

Looking the other way: Linguistic ethnography and forensic linguistics

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As a practical matter, the ethnographer's initial emphasis on data collection often produces a wealth of descriptions that have been created at great pain. With these riches comes the emergent dilemma of how to organize the steaming mass into a coherent narrative before time either drains it of life or forces the researcher to take up more mundane responsibilities.
(Katz, 2002:64)

1 Introduction

For some researchers, forensic linguistics is the use of language study in the investigation of crime culminating in work as an expert witness in the courtroom. I take a broader definition in which *forensic linguistics* denotes the study of language in legal settings. The work summarised here is part of a larger study which uses various linguistic and sociolinguistic approaches to examine the work of the police, particularly in their interactions with lay people. The study of the language of police is part of a long but somewhat scattered tradition in sociolinguistics and the diversity of settings and activities which police officers engage with, as well as the importance of their work to the smooth, safe and fair operation of many aspects of social life, makes them an important focus for continuing research.

2 The language of detention and the language of rights

The 1970s were not good times for policing. “Rumblings of discontent with the British criminal justice system began to grow in the 1980s. ... The phrase “miscarriage of justice” was crystallised around two big cases – the Birmingham Six and the Guildford Four. Both stemmed from IRA outrages against civilian targets at the height of the bombing campaign. Police appeared to have quickly rounded up the suspects and brought them to justice. In reality the wrong men had been convicted”

(BBC, 2001a). It is now widely acknowledged, even within the police service, that policing was faulty at the time when these wrongful convictions were instigated. Sir Ian Blair, Commissioner of the Metropolitan Police, recently commented that “old methods of detection, *in extremis* based on hunch, prejudice and judicial complicity in downright lying, failed. Miscarriages of justice stained the reputation of the [police] service” (November 2005). At possibly the peak of this staining, the BBC commissioned a survey of 1000 people which revealed that 52% of them had “lost faith” in the criminal justice system as a result of the controversies (BBC, 2001b). Miscarriages of justice do still happen. In fact the Criminal Cases Review Commission (CCRC), an independent public body, was established in 1997 to consider and investigate such cases. “To date the Commission has reviewed more than 6,500 cases and referred more than 225 to the appeal courts. The Commission usually receives 2 or 3 new applications every working day” (CCRC, 2006). However those wrongful convictions, which resulted from poor treatment or mistreatment of detainees in custody, have received a number of legislative responses. Perhaps the most important and far-reaching being the formulation and introduction of the Police and Criminal Evidence Act 1984 (PACE).

PACE was intended to regulate and improve police practice and to allow the courts to exclude evidence which has been unfairly obtained. PACE is accompanied by and encoded through a book of rules and regulations, the Codes of Practice which is divided into seven sections detailing procedural rules which govern searches of people, vehicles and premises, identification, interviews, detention procedure and powers of arrest. Much of PACE and its Codes of Practice is of interest to linguists, sociolinguists or linguistic ethnographers. For example, PACE defines what constitutes a confession (Section 82(1)). The Codes of Practice explains procedures for such matters as the provision of interpreters to those in police custody (Code C, Sections 3 and 13), the permissible police responses to detainees who refuse to enter an interview room (Code E, Section 3.4) and the use of voice identity parades (Code D, Section 1.2).

This paper centres on those sections of PACE which are concerned with the administration of arrest and detention and the series of rights which underpin those sections. These rights are likely to interest the linguistic ethnographer for two reasons.

First the rights govern various linguistic practices, regulating language or linguistic conduct in some way and secondly they are delivered and explained through language. To explain how these interests for linguistic ethnographers might take shape I will consider these two issues of the rights' domains of influence and their delivery in turn.

Turning first to the rights' coverage, three of the rights are concerned with speech: *the right to silence*, which is explained in the police caution, protects detainees from incriminating themselves through talk, with certain caveats about omitting to mention facts which may become central to a detainee's defence in court; *the right to free, independent legal advice* permits talk with an adviser who has a specified and regulated role; and *the right not to be held incommunicado* permits limited communication with the outside world via a police officer. The other two relate to written texts: *the right to see the Police Codes of Practice* enables detainees to ask to see the book of rules and regulations which governs their detention and *the right to see the Custody Record* enables them to have a copy of a document summarising their treatment and behaviour throughout their time in custody, once they leave custody. The provision and operation of these rights is central to the fair progress of the criminal justice system in England and Wales. For the rights to be provided and operated fully, they must be presented and communicated successfully. Therefore, their other (socio)linguistic aspect, their mode of delivery, is very important. Detainees who do not understand that they have these rights or do not realise how, when or possibly even why to invoke them are effectively treated unfairly in custody. There is therefore potential for any detainee to be disadvantaged by shortcomings in the presentation or communication of their rights.

3 Positivist approaches to rights communication

The occurrence or potential occurrence of disadvantage is a worthy catalyst for academic research. In the case of detention, the potential for rights to be misunderstood in police custody and for such misunderstandings to cause injustice led first to a series of studies by psychologists. The psychologists' research asked apparently clearly defined questions centring on whether texts which are intended to

explain rights are easy to understand, whether they are easy to explain and whether they are more or less 'complex' than various other possible formulations. Psychologists identified their research subjects or participants using established disciplinary norms testing various formulations on groups including those with low IQs. They used two sets of positivist methods. In one they created experimental settings in which to administer tests which were built around speech situations which were very different from those encountered by police officers and detainees. In the other they used 'objective' tests like Flesch scores (1948) and the Ley index (1977) to determine texts' effectiveness (for example, Gudjonsson, Clare and Cross, 1992; Gudjonsson and Clare, 1994; Clare, Gudjonsson and Harari, 1998; Fenner, Gudjonsson, and Clare, 2002). PhD theses were produced which applied these methods on a grand scale (Clare, 2003). Additionally a Royal Commission used this research position to test and re-write rights texts in order to 'simplify' the texts and 'improve understanding' of them especially for those with an average IQ score of between 80 and 89 points.

The psychologists' tidy solutions certainly looked easy to implement although, as far as I know, their recommended revisions to Home Office documents were never used. Nonetheless, these researchers were influential in addressing a wide range of problems within the legal system in the late twentieth century and took every opportunity to present themselves as such. Pointing out through a literature review, for example, that "in Britain the impact of psychological research and expert testimony on law and procedure, police practice, and legal judgments, is unparalleled to that anywhere in the world" and that "relevant psychological research and expert testimony in cases of disputed confessions have had profound influence on the practice and ruling of the Court of Appeal and the House of Lords" (Gudjonsson, 2002:332). Linguists seem to have been less successful in presenting themselves as so indispensable to the operation of the criminal justice system compared to psychologists whose ideas have in some areas, such as statement-taking, have become routine within police work.

Psychological research on rights communication tested understanding and recall and made recommendations on which texts communicated rights best (Clare and Gudjonsson, 1992). From this positivist standpoint these researchers were able to

make general statements about the comprehension of documents claiming for example “An average of only 41 per cent of the sentences [of the written rights notice] were understood fully by all the subjects” (Clare and Gudjonsson, 1992:7) and general statements about comprehensibility, for example, “overall, the Flesch score of the further information leaflet ... is 77 (‘fairly easy’). ... An IQ score of 87 (Low Average) would be required to understand it fully meaning that it would be comprehensible to 80 per cent of the general population” (Clare and Gudjonsson, 1992:10). These researchers also made extremely specific quantitative assertions, for example noting that “With regard to the three sentences of the caution, only about half the subjects understood that whatever they said might be used by the police for their investigations or in court. ... However, more than three quarters ... understood the right to silence” and that “Overall 100 per cent of subjects ... understood the right to legal advice which is given in different sections of the [rights text]” (Clare and Gudjonsson, 1992:17).

Predictably perhaps, sociolinguists found such claims deeply problematic. Some criticised the Royal Commission directly (Owen, 1996) others implicitly by addressing the Commission’s concerns from a more sociolinguistic standpoint using interviews (Cotterill, 2000) or the examination of naturally occurring data (Russell, 2000). Cotterill noted a “lack of research into *in situ* delivery” of rights and began to plug this gap with a thought-provoking paper which used officers’ reports of their talk in custody and apparently short interviews with detainees (2000:10). Yet there remained a disjuncture between essentially quantitative research which examined decontextualised talk about rights in custody and the situations which daily unfolded in police stations across England and Wales. My research on police custody aimed to recognise the claims of the positivist researchers and *look the other way* taking a broadly sociolinguistic, ethnographic perspective. This seems a sensible step given that ethnography “normally questions the oversimplifications in influential discourse, and interrogates prevailing definitions” (Rampton, Tusting, Maybin, Barwell, Creese, and Lytra, 2004:2). In particular an ethnographic stance makes it possible to discard the assumptions which have both created and followed from psychological research on rights texts.

4 Examining the police caution

I will illustrate the difference in insights which can result from *looking the other way* by exemplifying some relatively recent and decidedly typical work by the psychologists who have investigated the caution (Clare, Gudjonsson and Harari, 1998) alongside findings from my own study. The caution is intended to be spoken; it is recited at arrest and at various stages of detention. It is also included on written rights notices handed to detainees when they enter detention. Its wording is:

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.

Clare, Gudjonsson and Harari (1998) examined the current caution by delivering the wording in “optimal conditions” to find out how well it would be understood at best. This involved first reading out the wording and asking respondents to write down or verbally explain its meaning. Next the experimenter read it again sentence-by-sentence as well as providing a written copy for reference before asking respondents to explain, in either writing or speech, the meaning of each sentence in turn. This procedure has been tried and tested both here and in the USA (Grisso, 1981, 1998; Gudjonsson, 1991; Clare and Gudjonsson, 1992; Gudjonsson, Clare and Cross, 1992; Gudjonsson and Clare, 1992). It is a standard and, in the psychological literature, respected method for measuring comprehension of institutional formulations like the caution.

In the 1998 paper, this technique was used on individuals representing three different constituencies. Clare, Gudjonsson and Harari delivered the wording to a general population group as well as to people who might be expected to understand the wording well, either through prior experience (police officers) or due to their level of formal education (A-level students). Their findings depended on rating subjects’ responses for the degree of comprehension they showed. Each response was “rated: as ‘correct’ if its sense was explained or implied strongly, or as ‘incorrect’ [if not]” (Clare, Gudjonsson and Harari, 1998:326).

The results are not subtle. Clare, Gudjonsson and Harari summarise the main points arising from their research by asserting that “only a small proportion of the students

and general population participants explained all three sentences of the caution correctly” and “only half the police officer group explained all three sentences correctly” (1998:326). To me, these findings are interesting as an example of the results of an experiment but reveal almost nothing about the caution. They are very different from my findings on the caution as a part of the lived world of the police and those they detain.

5 The institution and ethnography

The police station is, in Weber’s (1978) terms, an institution because in the police station “individuals occupy set places that are immediately identifiable (thanks to objects such as uniforms, door signs, letterheads, etc.) and possess an authority which owes nothing to their personal properties”. Despite the formality which may be expected to follow from this, “networks of mutual acquaintance” may exist “beyond the official bureaucratic façade” (Weber, 2001:482-3). This combination of the impersonal and the interpersonal makes for constant fluctuations in various aspects of communication in custody. In the police station, networks of mutual acquaintance do not only exist between officers. Some detainees are familiar with and familiar to officers. However other detainees find themselves in an extraordinary environment when they enter detention adrift from any points of reference. Linguistic ethnography provides way of seeing and responding to this diversity.

In this paper I will give a brief flavour of my findings. The larger, more nuanced study is presented in forthcoming writing (Rock, 2007). I will begin by briefly exploring the extent to which this work can usefully be seen as linguistic ethnography.

This study falls within Hammersley and Atkinson’s view of ethnography which they say “in its most characteristic form involves the ethnographer participating, overtly or covertly, in people’s daily lives for an extended period of time, watching what happens, listening to what is said, asking questions – in fact, collecting whatever data are available to throw light on the issues that are the focus of the research” (1995:1). There was an assumption on the part of some of the informants I met that when I was asking questions, particularly in an interview room with a tape rolling, I was researching and at other times I was not. In reality fragments of insight about rights communication poked out from most conversations, even from passing through

corridors, chatting in the custody block and sitting in police cars. Nonetheless, the work I produced here was not a ‘complete’ ethnography. I did not produce an ethnography of the police station or even of the custody suite. The description I have developed is deep but is not the “thick description” that Lutz associates with the term ethnography. Nonetheless the work does conform to Lutz’s characterisation of work which is ethnographic as it uses “a case study, which narrowly focuses on a single issue, ... a field survey ... [and] a brief encounter (for a few hours each day for a year, or 12 hours a day for a few months)” (1981:52).

I was using ethnographic methods, as well as methods usually seen as part of discourse analysis and interactional sociolinguistics, to investigate a specific set of theoretical questions around the use of formulaic texts in largely pre-determined and relatively regulated institutional settings. To this end, I took the texts in use as my starting point. Like the psychologists who had investigated the texts, I was interested in what the texts were like and how they were used. For the psychologists these two interests were manifest in decontextualised investigations of comprehensibility (what are the texts like) and comprehension (what do people do with the texts). I wanted my questions to be much bigger in that they would be both asked and answered from the field. Therefore, I asked what the texts were like by examining a wide diversity of data and interactions around their *background, use and creation*:

Text background: I examined how a perceived need for rights text had developed, how the texts themselves had evolved before and since their initial introduction, how the texts had influenced the legal arena through case-law and appeals and how the texts related to the wider social world becoming part of public discourses.

Text use: I visited police stations in the north, south, east and west of England and Wales. Sometimes my visits were short and I simply collected audio-recordings of naturally occurring data. In other places I held lengthy, detailed semi-structured interviews with police officers, police trainers and detainees. In other places I spent several months observing police work either inside or outside the police station and participating in some aspects of the social world of the police station.

Text creation: I had not expected to be able to examine ‘official’ rights texts as anything other than pre-existing artefacts. However, I was able to watch rewriting practices of a police officer who had received Home Office funding to redraft written rights texts in order to improve them. This investigation began with interviews with the officer but as it developed I was able to observe his re-drafting activities and join him in meetings about the text at the Home Office. I also examined the rewriting practices of a team of information designers who redrafted the text in line with their occupational norms.

Use of multiple methods makes it possible to enter the research site from different places and enter different parts of the research site which might otherwise remain obscured. Kusenbach articulates the benefits of ethnography from multiple perspectives, saying that “in sum, the strengths and advantages of participant observation, interviewing and go-alongs accumulate when they are pursued in combination. The argument here is not one of superiority but for becoming more self-conscious about expanding the range of data-gathering techniques in order to exploit the different perspectives and angles each provides” (2003:459). Linguistic ethnography itself is a combination and this too enriched this research. Here the combination is of linguistic techniques which are relatively standardised, articulated and recognised with ethnographic techniques which require reflexivity, learning and adjustment (Rampton *et al*, 2004:3). As Katz notes “much of the work of constructing ethnographic texts *ought* to proceed in a mist of vague evaluative notions. If ethnographers become too self-reflexive, they risk driving themselves out of business” (2002:86). I found the potential for reflexivity provided by ethnography but the bounds provided by linguistics illuminating.

The focus on one aspect of a whole situation (i.e. the communication of rights within the whole of detention) might be seen as incompatible with producing any kind of ethnography. Indeed, the combination of a tight focus in an expansive setting made for a research experience which was rather like walking along a tightrope through a jungle. However, entering the custody environment with a specific set of questions around specific artefacts was crucial to finding out about those artefacts.

6 Rights communication through speech

A valuable method used in this study and, by most accounts, the most characteristically 'ethnographic' method is participant observation. One set of officers I observed were part of a 'shop theft team' at a police station. The team aimed to investigate and arrest shoplifters who operated in a large city centre. Members of the police team would often travel to large shopping centres and department stores which employed their own security guards in order to collect suspected shoplifters and evidence relating to their alleged crimes, to arrest the shoplifters and take them into custody. These occasions made the opportunity for a 'go-along' in which fieldworkers accompany individual informants on their 'natural' outings, and – through asking questions, listening and observing – actively explore their subjects' stream of experiences and practices as they move through, and interact with, their physical and social environment." (Kusenbach, 2003:463) The fieldnote below describes what happened after one such arrest:

Vignette 1

We pulled up outside the custody block at the back of the police station in the police van. The three officers who had been working around the department store and the detainee had been having an apparently friendly chat about football, the local city side and other British teams. I could have almost forgotten I was in a police van. When we got inside the custody block it was clear that there was going to be quite a wait before the custody sergeant was free to check in the detainee and assign him a cell. There were already two people at the custody desk. We could see them through the grille in the holding area where we would wait to be called into the main custody suite.

The sergeant of the shop theft team and I were now alone with the man he had just arrested at the department store. Very abruptly the jovial spirit that had characterised the journey in the van changed slightly although it certainly didn't disappear. The arrestee maintained a disarming air which became almost conspiratorial as he began talking about the offence he'd been arrested for. He described how he and his mate had travelled from another city to steal clothes. They'd travelled by train and met another associate in the city who would take the stolen goods away to a third city once they had been successfully removed from the department store in huge blue holdalls. He explained why they'd travelled by train, how they all knew each other and how this crime related to his previous experience. Then he smiled wryly as he pointed out the tricky job that the officer would have proving this and noted that he could justify his trip and his strange behaviour in the department store easily.

Officers carry a 'pocket book' where they note down confessions like this and the officer made a note about the exchange soon after he'd left the detainee. The detainee pre-empted this by adding that he certainly wouldn't be signing anything to confirm that he'd said all this and sure enough, later in interview, he claimed that the conversation had never taken place and that he would be taking up the right to silence that the caution had given him.

The officer wrote the incident off as totally routine and predictable.

Regular events like this show how far removed the language practices in and around the custody setting are from psychologists' questions about comprehension. The caution and procedures around it make arrest, detention and investigation an odd game. For experienced arrestees and officers like this there is an elaborate dance through the procedures often with each knowing the implications of the caution as they relate to the incident in question. For detainees who are new to the experience of arrest, the implications of the caution may be a complete mystery in the haste and distress of arrest. What can emerge from experiencing incidents like the one narrated in the vignette above? As I observed the events, it was unclear whether the arrestee was taunting the police officer or undertaking some kind of catharsis. The ethnographers' position as observer makes the journey from watching to learning difficult. However, taking part in go-alongs like this was a way to generate questions and puzzles. As Kusenbach explains the go-along is "a hybrid between participant observation and interviewing" and as such they "carry certain advantages when it comes to exploring the role of place in everyday lived experience" (2003:463). One advantage specific to this project is that they make it possible to overcome the impression that social practices like cautioning are spatially confined. A more general advantage is that they allow interplay between the kinds of insights that are usually only available through interviews and those which usually only surface in participant observation. Viewing encounters like this made me acutely aware that any understanding of the caution as a "tool of the trade" for police officers, as one officer put it, would need to gain some perspective on the dynamics of the caution at arrest.

Hymes asserts that the study of language and social life must examine the many ways that linguistic means relate to social meaning. For him, the only way that this can be accomplished is through a jointly ethnographic and linguistic method. He concludes that "any serious ethnographic account" must consider the community's "own theory of linguistic repertoire and speech" (1986:39). For Ochs and Schieffelin too ethnographic work must "take into account the perspective of members of a social group, including beliefs and values that underlie and organise their activities and utterances" (2001:268). A theory of linguistic repertoire and speech, taking the form of beliefs and values, was very present in the speech of police officers so it is here that I will turn to provide some perspective on the vignette above.

Here are just a few examples, focussing on the delivery of the caution at arrest. Arrest is a stressful situation for all concerned. As a speech situation it might be totally unique for one of the participants and unpredictable, at least, for the other. Officers have very clear priorities at this stage of detention. One explained:

Excerpt 1

I've got to deal with that incident quite quick once he's under arrest he's my responsibility so should he fall down and hurt himself die or whatever you know I think you'll find that we will get him into the cells as quick as possible

When the caution is issued in police custody, it might be explained. Officers are permitted to explain by their Codes of Practice. It emerged during my study that different officers have different attitudes to explaining and different police forces have different policies on the matter. Some of my other work has looked at how and why officers explain and what both they and detainees make of these explanations. At arrest however, officers' attention is, according to the officer in excerpt 1, focussed on an efficient and speedy trip to custody. This, he continued, meant that he did not tend to explain the caution at arrest:

Excerpt 2

if a man is arrested on the streets whether he likes it or not he is coming with me yeah he is coming with me and therefore I see no real explanation is necessary at that point

However there was some tension in his account. At a different time in our conversation he said that he would sometimes need to explain in order to encourage detainees not to speak:

Excerpt 3

the only time I would explain it is maybe not in official jargon as I say (.) if somebody asked perhaps a question that I feel that A I can't answer or B it might be in their best interests that you know that you know you've given them the caution I've given them the cau- "you've been given the caution my advice would be part of that caution is you do not have to say anything and I think it would probably be in your best interests that if you keep quiet and then when we get before the custody sergeant if you have any questions he will probably be able to explain better than I will"

This account highlights a different challenge of arrest. At the time of arrest detainees are often, as one might imagine, extremely concerned with the immediate which presents a very different frame of reference from that of the officer. For the officer, arrest marks the beginning of a more or less lengthy trajectory of custody and often interview. For the detainee this is also true but arrest may be conceived of more forcefully as the end of an illegal activity, the end of freedom for a while and, importantly, as a time of state-change as the detainee moves from being not under arrest to being under arrest. This, combined with the intense feelings that may accompany arrest, may lead arrestees to say more than they might otherwise want or than might be wise. This is problematic for officers. Their Codes of Practice limits the kinds of interactions which should normally occur in police cars. It is undesirable for detainees to tell their story in the car on the way to the police station, when the officers' ability to formally record it is limited. The final excerpt from this officer shows how, for him, the caution shifts from being a wording used to explain rights to being an important tactic in officers' attempts to prevent detainees from confessing, explaining or mitigating in transit. He said:

Excerpt 4

some people just want to tell you things and you've got to maybe stop the car caution them again and just explain perhaps the caution a bit more detail like you would before interview you know if you- "you seem to want to talk to me I've given you advice you're best to speak to a solicitor first but you've just said something I'm going to caution you again make sure that you do understand and I'm going to write that down I'll be asking you to sign it if that's-" and some people do do that no doubt about that

Other officers too recognised the complexity of the place of talk in the arrest situation and its immediate aftermath. One, for example, hypothesised that detainees spoke to officers despite the right to silence explained in the caution not because they did not understand the caution but because they lacked the macro-view of procedure that officers have:

Excerpt 5

a lot of people would quite happily do that you know they'll quite happily tell you all about it on the way to the police station thinking possibly if they do that when they get here it will all be sorted out in minutes and they'll be off again

This clash between lay expectations and the outcomes of interaction in this setting would lead some officers to generate talk to almost force arrestees to invoke their right to silence whilst travelling to custody:

Excerpt 6

I think it is explained to them quite well I will on arrest if its somebody's first time I won't speak to them about the job I'll speak to them about anything else

To summarise, the right to silence and procedure which supports it, discourage talk about offences during transit to the police station. This creates a situation which is a source of trouble to both officers and detainees. Officers observe that detainees are prone to discuss their arrest and its motivations on the way to the police station and have devised various strategies to respond to this. One is explicitly institutionally sanctioned, recording the talk in note form and presenting the notes at a later time. Officers described how they used this procedure to mark detainees' talk as problematic by drawing attention to the procedure (exemplified in excerpt 4). Officers also use the words or meaning of the caution to silence detainees. Officers who do this do not simply repeat the earlier caution but instead appropriate it, exploiting its potential to influence decisions about talk and silence (exemplified in excerpt 3). Finally, officers take preventative measures, generating superfluous talk in order to avoid creating a space for incriminating talk to occur (exemplified in excerpt 6).

Before interview then, the caution is used to silence detainees and encourage waiting. During interview, things may be very different because there, as officers described and spoken data indicated; the caution is often explained at length and might be incorporated into talk in a way that encourages dialogue. Officers who I interviewed described encouraging talk through notions drawn from the caution saying, for example:

Excerpt 7

it's really towards the end of an interview when you're reminding somebody that 'this is your chance to give your version of accounts alright and there's no point going to court and saying something else which you're not going to say here'

Naturally occurring data also revealed officers presenting the interview as a time for talk, presenting interview as *your opportunity to give your version of events or your*

opportunity to tell me your side of the story. Lexical items like *opportunity* and *chance* in officers' explanations of the interview setting when they were ostensibly explaining the right to silence were frequent and systematically patterned. Examples of analytic themes like this repeating across different sources, particularly naturally occurring data and interview data were frequent in this study. "As Becker (1958: 657) points out social scientists should not only strive to collect many instances of an identified phenomenon but also seek to gather 'many kinds of evidence' to enhance the validity of a particular conclusion" (Kusenbach, 2003:459). Grimshaw too suggests that "different types of data" such as naturally occurring talk, elicited speech and historical materials are "more or less critical at varying points in the process of theoretical development" or the movement from observation to description and ultimately to explanation (1989:420). In relation to these and other excerpts and occasions where invoking the right to silence was presented as a missed opportunity and where explaining the caution was represented as persuasive talk it was possible to move from description of cautioning exchanges as "instructional exchanges" to an examination of their potential to transmit "more than content" (Green and Wallat, 1983:161) without resorting to hyperbole or recrimination. In Paperman's work, ethnography revealed how the police uniform acted as "an embodiment of the law which both detects and constructs the occasions and the scenes for police interventions" (2003:399). In my data the caution acts as a symbol of doing arrest and interview, a means for attempts to encourage or discourage talk and a frame for subsequent interactions.

Yet, the findings of Clare, Gudjonsson and Harari's (1998) study are not totally unrelated to the themes that emerged from my interviews with police officers. One point illustrated by the psychologists' work was that police officers may not understand the caution well. This was not something that officers were oblivious to. Indeed, their awareness of the difficulty of the wording became part of their work with the wording. Some described hearing poor explanations and taking steps to put things right. Others talked about their own personal struggles to either understand the wording more fully or avoid their lack of understanding become apparent. They also saw the difficulty they perceived in the wording as likely to be magnified for detainees. The officer in excerpt 8 describes his feelings when the current caution was introduced in 1995:

Excerpt 8

I remember when this new one came out I remember thinking oh God even I don't understand it you know how to ex- and I'm going to be saying it a lot and how do expect people who are the wrong side of the fence so to speak how do I expect them to understand it (.) yes (.) good on you if you manage to get it changed

One of the strongest repeated themes from my research inside police stations was that both officers and detainees had access to a sophisticated metalanguage which enabled them to reflect on and discuss rights communication in some depth. There was a strong feeling from both groups that understanding the caution was not simply about understanding lexical items, syntactic structures and semantic concepts. Rather, the caution worked differently in different settings and its meaning was dependant on and generated by the particular. Police officers recognise that a formulaic wording in context becomes much more than a wording. This is not at all apparent from asking them to 'demonstrate understanding' in an experimental setting. For example officers had access to such concepts as connotation as the following excerpt illustrates:

Excerpt 9

see when I've arrested somebody and at the time I arrest them I'm talking about courts and- (.) that is one that's always sort of wrangled with me (.) that that I'm saying to them I'm- I'm in their house and I'm saying "something you later rely on in court" but if somebody comes to me as a layman and starts saying you know "that you alter- rely on in court" I'd be thinking bloody hell he's going to arrest me and I'm going to court you know as a layman that's what I would think

7 Rights communication through writing

Psychologists' work on written texts also aimed to test the documents' comprehensibility and potential readers' comprehension. I stated some of their claims in section 3. Like their findings on the caution, findings on the written rights notices also specified numbers of respondents who understood particular semantic components and described the difficulty of the text according to Flesch scores (Clare and Gudjonsson, 1992:3-8). As with their testing of the spoken caution, their experimental method for written texts "does not attempt to simulate the conditions of a police station" but to measure comprehension "in an ideal situation" (Clare and Gudjonsson, 1992:4). Whilst the results of such an enterprise may be intriguing, this seems a strange way to find out about a text which is normally used in restricted

circumstances when those circumstances are readily available for examination themselves. Here, an ethnographic method centring on observation, the analysis of naturally occurring data and semi-structured interviews really came into its own because it made it possible to investigate the activity of writing “as a dynamic component in the conduct and organisation of social relations” (Basso, 1989:431).

The major finding here was that more than half of detainees do not even take rights papers from the custody desk and those that do take them often do not read them. This might seem to suggest that providing texts which explain rights is pointless. However, it also became clear that providing a written text provided a signal that the text contained something important. I observed detainees who were unable to read because they were isolated from support networks (cf. Barton and Hamilton, 1998:254), detainees who resisted being seen to engage with official texts in police custody due to identity conflicts (cf. Barton, 1994:48) and detainees who were simply too intimidated to read (cf. Russell, 2000:36). For these detainees knowing that there was a text but being provided with an alternative way to access the information it provided was crucial. Such findings have implications for the format and distribution of rights information. Wallby notes that written texts are increasingly coming to mediate social actions and coordinating people’s everyday activities (2005:190). This is just one example of the way that this text coordinates, generates and motivates actions. Here, its very presence leads to responses including questions and curiosity or to resistance and the performance of distance.

My research in the police station also made it possible to find out whether detainees who did not read rights information simply had to effectively forgo their rights or, if they had some grasp of their rights despite not having read, where that knowledge was coming from. As Basso observes “writing, wherever it exists is always only one of several communication channels available to the members of a society. Consequently, the conditions under which it is selected and the purposes to which it is put must be described in relation to those other channels” (Basso, 1989:426).

It emerged that sources like television programmes and previous experience were key to providing information on rights. Rather less tangibly, reason or ‘common sense’ also played an important part in making sense of detention without access to rights

texts or, in some cases, in addition to those texts. The most widely discussed alternative to written rights texts was, nonetheless speech about rights which takes place in custody. Some of this speech is a proceduralised part of detention but I was surprised by how much non-regulated talk was dedicated to explaining rights even when I was not at the police station. One detainee explained that he was given opportunities to hear and discuss his rights even when this was not stipulated by procedure:

Excerpt 9

then I had somebody come in the next morning whether it was a sergeant or PC or whatever I don't know that was just after breakfast and again he went through "remember your rights" and said to me "are you sure you don't want a solicitor?" and so it was actually done to me twice but I did ask him to come in the next morning and go through it all again and do you understand this and do you understand that I said "yeh yeh" he says "has it all been explained properly?"

Finally, these research methods made it possible to look beyond general statements about whether detainees read or not, to examine their reading practices in more detail, revealing how and why they read. In this area, I encountered detainees who aimed to answer specific questions and identified the relevant information to do so, detainees who scanned the rights texts in order to get a general impression of their content and others who read in detail in order to soothe themselves to sleep.

8 Close

The pervasiveness and dominance of psychological work on the comprehensibility of rights texts around the world initially led me to wonder whether I might simply chart and calculate the comprehensibility and comprehension of these texts. However "questions may change during the course of an enquiry" and in this case "the dialectic between theory, interpretation and data" rendered the old questions nonsensical (Rampton *et al*, 2004:2).

Earlier, positivist work took as read that both spoken and written rights texts are, in various ways, unproblematic. Those who investigate the comprehensibility and comprehension of these texts assume that the texts are presented during arrest and

detention for comprehension, that their every appearance centres on attentive individuals communicating finite and fixed meanings to engaged, attentive others. In some ways to point out that such assumptions are problematic is to state the obvious. Rights are delivered by authority figures that may be more or less enthusiastic about the effective delivery of rights for various reasons and they are delivered to people who are likely to be hostile, fearful or otherwise over-stimulated. However by recognising that the delivery of rights is not a simple transaction of facts it becomes possible to use ethnographic methods of data collection and analysis to get inside the police station and thus to get inside the practices of police custody.

I have explained that institutional texts which are used in police detention tend to have been investigated in particular ways which has given a very particular perspective on them, failing to recognise the complexity of ways they are taken up in police custody. The few examples presented here have indicated some of the depth of understanding of such texts which can be achieved by looking at the texts 'the other way' or at least looking at them in a different way. However there is another sense in which this research has looked the other way. This has involved looking away from and through the research in order to apply the ideas it has raised to the legal setting.

Ethnographers recognise multiple realities in their fieldwork. They observe the various ways individuals perceive the world and attempt to record these differing perceptions However in delivering their findings to their various audiences – sponsors, program clients, courts, legislators, Indian tribes, colleagues, school districts, informants, media representatives, community members – ethnographers must again observe and distinguish differing realities. Further they must speak in the several languages appropriate to those realities.

(Fetterman, 1993:1).

The study was used in working with a police officer and the Home Office to rewrite detention documentation. The resulting documents are now available in police stations across England and Wales and on the Home Office website in English, Welsh and 42 other languages.

Having seen that one institutional response to this research was to use it, I want to close by considering informants' responses. Of course research in the police station raises questions about the place of the researcher. It was not possible to tell what the

informants made of “having an ethnographer in their midst” or how they viewed this young woman who appeared totally disconnected from and alien to custody (Venkatesh, 2002:92). In Venkatesh’s work, he encountered informants viewing the researcher in rather restricted ways as a “potentially intrusive state agent”, a conduit which could be manipulated to provide a resource or service in the wider world or a customer for the informants’ wares. He described the lack of engagement from informants, one of whom explained to him: “We tell all of you the same fucking thing – crime is real bad around here, gangs is getting out of control, we love America, we hate public aid, we want jobs [Isn’t all that true?] . . . We just trying to keep you happy, get you off our backs, you know, answer all them ridiculous questions about ‘how you feel living here?’ ‘What you going to do to better yourself?’ Nigger, you know we know you don’t care about us. Or you wouldn’t be asking that stupid shit all the time” (Venkatesh, 2002:95). My interviews also provided similar hostility and disillusionment:

Excerpt 10

- D if I came in here and I didn’t know anything about the system and I’d be like I’d be sat in my cell and I’d be worried thinking “what’s going on like I mean “where- where do I go from here what rights have I got ” but like this is just to be honest you haven’t got no rights ((when you’re reading this)) do you know what I mean they say it’s all new and that but at the end of the day you’re entitled to your phone call and you’re entitled to speak to a solicitor and you’re entitled to have someone let know that you’re arrested you know what I mean (.) it’s always been them same really so this is it’s like this you know like nothing is it really you know what I mean
- F it’s really just a new way of putting it across
- D it’s like me in the cell and me talking to you and everything to me it’s all an illusion you know what I mean it’s like it’s madness isn’t it 14 month ago I’m in for a case I am from 14 month ago you know what I mean and it’s took them until now to sort it out like you know what I mean

Such sceptical responses to research are perhaps inevitable and we should take care not to allow them to give us an excuse to fail to seek to apply our research and instead to simply looked the other way.

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Treatment of names and anonymisation

Consistent abbreviations are used throughout to label speakers in excerpts:

D	Detainee
F	Frances (the researcher)

All names and other potentially identifying details have been anonymised. Pseudonyms have been inserted in place of personal names in some cases for ease of reference.

Key

- (.) A micropause of 0.9 seconds or less.
- // // Simultaneous or overlapping talk. Words within the double slashes on consecutive lines are simultaneous.
- Self correction or speaker breaking off.
- (()) Unclear speech (Double brackets either contain an attempt to decipher the unclear speech or, where that is not possible, an estimation of the number of inaudible syllables).