

# The guilty silence: the discursive implications of non-response in a police interview

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*Police evidentiary interviews with suspects provide a source of institutional language data in which the contributions of participants may be critical to their future, in the context of a subsequent court case. An analysis of the interactional strategies of police interview participants demonstrates that the contributions of the suspect are highly constrained in a number of ways, including allowable turn types and the management of topic initiations. If assumptions about 'preferred responses' based on ordinary conversation are used to interpret non-response in this particular institutional setting, then these interactionally restricted contributions, which will be presented as evidence, may be susceptible to adverse inference in a way that is unlikely to be addressed by the judicial system. This paper concludes that discourse analysis can present a case against the erosion of the defendant's rights, in particular the right to silence.*

## Introduction

This paper will attempt to demonstrate, perhaps controversially, that tools drawn from Conversation Analysis (Sacks, Schegloff and Jefferson 1974) can be applied to ideological problems. The CA tool that I am interested in is the notion of 'preference' and, in particular, the way it can be applied to adjacency pairs that feature accusations or, more generally, attributions. The ideological problem concerns a suspect's 'right to silence' in police interviews and recent moves to have the invocation of this right made known to the participants in a subsequent court trial (Biber 2005; Hamer 2006). This paper has emerged from my research into the discursive behaviour of participants in police interviews with suspects, which is based on the analysis of data from tape-recorded police interviews (Heydon 2002, 2005).

I will begin with a discussion of the legislation and police regulations in which the right to silence is grounded and some of the legal considerations that need to be taken into account. Following this, I will briefly describe some of the key features of police interview discourse, paying particular attention to interactional strategies used in the construction of the interview. I will then outline the notion of preference in a CA framework and how it applies to the adjacency pair types mentioned previously—accusations and attributions. Several extracts from the data will be presented to see how these utterances are realised in context in terms of the sequential ordering of accusations and allegations and their second pair parts. Finally, I will discuss the ramifications of preference for the right to silence.

## Legislative background

In the Australian state of Victoria, considerations of interview procedure can be supported by reference to the Crimes Act (1958) and to the Police Standing Orders, which are derived in part from the legislation contained in the Crimes Act.<sup>1</sup> For instance, the Crimes Act (1958) S 464A (3) states that:

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

This is then represented in the Police Standing Orders as follows:

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

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

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

*Extract 1*

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

This example demonstrates how legislation enacted in the Crimes Act, via police regulations articulated in the Standing Orders, directly influences the utterances produced by the police interviewer. There are several similar types of utterances in the data which can be traced back to the legislative requirements, such as utterances concerning the suspect's contact with a friend or relative, and a solicitor, and the requirements concerning fingerprinting at the conclusion of the interview.

In order to understand the issues surrounding the right to silence, it is important to understand what its purpose is perceived to be, according to the legal documentation. While the legislation itself is relatively quiet on the matter, a great deal more explanatory information can be found in the case material, which forms a commentary to the Act, and in the Police Standing Orders. We can find some insight in section 568.50.8 which mentions that "(t)he onus is on the prosecution to show that any admissions made by the accused were made voluntarily. Voluntariness involves the exercise of free choice." (R v Buetti CCA(SA), 12 December 1997, unreported).

A definition of 'voluntary' is provided by the Standing Orders, Section 8.5, where a summary of the relevant law is used to define a confession as "voluntary, not in the sense that it is made spontaneously or that it was volunteered, but in the sense that it was made in the exercise of a free choice to speak or be silent". Thus we can see that the use of a caution by police officers to advise suspects of their right to remain silent is a step which in itself is intended to render any subsequent confession or admission voluntary.

However, the Police Standing Orders in subsequent sections demonstrate that voluntariness is not endowed upon a confession which follows a caution as a matter of course and police officers are instructed to avoid certain strategies which may jeopardise the voluntariness of any confession or admission. For instance, Section 8.8(a) prohibits interviewing officers from any action which may "endeavour to force any such person [i.e. an interviewee] into making any admission of guilt" and Section 8.8(g) states that "where such person makes a confession [a member of the Force shall not] attempt, by further questioning, to break down answers (sic) to which unfavourable replies have been received..."<sup>2</sup> In other words,

although a confession may have been offered which is deemed voluntary by virtue of having been made by a suspect who is aware of his or her right to remain silent, the approach taken by the police officers in the elicitation of such a confession may still render the confession involuntary. Both the legislation and the Standing Orders recognise that, for suspects faced with coercive police behaviour in an interview, merely knowing that they can remain silent is not considered sufficient protection against forced confessions.

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

### Preference in Conversation Analysis

As mentioned, the analysis of the data in this study draws on tools cultivated within Conversation Analysis (CA) as it was developed from the work of Harvey Sacks by Gail Jefferson and Emanuel Schegloff. Rather than provide an overview of CA in its entirety, this section will explain the specific concept of 'preference', which should provide sufficient detail of the theoretical basis of the paper.

Firstly, I wish to stress that the term 'preference' is used as a technical notion, not in its everyday sense and I am drawing on Jack Bilmes's (1988) paper on the subject where he makes a clear distinction between these two conceptualisations. He reminds us that the purpose of CA is to provide a set of conversational rules which are "conventional reference points that actors orient to and that give behaviour its particular intelligibility" and "by which actors understand one another's behaviour" (Bilmes 1988:162). In this context, Bilmes articulates the rule of preference by reference to a principle of ordering, which he identifies in Sacks's lectures on the notion of preference.

Bilmes's definition of the technical notion of preference can be summarised thus: following utterances which comprise first pair parts of adjacency pairs (e.g. invitations, requests, accusations, etc.) certain responses, or second pair parts, are 'preferred' over others by virtue of the fact that if there is no response, those 'preferred' responses will be noticeably absent. For example, following an invitation it is possible for the recipient to accept or refuse the invitation. However, if the recipient remains silent, it is the acceptance which is lacking, and a refusal is assumed to have been offered in its absence. In other words, preference is used by speakers to make inferences about responses they receive.

Of interest to me here is Bilmes's discussion of a particular case of preference which concerns accusations. In reference to Atkinson and Drew's (1979) assertion that following accusations, denials are preferred, Bilmes states his agreement as follows: "If one fails to deny an accusation, a denial is noticeably absent and is a cause for inference, the most common inference being that the accusation is true" (Bilmes 1988:167).

Bilmes goes on to demonstrate that in fact this preference for denials following accusations is part of a broader type of preference: "when A attributes some action or thought or attitude to B, in B's presence, there is a preference for B to contradict A interruptively or immediately following the turn in which the attribution was produced...When such attribution occurs without contradiction, a contradiction is relevantly absent" (Bilmes 1988:167). Bilmes demonstrates the strength of this argument using a number of examples of both contradicted and non-contradicted attributions.

### Features of police interview interactions

The interactional strategies found in the police interviews analysed all contribute to the construction of the interview discourse as an oriented-to chain of adjacency pairs (Frankel 1990), most of which can be loosely classified as question/answer pairs. In all respects, police interviews match the general criteria of institutional interviews discussed by Drew and Heritage (1992). Each turn of the interview participants is constructed to maintain a Q-A sequence, even when the nature of the turn would normally cause some change in the chaining sequence. Suspect-initiated utterances and topic shift are produced only within exchange structures or turn types that facilitate the return of the floor to the police participant at their conclusion. For example, if a suspect initiates a question, it is always a clarification question, which,

once the clarification has been received from the interviewing officer, allows for the suspect to respond to a prior police question. In this way, suspect initiated questions form insert sequences (Levinson 1983:304-5) as follows:

Police interviewer      Q1  
Suspect interviewee      Q2  
Police interviewer      A2  
Suspect interviewee    A1

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

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

This extract demonstrates how this is realised in the data:

Extract 2

380. pi01: do you know why she would have gone out the back room↑  
381.        (0.4) li' would she have been scared or↓  
382. IN1: maybe she was ⇒  
383.        but m' Betty's never ev seen me like that↓  
384.        I've never been like that before↓  
385.        (0.4) Betty knows I would not hurt her or hurt anyone↓  
386.        (1.1) and she must have known something really sparked him off↓  
387.        to get me goin like that ↓  
388.        something had to be goin↓  
389.        hh //something\* had to ^  
390. pi01: w'l what\* happened then-↓  
391. IN1: (1.1) get me going to do something like that↓  
392. pi01: you've hit him a coupla times⇒  
393.        he's um (.) holding his mouth or bleeding ⇒

The effort made by IN1 to complete his turn in line 391, when he has previously been interrupted by a topically disjunctive question put to him by pi01 (lines 389-390), is subsequently ignored by pi01, and this only serves to underline the weakness of the obligation on the interviewer to take up new information provided by the interviewee in this format. Several other cases exist in the data of interviewing officers ignoring new information provided by the suspect, and taking

the floor to ask an unrelated question; however, this example best demonstrates the phenomenon because of the overt display by IN1 that he considers the information important.

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

#### Accusations and attributions

So far we have considered the legislation surrounding the right to silence and its function in providing a forum in which a confession can be made 'voluntarily' by the suspect. We have looked at 'preference' and its technical meaning in CA and we have discussed some of the key interactional strategies of participants in police interviews. Accusations and attributions form a key resource for police interviewers trying to establish a police version of events as they present sections of the police narrative in a form that obligates the suspect to respond. It is therefore of interest to examine the data to see how accusations and attributions are produced and responded to in police interviews.

#### Extract 3

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

In the above extract, IN1 interrupts pio1 in line 316 to deny the allegation made against him. This denial of the accusation is predicted by Bilmes (1988) according to the rules of preference.

#### Extract 4

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

In lines 334 and 337, IN1 again interrupts pio1 to deny the accusation.

#### Extract 5

159. pio2: (0.8) so ah:: ((creaky voice)) // what didju\*didju (.) forcibly (0.2) drag 'er outta the house↓  
160. IN2: like I said look I⇒\*  
161. IN2: (1.0) aw well it was more o' less (.) you know arguin an' pushin' n' pullin' n  
162. (0.4) yeah^ n'↓ (1.4) whe'^  
163. (1.0) I grabbed'a by the bag↓ (0.2) a-

164. no that was outside I grabbed'a by the↓ (0.2) by 'er hand^bag↓  
165. she had 'er handbag over 'er shoulder⇒  
166. (0.8) cos we were going⇒  
167. (0.4) and then I d'n know what happened↓  
168. (1.0) she↓ (1.2) must have (.) gone to take off⇒ or someth' like that⇒  
169. grabbed her by the handbag⇒  
170. and↓ (1.4) I remember 'er (h)handbag got ripped to shreds^

In the above extract, it is observable that IN2 does not directly deny the accusation implicit in pio2's utterance in line 159—that IN2 'forcibly dragged' his girlfriend out of the house. This is particularly interesting because a little later in line 181, pio2 indicates that he has heard a lack of a denial as agreement by describing the action as *still draggin' 'er* :

Extract 6

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

Similarly in line 184 and following, pio2 makes an accusation that IN2 has dragged his girlfriend by the hair. IN2 does not expressly deny this in the immediately following turn but says it happened at a different time to that indicated by pio2.

Extract 7

184. pio2 (1.8) right↓ (.) it's it's alleged that at that stage⇒  
185. that it was er (0.2) thatcha had (.) hold of 'er hair↓  
186. (0.2) dragged her out by the hair↓ waddeyer say to that^  
187. IN2 (0.8) that was after she went back into the house⇒ (0.2) // an I\* // (\* )

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

Extract 8

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

204. IN2: (0.8) well eventually we've got in the car an (0.2) left^

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

Extract 9

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

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

241. IN2: mm hm^=

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

243. (.) dragging her outside↑

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

Extract 10

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

230. (0.8) for later use↓

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

Unfortunately, there are no cases of the suspects invoking their right to silence in the data, however, it would appear that these data support Bilmes's (1988) findings in that denials are routinely treated by interviewers producing accusations and attributions as preferred. One last extract from INT1 comes the closest to containing a zero response after an attribution:

Extract 11

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

434. IN1: (0.4) I just kept walking↓

435. (0.2) I just got in the car ⇒

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

437. (0.4) whadcha do^

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

439. that the glass was broken^ or↓

In response to *pio1*'s attribution of seeing the glass shatter, IN1 claims that he just kept walking↓. This is not an overt contradiction or acceptance of the attribution. He may have seen the glass shatter before he kept walking↓, or he may not have. IN2 seems to be making an entirely different point to that which *pio1* is pursuing and which she articulates in lines 438-9. Regardless of the point IN1 may have been making though, *pio1* has assumed that he accepts her attribution of seeing the glass shatter and being aware that it has shattered, as we can see in her next turn. Thus there is evidence in this extract, as well as in Extracts 5-9, that a lack of a contradiction immediately following an attribution is treated as an implicit acceptance of that attribution by the suspect.

### The implications of 'preference' for right to silence

We have seen that the police interview provides a constrained speaking environment for suspects which leaves them vulnerable to acts of discursive coercion by interviewing officers. We are aware that this vulnerability is addressed in part by legislation requiring all suspects to be informed that they have the choice to remain silent at any time. However, the most technical understanding of the CA notion of 'preference' informs us that in the case of a suspect actually invoking their right to silence in response to any accusation or attribution made by police interviewers, a denial or contradiction will be relevantly absent and '[g]enerally, the conclusion drawn is that the recipient is acknowledging the truth of the attribution [for accusation]' (Bilmes 1988:167).

The ramifications of this state of affairs are extremely serious in the context of a police interview for two reasons. Firstly, it may prove difficult for the suspect to address any further assertions made by a police interviewer based on the inferences drawn from the suspect's 'absent denial', particularly if the suspect wishes to continue to invoke his or her right to silence. Other difficulties would involve the suspect's lack of access to discursive devices which may be needed to address police assumptions, such as topic initiations, and questions and other first pair parts.

Secondly, in a subsequent trial, if the defendant were known to have invoked his/her right to silence at any time during the police interview, the judiciary would be placed in a position to draw the same inferences from the silence as any participant in the actual interview. In other words it is extremely likely that a jury, upon hearing that the defendant had offered no response to a particular police interviewer accusation or attribution, would infer that the defendant had agreed with the police utterance. The possibility of a court drawing an adverse inference from a suspect's refusal to respond to police questions continues to be a cause for concern within the legal fraternity, as evidenced by recent articles dealing with the topic in law journals (Biber 2005; Hamer 2006). Whilst these authors consider the legal arguments surrounding the recognition of a suspect's invocation of the right to silence in the subsequent court trial, this research makes it clear that there are important linguistic considerations.

Any move in the judicial system to allow the court to be made aware of the suspect's invocation of the right to silence should take these technical aspects of the mechanics of conversation into account. Furthermore, the legal understanding of silence as a response could be greatly enhanced by an understanding of the notion of preference as it applies to certain utterance types. Finally, this study has clearly demonstrated that CA can indeed be utilised in an ideological argument precisely because "its concern is with relevance, intelligibility and systemic function" (Bilmes 1988:161).

### Notes

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

### Transcription Conventions

pio	Primary interviewing officer
IN	Interviewee (suspect)
//	overlapping speech commences
*	overlapping speech ends
=	latching
(0.6)	silence measured in seconds
(.)	micro-pause of less than 0.2 seconds



°word°	softer than surrounding speech
<u>word</u>	syllables having greater stress than surrounding sounds
↑	high rise intonation
^	low rise intonation
⇒	level intonation
↓	falling intonation
::	the sound is lengthened by one syllable for each colon
-	truncated word
(( ))	transcriber's remarks, including comments on voice quality or non-verbal sounds

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