness's answer to either *yes* or *no*. But this child witness was by this stage in his second day of cross-examination, and he showed no signs of being able to negotiate his meaning of the word *force*.) (Some of this discussion is taken from Eades 2008a: 141–142.)

[xxi] **Exercise 6.6**
The cultural presupposition in the first question in this extract is that Barry had to have a reason for walking around the mall late at night. This may make sense for middle-class Anglo lawyers, but it ignores a popular activity in youth cultures in cities around the world, namely that of *walking around*, referred to in some varieties of English as *cruising*. The questions in Turns 5, 7 and 9 are all leading questions (see Section 4.1 of Chapter 3), which suggested an answer to the witness. Each of these suggestions incorporates the notion that the reason that Barry had been walking around the mall was to ask for or steal money. Although Barry and his two friends were never charged with an offence relating to that night when they were walking around the mall, there were repeated suggestions such as we see in this extract that they were engaged in vagrancy (although that word is never used). The Vagrants Act in Queensland at that time included prosecution for any person who 'loiters or places himself in a public place to beg or gather alms'.

[xxii] **Exercise 6.7**
The most significant point to notice about the NSW legislation on improper questions in cross-examination is that the restriction of questions is at the discretion of the court, that is the presiding judicial officer: '... the court must disallow a question ... if the court is of the opinion that ...'. However, the subsections of this Section 275a provide a number of specific situations or characteristics of questions which can be considered disallowable by the court. These details should provide legal counsel with grounds to present arguments to the court about questions which the counsel consider improper. If less detail of the characteristics of disallowable questions had been provided in the Act, it might well be harder for counsel to make a case for disallowing particular questions.

## Chapter 7

[xxiii] The US right to silence is unconditional, as was the right to silence in England and Wales until 1994. This unconditional right to silence is consistent with the rights of an accused

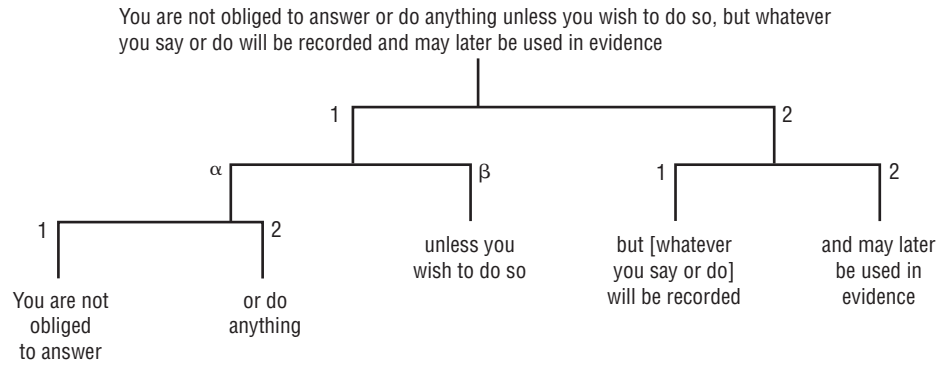
person to be innocent until proven guilty, and the obligation on the prosecution to prove any allegations against an accused person. In England and Wales since 1994, a suspect can choose to remain silent in the police interview, but if they then say something in their evidence in court that was relevant to questions in the police interview, the former silence can be used against the suspect. For example, jurors might be entitled to conclude that the suspect had been hiding something in the police interview, or later inventing something. (See Rock 2007: 139–140 for an indication of the legal complexities of this issue.)

[xxiv] **Exercise 7.1**

Some of the features of this caution which could make it difficult to understand include:

- Use of passive, with no agent expressed, in *will be recorded* in both the first and second sentence, as well as *may later be used in evidence*.
- Use of legal register/legalese in the expression *certain questions*. This is not an everyday usage of the word *certain*. Why not *I am going to ask you some questions*?
- The second sentence is long, and contains several propositions. It could easily be broken into two sentences.
- Also note that *do you understand* questions two different propositions. What if someone understands the first part, but not the second?

Gibbons (2001: 452) presents the structure of the second sentence in this caution in the following diagram:




Key: elements in brackets [ ] are rank shifted

**Figure 7.2** Earlier version of NSW right to silence caution (Gibbons 2001: 452)

[xxv] **Exercise 7.2**

Gibbons' (2001: 453) suggested revision of the right to silence caution was:

I am going to ask you some questions. You do not have to answer if you do not want to. Do you understand that?

We will record what you say. We can use this recording [in court/against you/against you in court]. Do you understand that?

The final version of this right to silence caution adopted in NSW was:

I am going to ask you some questions. You do not have to say or do anything if you do not want to. Do you understand that?
We will record what you say or do. We can use this recording in court. Do you understand that?

[xxvi] **Exercise 7.4**

(a) These questions look quite like the coercion questions asked by the record-oriented judge (Judge Y) in Exercise 6.2 (Section 3 of Chapter 6). Like this judge, the police officer seems to be asking formulaic questions, in order to satisfy a legal requirement. Here it's the requirement that the suspect is not participating in the interview because of a threat or a promise or a bribe. Students should consider how a police officer can satisfy this legal requirement through questions which are not formulaic. The parallel questions asked by the procedure-oriented judge (Judge X) in Exercise 6.2 might provide a good starting point.
(b) The question in Turn 15 was asked in a way that invites gratuitous concurrence, for the reasons discussed in this section of the textbook. The suspect answered *yes* (in Turn 16) as soon as the question was asked. This exchange in Turns 15 and 16 provides no evidence for us to judge whether the suspect did or did not understand his rights. However, the interaction in Turns 17 and 18 suggests that he probably did not know what is meant by the term *your rights*. Here we see that when invited to explain his understanding with the officer's comprehension checking question (Turn 17), the suspect hesitated, and then asked about his rights. But rather than take this opportunity to encourage the suspect to explain what he knew, the police officer simply started on a series of questions explaining the rights. One way in which the police officer could have handled this differently is by asking something like: *Can you tell me what I'm supposed to do for you to make sure your rights are looked after during the interview?* or *Can you tell me what I'm supposed to do for you to make sure I give you your rights during the interview?* Also note that the police officer started his explanation of the suspect's rights (in Turn 19) with the legalese expression *have a duty of care to do certain things for you*? *Duty of care* is a technical term which is unlikely to make sense to many suspects. And again the legal register in the expression *do certain things for you* uses the word *certain* in a way that does not occur in everyday talk.
(c) The police officer did ask short questions, separating each right and asking about them separately. Also in Turn 29, the police officer corrected his use of the legalese term *waived your right* and replaced it with the ordinary English expression *didn't want that legal advice*.
(d) The negative question in Turn 37 presupposes a *no* answer. It could have been asked in a clearer way as a positive question *Do you want to speak to anyone about that?* Note that this suggested alternative also uses everyday *want to* instead of more formal *wish to*, and everyday *about* instead of the legalese *in relation to*. Also see (b) above about the question in Turn 19. And the everyday English expression *allowed to have* could have been used instead of *entitled* in Turns 21 and 27.

[xxvii] **Exercise 7.5**

Students acting as police officers will hopefully listen to the suspects' answers and respond to what suspects actually say, in contrast to the police officer in Extract 7–ii who simply gave a routinised explanation in technical language. It might also be possible for police officers to model the options through hypothetical scenarios, following Heffer's suggested approach

for judges explaining legal rules to the jury, discussed in Section 6 of Chapter 3 above (see also Rock 2007: 229, 255). Rock (2007: 221) talks about the value of 'collaborative recontextualisations', that is police officer and suspect rephrasing the caution through joint or collaborative talk about it. Rock says:

> Increased use of collaborative recontextualisations would make it possible to embrace the comprehension check as more than an institutionalised performance of procedural adherence, an (un) official script in which the detainees' turns are incidental. It would re-cast detainee recontextualisations as catalysts to almost pedagogic exchanges and would widen the boundaries of what rights communication might involve by potentially encouraging attention to detainees' contributions. Officers themselves suggested this.

She also warns that 'comprehension is not necessarily best achieved for all through interactivity and collaboration may be impossible for some officers or in some situations.'

**[xxviii] Class debate**

Some of the advantages of using scripted cautions include the guarantee that everyone is given the same script, and that police officers don't have to be worried about possible appeals because they inadvertently gave a less than satisfactory version of the caution. These advantages are reminiscent of the reasons why rule-oriented judges in Philips' (1998) study of US guilty plea hearings asked questions in the same way in every case. But, as we discussed in Section 3 of Chapter 6, this approach assumes that all people are equal and are equally capable of taking care of themselves – which is not the same as saying that people should be given equal treatment. So, an argument against scripted cautions is that people come from diverse linguistic, cultural and educational backgrounds, and in order for them to understand their rights, different people will require different levels of explanation. Rock (2007: 254) says that 'making meaning is not one-size-fits-all; it is impossible to imagine a universally successful explanation. Furthermore, if officers are de-skilled through reliance on a standard formulation, deviation from the script may become impossible. Officers might also come to pay little attention to the caution's meaning with no routine reason to consider it'.
If the delivery of the rights is seen as a communicative act, then the use of a scripted caution might make it difficult for real communication between officer and suspect.

**[xxix] Exercise 7.6**

Teachers can go to Ainsworth (2008: 8–10) for discussion of these and other examples. In all of these examples, the argument that it is not an invocation of the right to a lawyer rests on a literal interpretation of the semantic meaning (or sentence meaning), ignoring the pragmatic meaning (or the way that such an utterance is used). Taking such a literal semantic approach to meaning is like answering *yes* when someone asks you *do you know the time?*, without telling them what the time is.
1. *Could I get a lawyer?* uses interrogative syntax, instead of the required imperative syntax. Students should discuss the pragmatic force of similar utterances which have interrogative form, but which can often function as imperatives.
2. *It seems like what I need is a lawyer ... I do want a lawyer* uses mitigation with *it seems like what I need*. The court in this case held that this made the request equivocal. This seems hard to sustain given the second part *I do want a lawyer* which has the form of a bald statement of what the suspect wants.

3. *I think I would like to talk to a lawyer* uses the hedge *I think* which was also held to be equivocal.
4. *If I'm going to jail on anything I want to have my attorney present before I start talking to you about whatever it is you guys are talking about.* This clear expression of *want*ing his *attorney present before* he *start*s *talking,* is expressed as conditional. This disqualified it as a clear request for an attorney according to the court, even though the suspect did go to jail as a result of the investigation.
5. *I'll be honest with you. I'm scared to say anything without talking to a lawyer.* Again this was held by the appeal court to be not a clear invocation of the right to a lawyer. Ainsworth points out that this is exactly the sort of situation which the Miranda rights are supposed to protect: a person who doesn't know how or whether to answer police questions without a lawyer present.

[xxx] **Exercise 7.7**
In Newbury and Johnson's (2006) analysis, these are examples of (a) avoidance, (b) refusal, (c) contest and (d) correction. It might be argued that some of the extracts exemplify more than one of the strategies, for example that extract (a) exemplifies refusal as well as avoidance.

[xxxi] **Exercise 7.8**
The features of policespeak in this utterance are:
lexical features
*informed* (cf. *told*)
*making inquiries* (cf. *asking you some questions*)
*in relation to* (cf. *about*)
*an amount of* (cf. *some*)
*green vegetable matter* (cf. *plants*)
*was located* (cf. *was*)
*motor vehicle* (cf. *car*)
grammatical feature:
word order: *today searched* (cf. *searched today*)
As discussed in Section 4 of Chapter 1, the use of the term *green vegetable matter* may be legally required, as it cannot be assumed that this vegetable matter, or plant material, is marijuana, until this has been proven by laboratory testing. However, it is quite possible that using the term *plants* would suffice.
Hall (2008: 75) discusses the use of the word *vehicle* in policespeak. He points out that road rules frequently use the generic term *vehicle* – appropriately – in referring to any kind of car, truck, bike, bus, etc. However, police often use this generic term when talking about one specific *vehicle*, which is clearly either a car, or a bus, or a bike, etc. In this example, it is a particular car the police officer is talking about.

## Chapter 8

### [xxxii] Exercise 8.1

(a) Students should discuss the possible consequences of the omission of the phrase *or do* from Turn 1 in the interpreted Turns 2 and 4.
(b) The interpreted version inaccurately gives the caution as being about not saying certain things (Turns 2 and 4). But the caution gives suspects the right to choose to say nothing at all. Students should also discuss whether telling the suspect that the words they speak will *remain* as evidence is the same as saying that they may be *given* in evidence.
(c) Nakane (2007: 102) suggests the turn boundary after *unless you wish to do so*. Apart from making the two parts of the caution more balanced in length, and reducing the memory load for the interpreter and the suspect, this turn boundary is consistent with the structure and meaning of the caution. Structurally, it contains two main clauses joined by *and*. First: *I must caution you do not have to say or do anything unless you wish to do so*. Second: *anything you say or do may later be given in evidence*.

### [xxxiii] Exercise 8.2

(a) The suspect's answers in Turns 4 and 6 seem to indicate that she had no idea of what the right to silence means. She said it means that *if [she] is not scared [she']ll do [her] best to answer every questions*. And again in Turn 8 she said that if she doesn't want to answer any more questions she'll *try [to] answer it*. The answer in Turn 10 might suggest that she does at that point understand the right to silence. But this answer comes straight after the two answers which seem to indicate that she had no idea of what it means. And there has been no attempt at clarification. So it is hard to know if she did indeed understand the right to silence.
(c) This extract, like Extract 7–ii, shows that it is all very well to ask what the suspect understands, but police officers should listen to the answer and see if it really does show comprehension. In Extract 8–iii, the police officer is trying to gain evidence that the suspect knows what the right to silence means, by asking two consecutive comprehension checking questions (Turns 3 and 7). Following two indications that the suspect does not understand this right (in Turns 4 and 8), he asks a third comprehension checking question (in Turn 9). As discussed above, it is impossible to know if the suspect's answer in Turn 10 really does indicate understanding. Cooke also discusses this case in his thesis (1998: 103). Here he points out that there is a problem right from the police officer's first turn in this extract. You can see that the officer expressed the suspect's right to silence

> in terms of individual questions rather than to the interrogation as a whole. If he had continued on from, 'if you don't want to answer any of my questions', with: 'you just say, "I don't want to answer any questions"', then [the suspect] could have made the inference that she was permitted to opt out of the interrogation. His use of the singular in 'that', 'question', and 'it' implied otherwise.

### [xxxiv] Class discussion

(a) We would not expect the police officers to be aware of the subtle dialectal differences involved. Further, the extent of overlap between Aboriginal English and other varieties of Australian English makes the analysis of dialectal difference in this area of Australia a very

complicated matter. But it is interesting that in Jack's case, the evidence of dialectal difference is all in the police interview: when Jack complains about his brother *carrying on silly in the house,* he gives examples of the physical violence involved, as we have seen. And he explicitly says that it does not involve him *saying* anything, as we also saw.
(b) It seems that it did matter in this case that the police officers did not understand what Jack meant by *carrying on* and *carrying on silly*. We saw that they summarised his police interview, saying that Jack had 'had enough of his brother's antics', thus obscuring Jack's answers indicating he had a reasonable fear of his brother's violent attack on their sister. Thus, in the summary there did not appear to be any reason for Jack's attack, and he was charged with murder. Students may want to discuss the role of expert linguistic evidence in this being later changed to manslaughter. This case also highlights the importance of electronic recording of police interviews with suspects.
(c) Students should have a range of suggestions here. For example:

- some specific training about the fact that many Aboriginal people speak a dialect of English which has significant and often subtle differences from other varieties of Australian English;
- provision of Arthur (1996), the dictionary of some commonly used Aboriginal English words;
- easier than both of these options, is specific training for police to read transcripts carefully as records of interaction, rather than simply records of answers.

Students might suggest the use of interpreters for speakers of Aboriginal English. In my view, this is not advisable for people like Jack who speak a light variety of this dialect, in which there is considerable overlap with speakers of other varieties of Australian English. Using an interpreter in an interview such as the one in this case would arguably do much to trivialise the usual work of interpreters, as well as Aboriginal English. This is because the interpreter would be providing exact repeats of many of the answers, due to the overlaps between Aboriginal English and Standard Australian English.
Students might also suggest that Aboriginal police officers should be used in interviews with Aboriginal English-speaking suspects. This seemingly practical suggestion would be somewhat compromised by the demographics: Aboriginal people are arrested at 11 times the rate of the general population, and very few Aboriginal people are police officers.
Regardless of any of these policy changes, we have to remember that the police in this case were probably focused on the construction of Jack as a murderer. There is undoubtedly a strategic purpose in presenting Jack's identity as murderer without the complication of evidence which would point to him being a victim as well.

### [xxxv] Exercise 8.6

The most important point to start with in this discussion concerns the different functions of police interviews and courtroom cross-examination. Students should be well aware of this difference at this stage, but if necessary they should be directed to go back to Section 4 of Chapter 3, and compare it with Section 5 of this chapter. The main concern for the interviewer in investigative interviews with child victims of alleged abuse is how to facilitate the child telling their story as accurately and as fully as possible. But in cross-examination the main aim of the questioner is to find flaws in the witness's story which show them to be

unreliable witnesses whose story should not be believed. Students should examine the differences between questions asked of children in court and in police interviews with this difference in mind. Concerning possible changes to cross-examination, students should go back to Section 5 of Chapter 5, in addition to thinking widely about other possible changes. The main challenge for the legal system in this whole area is how to preserve the rights of the defendant to be innocent until proven guilty, and to question the accuser. (I have found that students can sometimes be reluctant to engage with these rights, until I ask them to imagine that a defendant has been wrongly accused of child abuse, and that this defendant is their brother.)

## Chapter 9

### [xxxvi] Exercise 9.1

Note that to take a more dynamic and reciprocal view of power relationships would require going beyond isolated linguistic features and short extracts, although these could be a part of such a study. To understand power relationships as constantly being worked for, and not simply an asymmetrical static situation, a study would need to consider the social and legal context more fully. For example, what is the lawyer trying to do, within what legal requirements? What are the client's objectives? It might be good to come back to this question after the examination of Trinch's work in Section 5.

### [xxxvii] Exercise 9.2

(a) This question requires examination of Turns 4 and 14. In Turn 4, despite reporting what the abuser did to her, the woman presents herself as the agent in several clauses *I was … crying … dehydrated … couldn't get any water … couldn't go to the restroom … couldn't move … just had to sit there*. Then in Turn 14, she reports her physical agency in attacking the abuser in her successful attempts (see Turns 9 and 10) to stop his attempts to rape her.
(b) This question requires examination of Turns 14 and 15. The interviewer gives no reaction to the woman's reports (in Turn 14) of her self-defence attacks on the abuser. In fact in Turn 15, she doesn't ask if the woman was successful in *getting him away from [her]*, but asks about whether the abuser was successful in another way (admittedly this is related, but it is not the same as the issue being reported by the woman in Turn 14).
(c) The interviewer asks the woman (in Turn 13) if she and the abuser had been *struggling* before the woman gives any evidence of her initiation of attacks (in Turn 14). *Struggling* is a neutral word, conveying reciprocal actions. Thus this question *So were the two of you struggling?* does not seek any information about the woman's individual actions. Perhaps the interviewer often or always used this neutral verb as it does not reveal any evidence of violence on the part of the client. For these reasons, *struggling* might be considered a suitable word. In this case it did not prevent the woman from volunteering information about her own self-defence attacks on the abuser. Students might like to discuss the use of possible alternatives such as *So were the two of you fighting?* (which would be asking directly about the woman using physical violence) or *How did you stop him [from raping you]?* (which would be asking directly about the woman's self-defence).

[xxxviii] **Exercise 9.3**

(a) In her protective order interview, the woman reported her self-defence actions in terms of herself as an active participant standing up to her abuser by biting him and hitting him (Turn 14 of the previous extract). In the affidavit, written by the lawyer, but presented in first person as the woman's own words, the actions of biting and hitting are muted and reported euphemistically as *I did everything I could to keep him from raping me*.

(b) We cannot know this, but students can discuss possible reasons, such as convention, or trying to downplay any suggestion that the woman was also an attacker (although of course, this is what has to be involved for self-defence quite often).

(c) Students will have various opinions on this question. One important consideration relates to possible negative consequences of this muting in future judicial proceedings. For example 'if an abuser's attorney questions whether the woman bit the abuser, her affidavit could quite easily be made to look as though she had intentionally left such specifics out' (Trinch 2003: 205). This question (c) is so important that the textbook gives further discussion of some aspects of it after this exercise. I have generally avoided discussing in the textbook questions given in exercises or class discussions, but this is so important that I didn't want to leave it out. Hopefully this will not prevent students from a thoughtful consideration of other aspects of the question which I have not discussed.

[xxxix] **Class discussion**

This question is aimed to get students to bring together the research in this chapter in terms of the 'big picture' about lawyer–client communication. Hopefully some students will make the point that we need research to know more about what clients really do think.

One of the main points that students should focus on is that there is little evidence in the sociolinguistic research that the use of legal register (or *big words*) is an issue (although Bogoch 1994 did find this in her study, as we saw in Section 3). Students could list and discuss:

- conversational features, such as lawyers ignoring parts of their clients' stories, and making abrupt topic changes;
- interactional features, such as lawyers typing or writing while talking or while their client is talking;
- discourse features, especially lawyers focusing much more on legal and rational aspects of their clients' stories than on the social and emotional aspects.

On a general level, we have seen that a major part of lawyers' work is interpreting the law for their clients, and interpreting their clients' stories for the legal process. Students might like to consider what is involved in good interpreting from one different language to another, and what some of the challenges are. (Parts of Chapter 4 might be useful on this point, although the lawyer–client interaction is not bound by rules of evidence, which provide some of the most difficult challenges for courtroom interpreting.)

For a helpful overview of legal and ethical responsibilities of lawyers, and different views on the balance between lawyers as agents for clients and lawyers as independent advisors, see Mather (2003).

## Chapter 10

### [xl] Exercise 10.1

The points Rawls makes are:
(a) Bennett's trees grew big.
evidence: photo (*the picture there*)
(b) Bennett said he'd take out the hedge or the stumps (not clear which it is).
evidence: *he told me*
(c) Bennett didn't do this.
evidence: Rawls' report that she *was still taking out those trees and he wasn't coming to help [her] like he said he was*
(d) Rawls hired a tree service company to do the work.
evidence: Rawls's report, including name of tree service worker
(e) Tree service worker said Bennett should help Rawls.
evidence: Rawls' report of conversation
(f) Bennett's shrubbery is over the property line.
evidence: photo (*pictures*)
(g) One of the offending trees was dead.
evidence: Rawls' report of tree service worker's comment
(h) Rawls believes that Bennett's lack of attention to the trees is deliberately intended to harass her.
evidence: none
(i) The effect of Bennett's lack of attention to the trees is that Rawls has to collect his *trash* (presumably the fallen leaves) at personal inconvenience (*bending over*), and straining the capacity of her single trash can.
evidence: Rawls' report

### [xli] Exercise 10.2

The points Hogan makes are:
(a) Hogan is responsible for assisting sales reps with the sanctioned programs, using a calculation sheet.
evidence: sample calculation sheet for spectrometers from March to August 1984
(b) There was a $200 payout for the 1001 Spectrometer.
evidence: same calculation sheet as in (a)
(c) In late October or early November, another employee (Harper, referred to in this excerpt as *him* and *he*) informed him of the situation with Webb, and she asked him to call Webb and explain why the Instrument Supply company would not provide $200 commission.
evidence: Hogan's report
(d) At the time that Hogan encouraged Webb to close the sale she was not aware that he did not know about not being eligible for $200 commission from Instrument Supply.
evidence: Hogan's report
(e) When Webb resigned at the end of December, Hogan informed Webb that the Instrument Supply company would not provide $200 commission.
evidence: Hogan's report

Some of the differences between Rawls and Hogan's presentation of their stories:

- Rawls presents her case in terms of the relationship between herself and Bennett, particularly evaluating Bennett and his motivations. But Hogan presents her case in terms of procedures and actions, and not relationships or personalities.
- Hogan has specific details (dates and amount of commissions), and documentary indication of the procedure used by the company. Rawls does have photographic evidence of the situation she is complaining about, as well as the name of the tree service company and its worker. But there are no other specific details, such as how many trees or shrubs are involved, and how many metres of her property is affected by Bennett's trees.
- Hogan presents her case in a business-like chronological way, and assumes no knowledge of the people, places or events she is talking about. Rawls uses a chronological structure, but in places it is rambly and does assume knowledge of the people, places or events she is talking about. Her use of the pronoun 'he' is confusing in places, where it is not clear at first whether she is referring to Bennett or Cook.

Conley and O'Barr (1990) also point out that Hogan – the rule-oriented litigant – 'deals directly with the issues that the judge must resolve to decide the case' (p. 63). Rawls, on the other hand, responds to the judge's questions with lengthy digressions about the history of her relationship with Bennett, which 'meander through time and place, drawing her audience ever deeper into her social world, but providing little information about the specific issues that are of interest to the court' (p. 61).

[xlii] **Exercise 10.3**

After students have discussed Question (a) of this exercise, you should start addressing Question (b) with students reading out the extracts in character. They might need to go back to the transcription conventions in Section 8 of Chapter 1 to work out which parts are raised volume, lengthened syllables, emphasis, overlapping talk, etc. Extract 10–iii illustrates the 'ground rule' or conversational rule that disputants are not allowed to start talking while someone else is still talking (in ordinary English, this might be expressed also as 'no interrupting'). Although note that the mediator has interrupted in this extract. Extract 10–iv shows that the mediator is controlling the talk, and allocating turns. Extract 10–v shows the participant making an allegation about the other party in an indirect way. He does this by telling the third person – the mediator – and by using an agentless passive *I've been assaulted*. This can contrast an argument between two people, where one person might say *I feel that you've physically and emotionally assaulted me* or *You've physically and emotionally assaulted me*.

[xliii] **Class discussion**

There is plenty to discuss in Greatbatch and Dingwall's analysis of this case (which students should read before the class). Make sure they talk about whether or not selective facilitation is consistent with impartiality (discussed in the article in terms of 'neutrality'), and if not, why not? To what extent does this example illustrate the claim in Greatbatch and Dingwall (1989: 639), that there is not a clearcut distinction between neutrality and bias.

[xliv] **Exercise 10.4**

Garcia (2000) is an important teacher resource for this exercise, and students should also be encouraged to read it after they have completed the exercise and all discussion. Garcia discusses three strategies used by disputants to resist mediator solicits for position reports: silence, passing and non-position report talk. Did the students find examples which fit Garcia's discussion? Did they find other resistance strategies not discussed by Garcia? The immediate success of the strategies of resistance can be discussed in terms of whether or not the mediator eventually succeeded in eliciting a position report. What other findings might count as success of resistance strategies?

I suggest that students list and discuss the mediator's display of impartiality according to their own observations first. Then you can introduce some of the strategies from the literature in one of two ways. You can present a summary, or you can ask students to read one or more of the articles cited in Section 3.2 and then see how the data from their role play fits with these published analyses of mediators' displays of impartiality. (This would ideally make the role play analysis an exercise to be done in two different class sessions, with students reading one or more of the references after their initial ad hoc analysis of the role play, and then revisiting their analysis in light of this reading in the second class.) Some of the main strategies for mediators' display of impartiality in the publications referred to in this section are:

- Heisterkamp (2006): self-labelling, unbiased paraphrasing, perspective display series, footing, and replies to disputant information seeking attempts.
- Jacobs (2002): indirect advocacy (asking questions), framing of advocacy (summarising) and equivocal advocacy (informing).
- Greatbatch and Dingwall (1999): refraining from direct expression of opinions, refraining from overt affiliation with, or disaffiliation from, opinions expressed by disputants (see also Heisterkamp 2006). Note that this is similar to Atkinson's (1992) discussion of arbitrator impartiality in small claims hearings, discussed in Section 2.3 in this chapter. Are the strategies he analyses there relevant to this mediation roleplay?

Note also that Garcia (2000: 337) discusses how the mediator's display of neutrality is partly dependent on 'the disputant's willingness to produce position reports when solicited'.

[xlv] **Class debate**

This section has provided references to several publications which discuss this point. When students debate this proposition, make sure that they consider how the type of dispute might impact on questions of power and rights.

[xlvi] **Exercise 10.5**

(1) In this extract the conversation was between the defendant and one of the four elders presiding with the magistrate over the hearing. In contrast, in conventional courtroom hearings, it is lawyers and sometimes also the magistrate who ask questions of the defendant.

(2) The focus in this extract, as in the whole hearing, was on the defendant's problems and their consequences.

(3) The defendant had some quite long turns, as in Turns 2 and 6 in this extract. In contrast, Aboriginal defendants in conventional courts typically have very short turns.
(4) This extract, as with the whole hearing, was not structured entirely by questions and answers. For example, look at the exchange in Turns 5 and 6: the elder emphasises the seriousness of the defendant's problem, and this is followed by the defendant volunteering his feelings about how hard it is for him to reform away from the support of the alcohol rehabilitation centre. This appears to be the defendant's honest contribution to the discussion of his problems, rather than an excuse, as his Turn 10 expresses his remorse about the consequences of his actions.

**Extra reference:**
Mather, Lynn (2003) What do clients want? What do lawyers do? Emory Law Journal 52, 1065–1086.

**Extra acknowledgments:**
Figure 2.2 is from The Language of Jury Trial: A Corpus-Aided Analysis of Legal-Lay Discourse by Chris Heffer published in 2005 by Palgrave Macmillan;
Figure 7.2 is from Revising the language of New South Wales police procedures: Applied Linguistics in action, by John Gibbons published in Applied Linguistics 22 (4), 439–469