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EXPLAINING TURN-TAKING CONSTRAINTS USING A TRADITIONAL CONVERSATION ANALYSIS APPROACH IN CROSS-EXAMINATION COURTROOM INTERACTION.

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ABSTRACT.

A Conversation Analysis (CA) approach is used to analyse the interactional practices of question-answer frameworks used in the courtroom case of 'The Murder Trial' whereby cameras were allowed in the High Court in Edinburgh to capture a trial in its entirety.

Talk in the courtroom comes under a sub-heading of institutionalised talk, whereby courtroom "interaction is merely a neutral medium through which attorneys, witnesses, judges, and jurors determine what the facts are and how the law applies" (Heritage & Clayman, 2010, p.173). This linguistic and sequential pattern of interaction showcases the court's own dynamic structures and rules that bring about turn-taking constraints that are embedded within the talk to construct individualised goals of guilt or innocence.

This paper investigates the defence lawyer's cross-examination questioning techniques which are addressed to the witness by looking at transitions in speakership between turn-taking

constraints to see how agendas are designed, and in turn project a constraining answer from the witness in the institutionalised order of question-answer phenomena, (Atkinson & Drew, 1979; Drew, 2002). For example, the witness is allowed little or no flexibility in giving their evidence; instead they are inhibited and guided by institutionalised frameworks, (Atkinson & Drew, 1979; Danet & Bogoch, 1980; Drew, 1992; Heritage & Clayman, 2010; Matoesian, 1993).

Heritage & Clayman, (2010), suggest that "talk alone does not make verdicts of guilt or innocence determinative", (p.185), yet demonstrates how talk needs to instead be invoked and analysed to see how such language practices shape the decisions of what is talked about and how it serves to shape the conversational goal of each interlocutor.

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CHAPTER 1.

INTRODUCTION.

1.1 Dissertation overview.

This research project uses a Conversation Analysis (CA) approach to analyse the interactional practices of question-answer frameworks used in 'The Murder Trial', "a real life murder trial... broadcast on television giving a rare insight into the court system. The documentary – The Murder Trial – was made by Windfall Films and [was] screened on Channel Four", (http://www.bbc.co.uk/news/uk-scotland-north-east-orkney-shetland-23231925). Talk in the courtroom is a specialised form of institutional talk, where turn-taking constraints are embedded within the talk to construct individualised goals of guilt or innocence, (Atkinson & Drew, 1979; Heritage & Clayman, 2010).

I use data from a television programme called 'The Murder Trial' which is available from Huddersfield University's Unitube, (https://unitube.hud.ac.uk/), whereby cameras were allowed in the court for the first time to capture a trial in its entirety. Here, I am primarily interested in looking at turn-taking constraints during the cross-examination stage between the defence counsel and the witness to see how the conversation is managed.

By transcribing and analysing sections of 'The Murder Trial' it will be possible to detect sequential questioning patterns used by the cross-examining defence counsel to see what effect, if any, it has on the witness, in the turns being *"context-shaping or context-renewing"*,

(Heritage, 1984a, p.242), that is, does it constrain the witness to a pre-allocated answer, does it receive a rebuttal from the witness, is the question answerable, and many more which shall be discussed deductively throughout this project. I want to see if the question-answer sequences can be tested through the "next-turn proof procedure", (Heritage, 1984a, pp. 256-257). This is, that my findings are "based on the actual recorded interaction and their transcriptions", (Arminen, 2005, p.4), instead of theoretical bases. For example, are yes/no questions always received with the projected response, and if not, what aspect of the question's design influences this?

1.2 Background and aims.

The aim of this project is to investigate the defence counsel's cross-examination questioning techniques by looking at transitions between turn-taking constraints to see how doubt is challenged and constrained by the institutionalised order of question-answer phenomena to bring about resolution, (Atkinson, 1992; Drew, 1979, 1992). For example, the witness is allowed little or no flexibility in giving their evidence; instead they are inhibited and guided by institutionalised frameworks alone, therefore largely infringing their version of the story and truth to which they are being questioned, (Atkinson & Drew, 1979; Danet & Bogoch, 1980; Drew, 1992; Heritage & Clayman, 2010; Matoesian, 1993). This quotation from Heritage & Clayman provides a solid foundation for my project: "The courtroom is far from epiphenomenal that the facts don't speak for themselves, and that even material evidence is not self-explicating", (2010, p.185). This clearly highlights how "talk alone does not make verdicts of guilt or innocence determinative", (Heritage & Clayman, 2010, p.185), yet

demonstrates how talk needs to instead be invoked and scrutinized to reveal precision and meaning. Atkinson & Drew, (1979, p.8) argue that,

> Court procedures can be seen to provide one way of producing decisions which are recognisable to members, for practical purposes, as being more 'definite', 'binding' and 'final' than is often the case with those arrived at in the course of ordinary conversations.

1.3 Reasons behind the project.

The idea behind this project is to investigate an institutionalised branch of talk in the courtroom using a traditional conversation analysis approach. Here, the defence lawyer designs and uses multiple questioning techniques which require answers from the witness, whereby both parties (the lawyer and the witness), must adhere to this rule at all times to accomplish the task at hand, (Atkinson & Drew, 1979; Travers & Manzo, 1997).

Linguists such as Clark, (2004), propose that "questions are a staple of gossip, discussions and business transactions", (in de Ruiter, 2012, p.81), which require specific organisational details to accomplish the task. With this I aim to build on the work of Raymond, (2003, p. 939), who looked into "advancing our understanding of language as a resource for social action by analyzing one of the most pervasive practices in interaction: YNIs [and questions] and the turns speakers build in response to them".

Although previous scholars have looked into courtroom language, a large proportion have been oriented towards the power related issues associated with the barrister, (O'Barr, 1982), who is able to exude a large proportion of control over the witness, rather than narrowing the research down into *how* such aspects are mobilised in the courtroom setting.

I would like to replicate the methods which were first described and applied by the linguists, Atkinson and Drew, (1979), in 'Order in Court'. Here, I shall be able to analyse what or which sequentially ordered patterns of language are used in my data, 'The Murder Trial', to bring about certain types of questioning, and how they in turn, could project goals of accusation, blame, denials, and many more. Bearing this in mind, these sequentially ordered patterns of language in the courtroom setting, originally identified by Atkinson and Drew, (1979) will be applied to my analysis to direct the reader through the various stages of 'The Murder Trial', to identify the defence counsel's question designs which demand constraining answers from Hector Dick, (the witness), and which can reveal a great deal about question design in this institutionalised courtroom setting, (Heritage, 1984a).

With this, it is necessary to acknowledge that courtroom language will be context-sensitive, that is, it is based on a specific, formal setting with expected behaviours which will occasion knowledge from prospective readers which could blur their interpretation. For example, a witness may expect the defence lawyer to use manipulating questions to make them appear to be an unreliable and untrustworthy witness even though this may not be the case, because it is the defence lawyer's role to create doubt and a contrasting version of events for the jury. However, this project shall be directed using "talk as a basic and constitutive feature of human social life", (Sidnell, 2010, p.1), to overshadow any such temptations to speculate on anything else but the sequential patterns of language available.

The motivation behind this project stems from a passion in analysing how language is being used in the context it is in. My first fascination with the institutionalised talk between the doctor and patient relationship has propelled my passion to look at other institutionalised settings of work to draw parallels or identify differences. These sequential linguistic patterns help shape the people and the environment to enable us, the reader, to gain an interior view into a highly intricate and fascinating world. For as Heritage, (1984b, p.241), suggests "Careful study of conversation can reveal 'organised patterns of stable, identifiable structural features... [that] stand independently of the psychological actions or other characteristics of particular speakers".

1.4 A brief summary of the members in the trial.

'The Murder Trial' is a second trial of the accused, Mr Nat Fraser, a resident of Elgin, Scotland, who is being re-tried for the murder of his wife, Arlene Fraser.

What must be mentioned is that Nat Fraser, the accused, has exercised his right not to be re-questioned, and therefore I shall use Hector Dick instead, (who shall hereafter be referred to as HD), who is a principal witness for the prosecution in this trial.

'The Murder Trial' took place in the High Court in Edinburgh in May 2012, "where [the High Court] hears the most serious criminal cases such as murder and rape", (http://scotcourts.gov.uk/the-courts/high-court). Prior to this re-trial "Mr Fraser's legal team argued that there had been a miscarriage of justice [with the first trial in 2003], focusing on claims that evidence had been tampered with and prosecutors had not been given all of the facts", (http://www.bbc.co.uk/news/uk-scotland-north-east-orkney-shetland-23231925).

To this end, a retrial was permitted with a different prosecution and jury to inform a new decision on whether or not Nat Fraser should be sentenced to life imprisonment for the murder of his wife, Arlene Fraser.

Looking back, Nat Fraser and Arlene Fraser were married in Elgin in 1987 and during that time they had two children together. Nat Fraser worked in IT as a wholesale supplier of fruit and vegetables, "whilst Arlene Fraser was described as a caring mother according to family and friends", (https://www.scotcourts.gov.uk/opinions/2013HCJAC117.html/), and she was a student at a college near to where they resided. However, cracks started to show later in the marriage, with Arlene Fraser making several visits to her solicitor in the lead up to her disappearance. Here, she asked questions about divorce proceedings, but each time she appeared to be reluctant to proceed, until the last time she was seen alive by her solicitor, where she was apparently more determined than ever to go ahead with divorcing her husband, Nat Fraser.

Nat Fraser was revealed to be an incredibly jealous man who did not want Arlene to go ahead with the divorce proceedings. One of his main concerns was that he would not be involved in his children's upbringing, and another man would take his place; something that further fuelled his paranoia by the suggestion from himself that his then wife, Arlene, was already having an affair. To add to this, Nat Fraser was very secretive and protective with money, something that he did not want Arlene Fraser's solicitor to investigate in the event of divorce proceedings.

HD, the witness who appears predominantly in this re-trial is a local farmer and friend of Nat Fraser and has been called as a witness both times in the case. However, he is now no longer a friend of Nat Fraser, instead he is giving evidence against him for the prosecution and recalls how he says he was assigned to helping Nat Fraser in the involvement in Arlene Fraser's

disappearance. To this end, HD has repeatedly said that Kevin Ritchie, (another accomplice, who shall hereafter be named KR), a local scrap yard worker supplied him with a car for Nat Fraser at Nat Fraser's request in the days before Arlene Fraser's disappearance. Nat Fraser strongly denies this, and, instead it is just HD's hearsay. HD, however, does eventually confess in court to giving KR fifty pounds to keep him quiet about getting this car for him. The car was later burned and destroyed by HD, who it appears got nervous about its implications following Nat Fraser's confession that the car was coming back to him as there had been a problem.

To this day, no body, no weapon, and no forensics have been found concerning Arlene Fraser, making it an incredibly difficult case to determine. What I want to make clear here, is that I am not interested in solving the case or in suggesting who is wrong, instead I am intrigued by the specific selection of evidence that the defence counsel introduces and how that is used in the case. Here, I shall be able to identify questioning patterns to see how they are sequentially ordered, and how this projects the response from the witness, whilst giving the jury, and indeed, the reader an insight into the events that are leading the case.

1.5 Hypothesis.

For this dissertation I shall be using an inductive hypothesis to systematically guide me through the realms of data analysis available from 'The Murder Trial'.

Here, I shall transcribe each section of the defence lawyer's cross-examination, (who shall hereafter be referred to as DC), looking for sequentially patterned and constraining questioning designs which project certain answers from HD. There is no specific hypothesis

being tested here. However, there is a premise; that the witness, HD, shall be constrained by how he can answer the DC's questions because of the form of their design, and the normative framework of the courtroom setting. With this in mind, I will discover the specific patterns inductively by using methodological, intellectual and analytical objectives

For reasons of economy, these inductive sections will be discussed in chapter three.

CHAPTER 2.

LITERATURE REVIEW.

2.1 What is Conversation Analysis?

"The basic idea of CA is so simple that it is difficult to grasp: CA studies what an utterance does in relation to the preceding one(s) and what implications an utterance poses for the next one(s)", (Arminen, 2005, p.2), "where conversation serves as the foundation... for social organisation generally", (Nofsinger, 1999, p.4-5).

CA was originally born from the work of three sociologists named Sacks, Schegloff and Jefferson, (Myers, 2009). Here, they all shared a passion for

> focus[ing] on how speakers design their talk to convey particular social actions, how that talk is interpreted by listeners as having the status of certain actions that speakers are producing, how participants make inferences about what meanings are being conveyed on that particular occasion, how participants' sense of appropriateness can be used to produce special communicative effects..., and so on. (Nofsinger, 1999, p.5).

With this in mind, knowing that "spoken interaction is central to the legal system.. [and] is geared to an outcome with social and moral ramifications", (Heritage & Clayman, 2010, p.173), I feel that CA would bear an influential insight into my research project of conducting a conversational analytical view into how questioning techniques are mobilised from the courtroom.

I am, of course, mindful of scholars such as Mey, (2001, p.135) who suggests that "CA is a minimalist approach, which allows only so much hypothesizing as is strictly required to explain the phenomena at hand". Whilst respecting such scholars, I aim to show that CA should not be cast aside or ignored, as its findings are informative and often would not propel other such research such as pragmatics if it were not for getting a grasp on sequential ordering of language in the initial stage. Arminen, (2005, p. 1), suggests that whilst, "the idea that conversations are orderly is undoubtedly old, the systematic study of interactions is somewhat new... with CA describing the competencies and procedures involved in the production of any type of social interaction".

However, such assumptions do not exist for the pragmaticians who could argue that issues such as politeness are carefully thought out and are not just taken out of a vacuum. "Pragmatic rules, by contrast are statements not about whether a particular line of conduct is just or unjust, but about whether or not it will be effective", (O'Barr, 1982, p5). Courtroom language, as far as the DC is concerned, follows a strategic goal in exploiting the question-answer sequence by using it as a platform for the construction of a competing and contrasting version of facts, (Atkinson & Drew, 1979). In this situation, it is easy to see how issues of meaning, inferences and footings would take precedence if this analysis were to concentrate on

questioning techniques from a pragmatic viewpoint. Whilst, not wanting to detract from these issues, I want to see how CA alone can guide the reader through the ordering and design of questions to discern how the DC's linguistic actions can accomplish the goal of directing HD's testimony to coincide with his individual agenda, (Atkinson & Drew, 1979; Drew, 1992; Nofsinger, 1999).

2.2 Why do we need courts?

Courts comprise of judges and the jury who employ a vital role in the justice system. Criminal cases come to court after a decision has been made by "The Crown Office and Procurator Fiscal Service in Scotland, (COPFS), (which is where this particular 'Murder Trial' took place), which is Scotland's Prosecution Service", (http://copfs.gov.uk/about-us). Here, very serious criminal cases, such as murder and rape, may be heard by a High Court judge. "The main roles and responsibilities of COPFS are to: investigate, prosecute and disrupt crime, including seizing the proceeds of crime and to establish the cause of sudden, unexplained or suspicious deaths," (http://copfs.gov.uk/about-us).

Here, the judge has the power to imprison those convicted of a crime, if the offence is serious enough. "But imprisonment is not the only solution; a judge can order a community punishment, or put an individual under some sort of control order where their movements or activities are restricted," (http://www.judiciary.gov.uk/about-the-judiciary/the-justice-system).

In addition, sometimes a person has to go to court because he or she is a witness. Here, "the witness tells the judge and the jury what he or she knows about the case," (http://www.co.galveston.tx.us/judgecriss/courtclass/why.htm).

What must be stressed, is that I am not interested in solving the case or determining who is right or wrong, especially given Shuy's, (2002), suggestion, that "we can point out patterns of language use that may give clues to intentions or clues to agendas, but the conclusions to be drawn from such analysis are the jury's alone" (In Cotterill, 2002. p5). Instead, this project uses an original piece of data to investigate the linguistic links between question and answer sequences, which were primarily identified by Atkinson and Drew, (1979), to test their veracity. For example, it is important to know what information defence barristers present for the benefit of the jury and how they do this. Of course, "all versions [of statements or answers] cannot be equally correct; it is the role of the jury ... to decide which witnesses to believe and whose testimony to hold above others in reconciling differences", (O'Barr, 1982, p11). Therefore, the CA approach that I shall be using will aim to satisfy 'how' talk is constructed through sequence, rather than 'why', which incorporates social variables such as age and gender which are omitted in CA.

It is important to remember though, that lawyers are not given free rein in what or how they ask a question, for they too, are under instruction as to how their message or agenda is mobilised. Lawyers' cannot just say what they feel; they have to have an agenda for doing so, and in doing so provide a narrative timeline of events for the jury to follow in order for them to be able to pass judgement on the final case (Cotterill, 2003). Of course, "lawyers are offered a great deal of advice about their own verbal behaviour" (O'Barr, 1982, p33), and are

subjected throughout their career training to read many manuals detailing how to perform such tasks. This is further strengthened by Coulthard & Johnson, (2007, p.105-6),

> Questions are highly constrained and constraining in courtroom interaction. Lawyers are constrained by the genre and prior texts in terms of what and how they can elicit, while witnesses are doubly constrained: first by the inbuilt constraints of the lawyer's framing and second, by how the questions are designed to constrain their answers to produce a particular kind of evidence.

2.3 Typical characteristics of direct-examination.

Here, it is important to discuss the characteristics of direct-examination, even though it must be stressed that it shall only be partially mentioned during this investigation because it shall help to demonstrate the contrasting characteristics of each lawyer's agenda. The main purpose of direct-examination is the opportunity to give the witness an occasion to present their version of the facts in a friendly and non-challenging way, (Hale, 2004).

Whilst cross-examination favours the promotion of leading questions to try and discredit the witness's version of the truth, direct-examination disallows this practice, because it concentrates on a less hostile approach entitling the witness to put across their version of events without being strategically lead by the defence barrister building up a contrasting version of events for the overhearing jury. It is to this end that open questions, which as the word suggests, offer less restrictive answers to how the witness can respond. Here, the witnesses themselves are given more freedom in how they interpret the question, (although

they are still lead by the lawyer's chosen questions), and how that in turn occasions the response that they proceed to give, (Atkinson & Drew, 1979; O'Barr, 1982). In essence, in direct-examination the witness is allowed to have a voice, "aiding the winning cooperation of the witness", (Hale, 2004. p35), unlike in cross-examination where [it] "is not about a witness testifying... it is about the lawyer eliciting the desired testimony from the witness", (Miller, Ryder & Vigil, 2001. p109). However, persistent use of open questions is not encouraged in direct-examination because it would take too long and the lawyer also has a duty to set and control the agenda in hand (Hale, 2004).

2.4 Typical characteristics of cross-examination.

> Cross-examination is essentially hostile. Attorneys test the veracity or credibility of the evidence being given by witnesses with questions which are designed to discredit the other side's version of the events, and instead to support his or her own side's case. When being examined, witnesses are, of course, conscious of the purposefulness behind the questions they are asked; 'they are alive to the possibility that a question or series of questions may be intended to expose errors or inconsistencies in their evidence, and hence to challenge and undermine it, (Travers & Manzo, 1997, p.51).

So, whilst direct-examination is typified as the 'more friendly' side of courtroom questioning, cross-examination seems to be completely contrastive to it, making the prospect of it to be

somewhat "emotionally draining", (Shuy, 2002a, p.5-6). There appears to be a great deal of skill attributed to cross-examination whilst following the simple rule that questions and answers are the only means by which to achieve the goal of resolution, (Heritage & Clayman, 2010), in which barristers are restricted to the act of questioning only, leaving the witness/defendant to do one thing: answer these questions, (Atkinson & Drew, 1979). However, even though the rules of extracting information in court are restricted to question-answer sequences only, Atkinson and Drew, explain how it is only a "minimal stipulation", (1979, p.68). How, the defence barrister structures his questions and his ultimate goal of that question can be built out of various linguistic strategies, such as pre-sequences, insertion sequences, narratives, recipient design and many more, (which shall be discussed successively in Chapter 3), whilst still obeying the normative framework employed in the courtroom setting, (Heritage & Clayman, 2010). It is, of course, noticeable that only two interlocutors are involved in this courtroom setting; the barrister and the defendant/witness making the turn-taking facility straightforward, (Heritage & Clayman, 2010). Here, one can say that the turn-order is fixed in that each interlocutor is restricted to how they participate in this conversation, with the barrister asking the questions and the defendant/witness being solely responsible for giving answers only. In addition, it must be noted that a Judge may also intervene at any time throughout the proceedings, (Heritage & Clayman, 2010). However, one attribute that must be made clear is that, whilst the turn-order is fixed, the conversation is still locally managed by the two interlocutors who must both work together collaboratively to ensure the smooth flow of conversation comes about, such as turn changes are detected in time and are not misjudged to bring about overlaps or lapses.

The use of pre-sequences from the barrister helps the witness to "occasion", (Nofsinger, 1999, p.69), what is about to be discussed. It triggers a schema for what is about to be talked about, and in turn aids the witness in seeing how the attorney is using the 'factual' information to discredit what the witness has previously claimed, which usually results in the witness "designing their answers as rebuttals, denials, justifications and so on." (Atkinson & Drew, 1979, p.70). Giving accounts of what the witness has just said is another favourable attribute of defence lawyers. This is called giving assessments or formulations of what the defendant/witness has just said. Heritage, (1985) suggests that they often 're-present' only a narrow selection from what had been said, or propose the "upshot" or further significance of a prior speaker's turn (In Nofsinger, 1999, p.121). These formulations, thus, give the defence counsel ample control over what particular information to highlight to their advantage, whilst contradicting or showing the defendant/witness to be at fault.

CHAPTER 3

METHODOLOGY.

In order to make this project interesting and extensive it has been broken down into appropriate headings. This chapter includes two sections which outline how I collected my data and what I did with it to satisfy my hypothesis.

3.1 Data collection.

Due to the confidential nature of the courtroom analysis I had to devise an ethical method of obtaining naturally occurring data. Of course, I was aware that anybody can go and sit in a court here in England or Scotland and view what is happening, but I would not have been permitted to record anything. Luckily, I saw a television advert for a documentary on Channel Four that featured actual live coverage form a High Court in Edinburgh involving a murder case. With this data in mind, I ensured to get a copy of the data and asked the subject librarian to record it on Huddersfield University's Unitube so that the data could be viewed several times, and also make it accessible for other students, in the event that they would like to replicate my project.

Once I was satisfied with the ethical perspectives, based on the fact that "the producers secured permission from all of the key witnesses in the high profile case following lengthy

negotiations, and that the Scottish High Court gave permission for this extraordinary and unique access – to film the case of a man accused of murdering his wife" (http://www.bbc.co.uk/news/uk-scotlans-north-east-orkney-shetland-23231925), in addition to being in possession of the recorded data, I was then able to narrow down my search in looking for conversations between the defence counsel and the witness only. Here, no scripts were used or issued; the conversation was natural to the best of my knowledge.

3.2 Treatment of data.

I collected a recorded Unitube file of a courtroom trial, ('The Murder Trial') in its entirety. Here, I listened carefully to the whole trial, which was made into a documentary by Windfall Films on Channel Four and consisted of almost two hours of data, alternating between live recordings and documentary style interviews. I then transcribed all of the actual recorded cross-examination question-answer section between the defence counsel to the main witness, HD, to satisfy my hypothesis, this being, how does the defence lawyer's question design constrain the witness's answer during the turn-taking organisation in cross-examination? Here, I wanted to identify the linguistic forms of pre-sequences, insertion sequences, adjacency pairs, repeats and formulations, tag questions and reported speech to get "an insight into the role of language in the legal process", (O'Barr, 1982, p.2), to see how academic researchers and scholars use this information to generate original and new knowledge of how language plays a pivotal role in courtroom question and answer interaction. With this in mind I divided the treatment of data into three main logical categories: methodological, intellectual and analytical objectives. These three categories will now be discussed successively.

3.2.1 Methodological objectives.

Here, I transcribed the cross-examination sections concerning HD and the DC during 'The Murder Trial', whereby I used the transcription conventions that were devised by Jefferson, (1974), (which can be found and described in Chapter 8 on page 107, and indeed, throughout my data) to provide a representation of the courtroom interaction between the two interlocutors.

Here, Jefferson's transcriptions provided a platform for investigating turn-taking constraints between the witness, HD, and the defence counsel, DC, to see how question design and word choices had an influential bearing on how HD did or should have responded.

This question is the focal point throughout this investigation to ensure that the study is well developed.

3.2.2 Intellectual objectives.

The intellectual objectives acknowledge the specific role of sequential ordering during courtroom examination, specifically that of the defence counsel and the witness. In investigating this theme, I will be able to demonstrate:

1) a linguistic account of the actual conversation

2) a linguistic perspective on the CA tools analysed

The following section provides a greater insight into my hypothesis, and the different categories that shall be analysed inductively to satisfy the criteria.

3.2.3 Analytical objectives.

3.2.3.1 Determining the use of the DC's pre-sequences.

As should have become apparent by now, "a common tactic in conversation is to check out the situation before performing some action" (Nofsinger, 1999, p.55). This characteristic can be universal, irrespective of institutionalised or ordinary conversation, although in the courtroom, as one would expect, the jury is ever present in the narration of what or who is being talked about. The jury plays a pivotal role in deciphering the information that the barrister chooses to address, as it is the jury who has the casting vote in deciding how the case shall be passed. During the case, defence barristers' often use leading questions, also known as pre-sequences in CA terms to set the scene for what is going to be talked about. As Nofsinger, (1999, p.135), suggests, "One obvious device that displays participants' alignment to a planned future utterance is the pre-sequence... A pre-sequence is an adjacency pair that projects or leads up to some other action".

In the interest of defence lawyers, they use pre-sequences to align the witness to future agendas without making them explicit, (Nofsinger, 1999). Seeing as conversation appears to carry its own structures and rules, these pre-sequence tactics help the witness to understand the nature of the enquiry before it unfolds. Defence lawyers naturally aim to contradict the prosecution's version of events when questioning the witness, and in doing so use different methods of articulating questions or sequences to achieve their desired result. If pre-sequences aim to align the participant to the defence barrister's agenda, one way in which this can be achieved is to assert blame to them, by building up to a narrative and using carefully designed wording and phrasing to elicit a preferred answer from the accused. Unsurprisingly, lawyers ask many questions to elicit answers to help them to develop their case. However, what is important, is what forms of questions are used and for what purpose. Whilst acknowledging that lawyers can either represent their client, or are acting to oppose the witnesses' views, certain design structures such as pre-sequences appear to be used more in cross-examination than in direct-examination. This assumption can be supported by the fact that direct-examiners are warned against using such devices, and to keep information 'factual', whilst defence barristers are encouraged to use these methods to construct the rationale behind the opposing future action, in addition to validating their methodological approaches, rather than being perceived as mere bullies who are acting on their position of power alone, (Atkinson & Drew, 1979; O'Barr, 1982).

The following example, extracted from Nofsinger, (1999, p.137) shows how a pre-sequence is ordered in conversation:

1:B: Uh, are you gonna have access to the car about

2:    five thirty or six today?

3: E: Uh::: yeah I think so why?

4: B: Cause I'm gonna need a ride down town....

Here, B's inquiry as to whether E will have access to the car during the time of five thirty to six presupposes that there is a valid reason for asking yet does not make this impending action explicit. It assumes that there is more extended conversation to follow. E is summoned to answer B's question on the understanding that there is a reason for the question, and presumably he will want to find out what or why that is. This is exactly what E does, leading the question to be taken up by B who now makes his request explicit as opposed to hedging around the topic and making his intentions indirectly as in line 1.

This demonstrates how some speakers can introduce the participant into the talk, yet could be seen to have motivational behaviours behind the idea, in that they may not want the other interlocutor to turn down their request before it has even been brought to fruition. So, one way in which a pre-sequence can aid a defence lawyer is that they aim to gently introduce a topic to avoid ambiguity between subject matters in aligning the participants together before further details are included. Furthermore, defence lawyers are presumably all too aware of their external perception as seen by witnesses because of their role in trying to disprove the prosecution's version of events, therefore they will aim to establish a common ground with them in order to avoid an opening statement of blame which could easily elicit a rebuttal or denial from the witness, (Atkinson & Drew, 1979).

3.2.3.2 Determining the DC's use of insertion sequences.

> Insertion sequences do not fulfil the entire functional requirement...so they continue to orient toward the relevance of the second pair part until it either occurs or remedial action is undertaken to cope with its absence, (Nofsinger, 1999, p.65).

Most importantly, seeing as courtroom talk is governed by question-answer sequences, if a question does not get answered, or is not a sufficient explanation for not offering an answer, the action is not complete and must be resolved to establish the reason for posing the question. One way in which this is achieved is to reformulate the gist of the original enquiry, "to demonstrate understanding and presumptively, to have that understanding attended to, and as a first preference, endorsed", (Heritage & Watson, 1979, p.138). Here, a formulation is always performed by the lawyer who retakes his turn in the sequential order of question-answer in the institutional setting. Here,

> the turn system operates the way it does because participants treat it as normative; that is, they orient to certain rules and treat certain behaviours as departures from (violations) of those rules... when such departures occur, participants work towards restoring orderliness, (Nofsinger, 1979, p.107).

Insertion sequences help to re-establish the agenda and complete the nature of the initial enquiry in order to bring about the intended resolution to a previously unanswered question. They are very common in institutionalised talk, (Drew, 2000), and scholars such as Drew, (1992) and Nofsinger (1999), suggest that they are helpful tactics in staying on track with the line of enquiry, and help the barrister to regain control over the witness. When used in conjunction with tag questions, they can become more coercive in steering the witness to give the pre-allocated response, (Hobbs, 2003; Lakoff, 1985).

As shall become clear in my analysis, insertion sequences are actively used in the question-answer sequence of the opposing lawyer's questioning, (DC) on the witness, HD. What I shall aim to address, however, is how these insertion sequences contribute to the act of constraining the witness to invite an answer. Would the effect have been the same if the witness had answered the first question differently?

3.2.3.3 Determining the DC's use of adjacency pairs

Adjacency pairs are a common feature used in conversation, not least in the courtroom setting whereby the whole conversation is governed by strict rules of questions and answers which make up adjacency pairs.

> Talk in examination [and in cross-examination] is organised into a
> series of question and answer pairs ... and a consequence of that is that
> the other (examined) party's utterances are always produced in the

sequential position of post-question, and should therefore be answers,

(Atkinson and Drew, 1979, p.61-62).

The barrister is restricted to 'doing' the questioning whilst the defendant or witness is only allowed to 'answer' the questions. How the questions are posed though, is a major issue for conversation analysts who seek to show that how the question is phrased is a convenient way to introduce a new topic or to ensure a response. Adjacency pairs are pairs of utterances that usually occur together, and the answer can be dependent on how the question was asked.

Question turns in examination may be designed to achieve such actions as challenging a witness to the truth or adequacy of his evidence to accuse someone, or to allege they were implicated in something, and the like. Where witnesses/defendants recognise that such actions (where first parts of adjacency pairs) are being performed in prior questions, they may therefore design their answers as rebuttals, denials, justifications and so on, (Atkinson and Drew, 1979, p.70).

In accordance with adjacency pairs there are certain expected patterns associated with their design. Nofsinger, (1999, p.51) explains,

When one of the first actions has been produced, participants orient to

the presence or absence of the relevant second action. There is an

expectation by participants that the second action should be produced,

and when it does not occur, participants behave as if it should have.

For example, if I were to look at how doctors interact with their patients, it is common

knowledge that in order to diagnose a health problem the doctor would need to both establish

and elicit some information from the patient to be able to pass judgement on what is wrong

with them, (Heritage & Clayman, 2010; Heritage & Robinson, 2005; Maynard & Heritage,

2005). In asking a question, the doctor would expect a reply as a minimum contribution to the

interaction. Of course, whether that response would be conditionally relevant, (Schegloff,

1968, 1972) would remain to be seen. For instance, if a doctor asked 'How long have you

been feeling like this?', which should elicit a response along the lines of time allocation, but

instead gets a somewhat off the mark response such as 'I didn't think I should have bothered

you with this', suggests that while the interlocutors may be participating in the same topic,

they are not adhering to the straightforward answer of what the question demands. Bearing

this in mind, in analysing turn taking constraints in the courtroom, this investigation aims to

highlight such conversational adjacency pair structures "which can continue for a very long

time", (Nofsinger, 1993, p.53), to show how conversation was brought about, and whether or

not the patterned sequence was orderly in fulfilling the needs of the question, projecting future

turns, or whether another conversational trigger was employed to re-structure the original

question to satisfy the goal. In the event that a question does not get the answer which it

requires, pre-sequences and insertion sequences can be added to re-establish order in the

agenda, (Nofsinger, 1999; Schegloff, 1972).

3.2.3.4 Determining the DC's use of repeats and/or formulations.

"A formulation then is a particular type of third turn receipt of information, which functions to establish the gist of what has been said in the prior turn", (Thornborrow, 2002, p.90). A classic example of how CA tools can help to create detailed analysis of courtroom interaction would be the topic of alignment, which Stokes and Hewitt, (1976, p.838), describe as:

> Largely verbal efforts to restore or assure meaningful interaction in the face of problematic situations... activities such as disclaiming, requesting and giving accounts... offering apologies, formulating the definition of the situation, and talking about motives.

For example, someone could ask another party in a conversation to clarify what they mean, or what they think they mean by evaluating the previous turn with something like "So... you didn't go to town then because you were afraid that you could have bumped into X". Here, the restored conversation would include sequential patterns to regain understanding from both interlocutors. Therefore, concentrating once more on my data, I would be able to address how the defence counsel's question design unfolds to possibly project more or less constraining answers from HD.

3.2.3.5 Determining the DC's use of tag questions

"Tag questions are a syntactic structure typically used to communicate expressions of certainty", (Lakoff, 1972, p.918). Unsurprisingly, then, these question types are employed by lawyers during cross-examination to build their case in eliciting responses from witnesses to help them to cast doubt in the jury's perception of the witness. Hobbs, (2003), argues that tag questions that are simultaneously used in conjunction with declaratives aid the barrister in showcasing a narrative of events to bring the jury closer to the case in question. Tag questions, on the other hand, are used more frequently as a dialogue progresses and the seriousness of the case is exposed, (Lakoff, 1985). They are structured to challenge and bring about resolution in the case. Therefore, an example could be the defence barrister questioning a defendant, "You were at the Majestic club on the evening of the murder, weren't you?" to coerce him into agreeing with the statement to get concrete answers to solve the inconsistencies of a case.

3.2.3.6 Determining the DC's use of reported speech and/or narratives.

> In direct speech the reporter lends his voice to the original speaker and says what he said, thus adopting his point of view, as it were. Direct speech, in a manner of speaking, is not the reporter's speech, but remains the reported speaker's speech whose role is played by the reporter. (Coulmas, 1986, p.2).(In Holt, 1999, p508).

What is interesting in looking at the use and placement of reported speech is to understand why a defence lawyer chooses to use it to communicate some relevance towards the case, yet more tellingly, whether or not the defence lawyer is faithful to the source of original talk, (Sternberg, 1982). For instance, will reported speech always be said in the manner in which it was intended by the original speaker? And if not, how does the defence lawyer use the situation to work towards his set agenda. Moreover, narratives are used, or in particularly that of indirect reported speech, (IRS), to do background work on the case, before switching to direct reported speech, (DRS), to bring the jury closer to the event in question, (Tannen, 1989).

CHAPTER 4.

ANALYSIS OF DATA.

4.1 Analysing the DC's use of pre-sequences.

Unlike, perhaps traditional pre-sequences which seem to focus on an epistemic gradient between the barrister and the witness, I argue that this question from the DC, '*Mister Dick: (2.0) > can ye< think back with me: over (.) the past (0.5) fourteen years*' (1) has characteristics similar to the more apparent pre-sequence formats. The way the request has been built, '*Mister Dick: (2.0) > can ye< think back with me: over (.) the past (0.5) fourteen years*' invites HD to get a premature snapshot into what the DC has knowledge of, and in turn how the DC may choose to direct his line of questioning. Here, this question design maps out the situation before embarking on the real reason for the question. The DC addresses '*Mister Dick:*' followed closely with a (2.0) pause, signalling that he is carefully building up to something. It provides a little suspense and indicates to the jury that what is to follow is definitely newsworthy. '*Can ye< think back with me:*' appeals for HD to work collaboratively with the DC in anticipating what is to come, with '*Can ye< think back with me:*' presupposing that whatever HD has been asked to rethink is significant and will direct and lead the next projected turn. So, going back to the DC's request for HD to '*think back with me: over (.) the past (0.5) fourteen years*' sees the DC ask the real reason for the prior introduction:

2   DC   *(1.0) Are you able to tell us↑ (0.5) today (1.0) how many times (1.0) you have LI:::ed*

3   DC   *about (1.0) your involvement in the disappearance of (.) Arlene Fraser?*

4   *(0.5)*

The DC's question design here, (2) uses the modal verb 'able' to highlight ability, whilst carefully incorporating the jury into the equation in issuing '*Are you able to tell **us'***. This question design, (2-3), presupposes that HD has lied. Notice that the leading question covers two bases; *Are you able to tell us'* appeals for a request for information and is positioned at the beginning of the question to give it a central focus, whilst '*how many times (1.0) you have LI:::ed'* (2) does not ask the question as to whether HD may have lied, but suggests that he definitely has lied. This question design also appeals in building up a case of the actions of a reasonable and reliable person test for the jury to show that a) a reasonable person would not be involved in the first place, b) a reasonable person does not lie, and c) helps the DC to build a meaningful case against HD in making his agenda of discrediting him appear effortless through the constraining and manipulative question design.

Moving forward, this next question from the DC, (22-23), demonstrates the epistemic gradients between the two interlocutors to provide an analysis of what information is already available to the DC prior to asking HD a question. Heritage & Clayman, (2010, p. 140), suggest that,

> Although questioners ordinarily solicit information and convey a relatively unknowing (or what we have termed a K-) stance towards the respondent, we can distinguish questions in terms of the epistemic gradient they establish between questioner and respondent.

Lines 22-23 of the transcript shows how the DC's question has been designed through 'factual' knowledge from the police, and in turn is used to inform the witness, HD, that he has

'access', (Holt, 1999), to this information, and is seeking to get confirmation from him, whilst seemingly having an agenda to do so.

22	DC	The police in this interview: actually even knew how much money y'ud paid for the
23	DC	car didn't they?
24	HD	°Mmhm yes
25		(0.5)
26	DC	They knew ↑that y'ud paid Kevin Ritchie fifty pounds to keep his mouth shut↑
27	HD	I think it was to do with the wheels

Here, the DC is in a K+ position, (Heritage & Clayman, 2010), because he has access to all of the tapes, transcripts and statements of HD's previous testimonies with the police. Building on from the DC's previous question about *'how many times (1.0)* **HD has** *LI:::ed about (1.0)* ***his*** *involvement in the disappearance of (.) Arlene Fraser?'*, (2-3), this question design, (22-23), presupposes that the cost of the car was significant in some way without making it explicit at this particular point. It weaves an objective, external voice into his cross-examination, (Atkinson & Drew, 1979), in using a third party as factual evidence to account for one of his actions which HD claims involved him sourcing a car for the accused, Mr Nat Fraser, in the lead up to Arlene Fraser's disappearance.

Whilst the question design ideally warrants an affiliative response of 'yes', because of the leading positive polarity of the question design, (Raymond, 2003; Sidnell, 2010), opposing barristers are all too aware of the witness's tendency to deny everything before the question has been fully stated, (Atkinson & Drew, 1979). With this, Nofsinger, (1999, p.149), suggests,

"Such a use of a pre-sequence to generate supporting evidence for next conversational action displays a concern for possible disagreement".

However, in this instance, the instant denial response that could be given by the witness, HD, is halted before such a response is offered, because the DC includes a tag question, *('didn't they?'),* (23), which makes the request more coercive, disabling HD's flat denial of the question, (Hobbs, 2003; Lakoff, 1972). For more information on tag questions, see section 4.5. This, therefore biased question design, (22-23), prompts an affiliative response from HD, although, it is initially weakened from his hedging manner *'mmhm yes',* (line 24), and spurs the DC to react to this tentative, yet affiliative response that is in his set agenda.

Line 26 *'They knew ↑that y'ud paid Kevin Ritchie fifty pounds to keep his mouth shut↑'*sees the DC ask about the established details of evidence, having already secured an affiliative, albeit tentative 'yes' response from HD that *'The police actually even knew how much money y'ud paid for the car didn't they?',* (22-23). So, whilst the DC managed to get HD on side with his initial declarative of informing HD that *'The police in this interview: actually even knew how much money y'ud paid for the car didn't they?'* (22-23), he now challenges HD as to the reason *why* he paid Kevin Ritchie, (KR), fifty pounds. Here, the DC presupposes that the monetary sum for the car was not as significant as the reason as to why he paid KR, the supplier, fifty pounds for the car.

The language game that the DC uses with the parallel of 'they knew' (lines 22 & 26) highlights the knowledge verses question aspect of the question design for the purpose of

making it available to the jury, (Heritage & Clayman, 2010; Sternberg, 1982), whilst simultaneously luring HD into what appears to be a more friendly questioning style, (22), yet all the while discrediting HD's credibility through his descriptive and selective choices of portraying what happened in line 26. Moreover, one can say that the DC teases HD with his mixture of questioning techniques to mislead him in his quest for realising his own agenda.

After all, as (Luchjenbroers, 1997, p.480), suggests,

> Physical characteristics of the courtroom, barristers' choice of address and register, questioning, topic-control and turn-taking strategies – all serve to reduce the witness to the function of a puppet with barristers being the puppeteers.

Moving ahead, this next question sequence from the DC shows how a declarative is issued first followed by an imperative, and is finally completed with narration and 'possible' direct reported speech to invite HD into the constraining turn-taking process.

41   DC   >*This*< *is a transcript of your evidence from two thousand and >three<. Have a look*
42   DC   *at line nineteen please↑ (0.5). And you give Mister Ritchie fifty pounds to keep his*
43   DC   *mouth shut (.) And your: answer in two thousand and three was: what?*
44   HD   *Yes*
45   *(1.0)*

Looking at line 41 '>*This*< *is a transcript of your evidence from two thousand and >three<,* it shows that the DC is trying to point at something from the way he designs the declarative.

Here, the fact that the DC has pointed out that it is a transcript form an earlier time presupposes that the DC has some 'factual' information to declare, but does not make the context explicit. Instead, it is a gradual build-up that identifies the setting of what is to be talked about, and the DC is careful to describe the transcript line number, '*Have a look at line nineteen please'↑* (41-42) to ensure that his question is fully comprehensible and that no ambiguities can be made. Interestingly, it is noticeable that the DC's request of '*Have a look at line nineteen please↑',* (41-42), acts as an imperative, because of the direct instruction to '*Have a look',* (41) instead of a more indirect approach of 'could you have a look at line nineteen please'. Here, the *'please'* (42) request marker shows the DC to be being polite, yet manipulative in this institutional setting, something that is often stereotyped amongst opposing barristers, (Atkinson & Drew, 1979). So the pre-sequence '*Have a look at line nineteen please↑'* (41-42), provides the necessary initial request for HD to carry out the DC's demands, but resists making the content explicit until he has got HD to affiliate with him. Here, the DC goes on to narrate what happened in two thousand and three. '*And you give (sic) Mister Ritchie fifty pounds to keep his mouth shut (.) And your: answer in two thousand and three <u>wa</u>s: what?',*(42-43) to constrain HD into answering the question based on the recorded evidence of two thousand and three. This question design is constraining because it allows for one answer only, this being that HD is made to read his earlier answer, (44), and therefore disables any other possible answer that HD could wish to give.

54   DC   >On the first October ninety nine> the police (1.0) showed you transcripts:: of (.)

55   DC   secret recordings (0.5) of your conversations with Kevin Ritchi<u>e</u>:

56   (1.5)   ((HD clears throat))

Please note that the above turn sequence, (54-56), presents similar traits to the previous turn in its design, and that therefore some characteristics shall not be reiterated.

Here, the DC uses a pre-sequence to lay out the outline of the details for what is to be talked about. The time location, '*>On the first October ninety nine>*', (54) is said quickly, closely followed by a reference to '*the police (1.0) showed you transcripts:: of secret recordings(0.5) of your conversations with Kevin Ritchie:*', which immediately arouses negative ideologies of why the recordings were indeed secretive. To add to this negative theory, comes the conclusion that the secret recordings were in fact between HD himself, and KR, the very man he has just inadvertently had to admit to the DC of giving him fifty pounds *'Just to keep him quiet'* (48) about the car.

With the DC's completion '*of your conversations with Kevin Ritchie:,* (55), comes a (1.5) pause in which time HD clears his throat which could be sequentially placed to show his disalignment to the projected future turn, because as the naturally recorded conversation suggests, HD could be pre-empting that what is coming next is going to be contradicted, constrained, or show that he is in some way guilty, (Atkinson & Drew, 1979). Meanwhile, the (1.5) pause that follows the DC's question at line 56, is also sequentially placed to give the jury time to acknowledge the intended guilt at what the DC is going to expand upon. All the while though, it is important to remember and see from the data that the DC is using his power as questioner to design questions that are confrontational to show how his questioning has come about and why the subjects that he raises gives him more cause for cross-examination.

4.2 Analysing the DC's use of insertion sequences.

5	HD	°°No°° (.) >I< can't put a figure on it
6		(1.0)
7	DC	It's <u>too</u> many time<u>s</u> to put a figure on it isn't i↑t
8	HD	I don't know
9	DC	<u>YOU</u> >Don't know↑< if it's too many times?
10	HD	°°T[ch°°

'It's <u>too</u> many time<u>s</u> to put a figure on it isn't i↑t',(7) is placed here as an adjacency pair "to continue to orient towards the relevance of the second pair part", (Nofsinger, 1999, p65), due to the DC's previous question of *'Are you able to tell us↑ (0.5) <u>t</u>oday (1.0) how many times (1.0) you have LI::<u>:ed</u> about (1.0) your invol<u>ve</u>ment in the disappearance of (.) Arlene Fraser?',* (2-3) being responded to by HD as a quiet ' *°°No°° (.)'*, and concluded by a comment of '*>I< can't put a figure on it',* (5). Although HD does, in part answer the DC's question ('*I don't know'*),(8) which carries a strong presupposition that HD has lied, and not once, but on several occasions, the question does expect the pre-allocated answer of 'yes' in which the DC is wanting and trying to manipulate from the witness, HD, from the design of the question, (Raymond, 2003), yet probably anticipates that HD will not be forthcoming given the characteristics of witnesses under cross-examination Atkinson & Drew, (1979), Drew, (2002), and Keevallik, (2011), suggest that a witness is highly unlikely, if not at all unwilling to confess or give a transformative answer that projects an element of alignment or co-operation in the initial enquiry.

So, with the previous question (2-3), still in doubt and not yet complete, the DC asks, *'It's too many times to put a figure on it isn't i↑t',* (7), which orients as an insertion sequence to narrow down the previous question as well as making the question more accessible and answerable for the witness to be able to reply, (Heritage & Watson, 1979). The '*too*' in '*It's too many times to put a figure on it isn't i↑t',* (7), dramatises the extent to which the DC is trying to discredit and manipulate HD's reasonable person credibility test in going to great lengths to show the possible interpretation of HD's '*>I< can't put a figure on it',* (5), (Park, 2012). The DC uses HD's vague answer, '*>I< can't put a figure on it',* as a possible confession of guilt to further fuel his agenda of making HD appear to be an unreliable witness. Naturally, given the sentence structure in line 7, a positive declarative with a positive tag, it necessitates a positive 'yes' answer to verify the DC's agenda, (Raymond, 2003; Sidnell, 2010), especially given the addition of a tag question, '*isn't i↑t*' (7), which Lakoff, (1972, p.918), suggests "communicates expressions of certainty". However, the only answer the DC receives from '*It's too many times to put a figure on it isn't i↑t',* (7) is a vague reply of '*I don't know',* (line 8), which Keevallik, (2011, p.201), argues "is an escaping technique for escaping pressure to provide an answer". Interestingly, HD's response of '*I don't know',* does not close down the question, or deter the DC from getting to the bottom of the question in hand, and sees him continue to try to get a confession out of HD by using bargaining tools, (Maynard, 2003), to coerce HD into delivering an answer to which he is responsible for giving, (de Ruiter, 2012). Hansen, (2008, p. 1405), suggests that, "witnesses sometimes use linguistic expressions 'loosely' in the way they would in ordinary conversation. In the forensic setting, however, this may give rise to comments and/or corrections".

In addition, line 11*, '[it's more than (.) ten?'* from the DC warrants a forced choice answer of

'yes' or 'no' from HD in so far as it is a technique used for narrowing down the original question, (2-3), into more manageable sections to enable the witness, HD, to be able to readdress a previous subject that was unanswerable due to its syntactic structure or description. Here, we, the reader can see how the conversation is continually locally managed by both participants to regain alignment. Essentially, of course, it is the DC who affords this opportunity to readdress problems or sources of trouble, because it is he, who is responsible for asking questions only, (Keevallik, 2011). Meanwhile, HD has also contributed to this change of question type, because he has either knowingly resisted or had trouble with answering the original question because of the way in which it was phrased giving possible rise to his vague answers of '*>I< can't put a figure on it*' and '*I don't know*', which do not provide sufficient grounds for an answer.

This revised question of '*[it's more than (.) ten?*', (11), from the DC does in fact get a conditionally relevant and affiliative response of '*I would say, °yes*', making it a "transformative answer", (Keevallik, 2011, p.199), because HD is now co-operating in comparison to his previous vague responses. Whilst the '*would*' certainly signals a move towards an affiliative response in relation to his previous uncooperative answers, it is nevertheless noticeable that 'would' gives a weaker epistemic stance than perhaps the DC would like or expect, especially in the given circumstances where the DC is cross-examining HD and HD is supposed to be able to answer what he does or does not know, and in turn is reflective of his own actions to which he should know, (Keevallik, 2005, 2011; Sidnell, 2010). Moreover, the addition of the quiet '*yes*', after '*I would say*', (12), paves the way for extended examination based on the tentativeness and the less than convincing response. Line 13 sees the DC re-establish his previous examination questioning style which runs parallel to line 11;

'[it's more than (.) ten?' versus *'It's more than twenty?'* to once again investigate the extent of HD's lies to show its consequences and effect on the whole case. The (0.5) pause that follows the DC's question, (16), shows a slight gap in the conversational flow between the two interlocutors, indicating a possible problem with the nature of the question or its impending answerability. This is further highlighted with HD's response including an elongated *'I::,'* quickly followed with *'>don't know<'* (line 15), which acknowledges that something has triggered a trouble source to the question that HD may have thought he had answered with his co-operative answer of *'I would say, °yes'* in line 12 when questioned as to whether it was more than ten times that he had lied. Here at line 15, HD's answer suggests that he has given as helpful an answer as he is prepared to give, and the DC's further challenge of getting him to disclose a precise answer appears to confuse HD for what he had anticipated had come to a conclusive end. Therefore the escape mechanism, *('I> don't know<'),* (8), which HD used at the beginning of the question relating to this desire from the DC to give an accurate number of times in which he has lied is reinstated to curtail further questioning and relieve him of his duty to answer the question, (Keevallik, 2011). This incoherent response from HD however, invites another question from the DC in the form of a comparative question (Atkinson, 1984a; Drew, 1990; Pomerantz, 1988), of *'It's more than a hundred?',* (line 17) to try to solve the difficulty in agendas between the two of them. The intensifier, *'more'* said with more emphasis, and the exaggeration of a hundred in comparison to ten and twenty puts pressure on HD to give an answer, whilst showcasing his credibility to the jury who have the ultimate task of deciding who is and who is not being truthful. Here, then, the DC's question as to whether *'It's more than a hundred?',* goes to great lengths to secure an answer form HD, yet it is constraining and manipulative in the sense that the answer still only warrants a yes or no, and it does not offer HD any flexibility in giving an alternative response. Of course, HD's transformative answer of *'I would say, °yes,'* in line 12, in relation to whether he has lied

more than ten times definitely admits to his lying in the disappearance of Arlene Fraser and the presupposition made by the DC, (2-3).However, now, when asked if '*It's more than a hundred?*' the only response that the DC gets is '*I doubt it=*', (line 18), which although it is somewhat vague, does nevertheless express a stronger disaffiliative response than his previous answers of '*I don't know*', (lines 8 & 15) to further support what he *does* know about this question, (Keevallik, 2011). It is a question design that has been built out of the previous questions and answers and particularly highlights the extremities that HD has gone to, or is going to now in being cautious about the truth of the crime. Whilst the DC wants HD to reveal the truth, he is also controlling him in constraining him with unanswerable questions which are in his agenda as a defence lawyer, but which do not help to portray HD as a reliable and trustworthy witness, which is of course the DC's goal. Notice, here, that the DC could be seen to be re-aligning HD to the question in hand by introducing 'potential answers', to seemingly difficult questions, whilst strongly keeping those 'potential answers' (ten, twenty, a hundred) in line with his own agenda of identifying HD's lies as unreliable to this very day.

'*It's more than a hundred?*' is the last question from the DC on this matter and appears to be the climax of how many times is '*too many*' which aims to answer the ambiguity puzzle of '*Are you able to tell us↑ (0.5) today (1.0) how many times (1.0) you have LI:::ed about (1.0) your involvement in the disappearance of (.) Arlene Fraser?*', (2-3), at the outset of this questioning. The DC's quick reformulation of HD's answer, '*=You doubt it*', (19) and his address of 'you', marking HD as responsible for his answer showcases the DC's scepticism about whether HD has the right to know or not know this answer based on his previous two answers of '*I don't know*', (8 & 15). This question structure works to "expand the

disagreement by recycling it", (Nofsinger, 1999, p.151), and brings the jury closer to the case in bringing HD's somewhat loose answers into question, (Hobbs, 2003).

46	DC	And the next question was <u>why</u> shud he keep his mouth shut, ↑an your answer <u>was</u>:
47		(1.0)
48	HD	Just to keep him quiet
49		(3.0)

Line 46 in the transcript sees the DC ask HD a further question to elicit an answer to the previously unanswerable question of (26): *'They knew ↑that y'ud paid Kevin Ritchie fifty pounds to keep his mouth shut↑'*. So far, HD has made a rebuttal of *'I think it was to do with the wheels',* (27) and *'No::wer I never asked Kevin Ritchie to keep quiet about the car'* (37), all of which have not admitted the truth or version of the truth from HD's statement in 2003 which the DC now has access to. The DC acts on and seizes HD's lack of co-operation and possible guilt and redirects and re-invites HD to look at his original statement of *'evidence from two thousand and >three<', (41).* The DC's progressive build up to the leading question and action of *'And you give (sic) Mister Ritchie fifty pounds to keep his mouth shut (.) And your: answer in two thousand and three <u>was</u>: what?',*(42-43) sets the scene for HD to give the pre-allocated and type-conforming answer of 'yes' which the DC wants, (Maynard, 2003).

The very fact that this question has had to be asked, re-asked and eventually comes down to a comparison of HD's own evidence in 2003 and his present version now, demonstrates how the DC is able to portray HD as conversationally inept and a persistent liar to this very day of retrial questioning. It is noticeable, however, that HD's response of *'yes', (44),* has to be made explicit to the jury and not remain ambiguous as to which particular part of the question that HD is responding to; is it the business of him paying KR fifty pounds, or fifty pounds being a

pay-off for KR *'to keep his mouth shut',* (42-43). Here, this part of the question is dealt with after a (1.0) pause and re-challenged with an insertion sequence of *'And the next question was why shud he keep his mouth shut, ↑an your answer was:',* (46). Here, the DC's question design clearly addresses the need for clarity, however, more tellingly is the fact that this question has been marked as 'next question' which shows its sequential ordering of events, relating back to the past event of 2003, indicated from the use of the past tense mark of *'And the next question **was** why shud he keep his mouth shut'*. Here, HD is constrained by reading from the transcript of what is in front of him, and he has no choice from the DC's extended turn of *'↑an your answer was:',* but to deal with what is in the question. A hearable (1.0) pause is heard before HD responds in line 48 with a monotone answer of *'Just to keep him quiet';* So here, we, the reader can detect a few sequential patterns. Certainly, there is the matter of the DC having to re-question HD after his initial rebuttal of *'I think it was to do with the wheels',* (27), when faced with the DC's positive declarative with rising intonation of *'They knew ↑that y'ud paid Kevin Ritchie fifty pounds to keep his mouth shut↑'.* (26). HD's rebuttal (27) is re-questioned by the DC further through the conversational sequence with, *Yo↑u wanted the alloy wheels?,* (29), closely followed by *'The car wasn't for[y↑ou:: if you're telling us the trut↑h'.* to which HD overlaps the DC with *'[I know',* (33). This gives rise for the DC to acknowledge this response and he projects his next turn to play out the scene of events and bring the jury even closer to the case which they are assessing. HD's word choice of *'[I know',* (33), is obviously hearable and resonates with what the DC has access to, that being that *'The car wasn't for[y↑ou::'.* What HD's answer does not deal with is, *':: if you're telling us the trut↑h',* because his receipt response of *'[I know'* is uttered before the DC issues this subordinating clause, (see page 109 for the full extract). With this, the DC has the next turn because of the way the turn order is fixed, (Heritage & Clayman, 2010), and he continues to evaluate the situation with, *'The truth of the matter is that y↑ou asked Kevin Ritchie to keep*

quiet about you buying that car: an' you gave him fifty pounds for the sile↑nce', (34-35). HD deals with this question in giving a negative *'No::wer I never asked Kevin Ritchie to keep quiet about the car'* (37), which shows the jury that he is reacting to what the DC has just said because he uses the identical description as the DC used of '*to keep quiet about the car',*(34-35), which highlights the importance of language being heard and reacted to, which is what Heritage, (1984a) terms "context-shaping and context-renewing", (p.242). Upon hearing HD's response, the DC merely looks at him with a look of bewilderment, (38). Even if, HD had wanted to say something here, the turn still belongs to the DC after a long pause, (Nofsinger, 1999), because it is the DC who sets the agenda and pace in the cross-examination setting.

Upon this stark expression and (2.0) pause from the DC, (38), he redirects HD to earlier transcripts from his original statement. Using narration and reading, and treating HD as a puppet, in which he has control over his movements and voice, (Luchjenbroers, 1997), the DC presses HD into providing his previous and affiliative answer of *'yes',* (24). The fact that the DC's description and choice of words now, *'And you give (sic) Mister Ritchie fifty pounds to keep his mouth shut (.) And your: answer in two thousand and three was: what?',* (42-43), mirrors his opening question in 26, ('*They knew ↑that y'ud paid Kevin Ritchie fifty pounds to keep his mouth shut↑'),* which proved in some way difficult for HD to answer, and is now answerable, results in an even more negative perception of HD which nicely helps to promote the DC's agenda of making HD look guilty and unreliable. HD's *'yes'* (44), affiliates with how the DC is directing his agenda. However, what is more, is that HD has to deal with both aspects of the question, that of a) giving KR fifty pounds for the car, or b) paying him off with fifty pounds for his silence in the matter. Seemingly in accordance with the need for accuracy and clarification in the courtroom, the DC issues a further question of, *'And the next question*

was <u>why</u> shud he keep his mouth shut, ↑an your answer <u>was:</u>' to deliver yet another damaging

blow to HD. HD replies with a previous verbatim account which he is forced to read of '*Just

to keep him quiet',* (48), an answer which he wholeheartedly denied in 37; '*No::wer I never

asked Kevin Ritchie to keep quiet about the car'.* Consequently, whilst accepting that HD has

now uttered his version of events once again, (which has shown him to be unreliable in using

his own words), it also highlights why insertion sequences are frequently used in cross-

examination, and indeed how they are useful in being able to back-track and project future

turns to bring about resolution to a previously unanswerable question, (Atkinson & Drew,

1979; Heritage & Clayman, 2010).

4.3 Analysing the DC's use of adjacency pairs.

26	DC	*They knew ↑that <u>y'ud</u> paid Kevin Ritchie fifty pounds to keep his mouth shut↑*
27	HD	*I think it was to do with the wheels*
28		*(0.5)*
29	DC	*Yo↑u wanted the alloy wheels?*
30		*(0.5)*
31	HD	*Yeah*

Here, '*Yo↑u wanted the alloy wheels?'* (29), the DC's turn is governed by what he has just heard

from HD, that being that fifty pounds was given to KR in payment for the wheels (27), '*I

think it was to do with the wheels',* rather than affiliating with the DC's question to which he

proposed that the police '*knew ↑that <u>y'ud</u> paid Kevin Ritchie fifty pounds to keep his mouth

shut↑'* (26). Clearly, the DC's initial positive declarative, (26) '*They 'knew ↑that <u>y'ud</u> paid*

Kevin Ritchie fifty pounds to keep his mouth shut↑' (26). "exerts pressure on [HD] to affirm…the state of affairs conveyed by the question's central proposition", (Heritage & Clayman,) (In de Ruiter, 2012, p.181). However, here, HD issues a rebuttal of *'I think it was to do with the wheels',*(27) making it a non-type conforming yes-no interrogative, (Raymond, 2003), because it does not deal with what is in the question, that being that the design of the question means that a 'yes' response is preferred. Raymond, (2003, p.944), suggests that, "Yes-No interrogatives (YNI) establishes preferences for particular kinds of response based not only on the action it embodies and the manner in which it is designed, but also on the more basic fact that it is a YNI." By resisting the DC's yes-no declarative question *'They knew ↑that y'ud paid Kevin Ritchie fifty pounds to keep his mouth shut↑',* (26) with *'I think it was to do with the wheels',* (27), HD has been able to direct focus onto the wheels of the car, and instead distract the DC from the police's evidence of them *'knowing that Kevin Ritchie was paid fifty pounds to keep his mouth shut↑'.* As Bolden, (2009, p. 122), suggests:

> Questions constrain what can be done next, but respondents are active agents who can marshal a range of resources for resisting, problematizing, or evading agendas and presuppositions put forth by sequence-initiating actions.

Meanwhile, it is noticeable that the DC is quick to react to HD's answer of *'I think it was to do with the wheels',* (27). The DC adjusts his questioning here to match that of HD's answer, by providing the upshot of what HD has just said, (Heritage & Watson, 1979). What is readily noticeable to the reader though, is the addition of the modifier, 'alloy' before the noun 'wheels', *'Yo↑u wanted the alloy wheels?',* (29). This gives HD 'access' (Holt, 1999), to what

information or edidence that the DC is in possession of. Otherwise how else would he know that the wheels were alloys? It suggests a reason why he might have wanted them – they are not just any old wheels. This is strengthened by HD's answer in which he responds with a *'yeah'* (31), which does not contest the description of them being 'alloy' wheels. Instead, HD's answer complies with the constraining and positive polarity of the DC's question design, (29). As Heritage & Raymond, suggest,

> Different question designs can adjust the depth of the epistemic gradient between questioner and respondent, encoding different degrees of information gap and different levels of commitment to the candidate answer advanced by the questioner, (In de Ruiter, 2012, p.180).

So here, it seems that the DC is right in using this declarative question with inversion of the subject and verb, *'Yo↑u wanted the alloy wheels?',* (29), as opposed to 'Did you want the alloy wheels', because this question design does not directly assign underlying blame to HD, and could be looked on as hinting at just a normal deal amongst friends, and is therefore designed as a neutral and innocent question to ask in this cross-examination.

The DC continues his lines of questioning with:

34   DC   *The truth of the matter is that y↑ou asked Kevin Ritchie to keep quiet about yo*
35   DC   *buying that car: an' you gave him fifty pounds for the sile↑nce*

36   *(0.5)*

37   *HD*   *No::wer I never asked Kevin Ritchie to keep quiet about the car*

Upon HD's agreement from the DC's declarative that *'The car wasn't for[y↑ou::',* (32), the DC continues to summarize the contradictory answers. Firstly, there is the matter of HD claiming to have paid KR fifty pounds for the alloy wheels, (27, 31), and secondly, why did HD pay KR fifty pounds for alloy wheels when *'The car wasn't for[y↑ou::',* (32). It does not seem to make logical sense, and the answer is something that the DC finds doubt in by suggesting through epistemic certainty that *'The truth of the matter is that y↑ou asked Kevin Ritchie to keep quiet about you buying that car: an' you gave him fifty pounds for the sile↑nce'*, (34-35). This summary of what the DC has come to conclude through previous question and answer sequences is interpreted for the purpose of the jury to ensure that any ambiguities are made clear, whilst bringing closure and accuracy to the topic by challenging HD's responses, (Cotterill, 2000). However, the description of events is once again adjusted by the DC from HD *'paying Kevin Ritchie fifty pounds to keep his mouth shut↑'* (26), to *ask**ing** Kevin Ritchie to keep quiet about **him** buying that car: an' giv**ing** him fifty pounds for the sile↑nce',* (34-35). Here, the DC "is orienting to subtle differences in composition and articulation of repeat prefaces, and that these differences help disambiguate the nature of the problem being indexed and how it is to be dealt with", (Bolden, 2009, p.123). Of course, both descriptions amount to the fact that HD gave KR fifty pounds, but the question is why, and for what purpose? Was HD paying KR off, or was he blackmailing him into not disclosing anything about the car? This misunderstanding is something that the DC has to try and resolve, through future turns. This is strengthened by Tracey & Robles, (2009, p.133), who argue,

That questions do important work when it comes to negotiating an institutional encounter. As arbiters of reality, questions are a primary means by which institutions determine truth and amass facts. Questions are account-seekers: they do the jobs of eliciting, as well as assessing, accounts of reality.

So, the DC's negative declarative with rising intonation, which is hearable as a tag question, *'The truth of the matter is that y↑ou asked Kevin Ritchie to keep quiet about you buying that car: an' you gave him fifty pounds for the sile↑nce',* (34-35), prefers a conditionally relevant 'yes' from HD because of the syntactic and narrative structure. Here, however, the DC's challenging and accusing tone simultaneously helps to build a steady case for himself in asking questions and getting no such robust answers from HD. Moreover, a 'no' response from HD would aim to solve the misunderstanding about why KR was given fifty pounds. However, as Luchjenbroers, (1997, p.484), suggests: "a witness's portrayal of the facts is largely at the mercy of the questioning barrister's choice of utterance forms". The DC's question design makes HD look more guilty or unreliable because he cannot answer the question due to constraints in the question design which only warrants a yes-no answer, when in fact neither a yes or no answer is sufficient or reveals the answer which he will probably want to give in his own words. This is of course what cross-examination is all about, suggesting an alternative reason which the jury can believe. Danet, (1980, p.523), explains, "That a lawyer's ability to control witnesses…expects a high occurrence of minimal responses to barrister questions…having a positive effect on the questioning barrister's grasp of the facts". HD replies after only a (0.5) pause with *'No::wer I never asked Kevin Ritchie to keep quiet about the car'*, (37). Here, this suggests that HD's double barrelled *'No::wer I*

never' answer, (Schegloff, 2006, 2007), further orients to a definite negative response of this presupposition. Interestingly, HD chooses to use the DC's same description of *'to keep quiet about the car',*

> to assert [his] epistemic and social entitlement in regard to the matter being addressed and do so by 'confirming' rather than 'affirming' the proposition raised by the questioner, thereby claiming more epistemic rights over the information required than the original polar question conceded, (Heritage & Clayman, In de Ruiter, 2012, p.185).

With this response comes the DC's penultimate bait question in the form of:

41   DC   *>__This__< is a transcript of your evidence from two thousand and >three<. Have a look*

42   DC   *at line nineteen please↑ (0.5). And you give Mister Ritchie fifty pounds to keep his*

43   DC   *mouth shut (.) And your: answer in two thousand and three __was__: what?*

44   HD   *Yes*

Here, the DC appears to read from a previous statement from two thousand and three which showcases HD's affiliative 'yes' response in relation to *'giving Mr Ritchie fifty pounds to keep his mouth shut↑'* in (26). With this confirmation now attended to, the DC issues the 'next question' [of] *'__why__ shud he keep his mouth shut, ↑an your answer __was__:',* (46), '*Just to keep him quiet',* (48) after a one second pause which points towards a dispreferred stance from HD, (Sidnell, 2010). Naturally, here HD's reliability as a witness comes under scrutiny, because he

blatantly denied asking KR to keep quiet about the car, *(No::wer I never asked Kevin Ritchie to keep quiet about the car')*, at line 37 and nicely coincides with the very opening question at the onset of HD's cross-examination of: *'Mister Dick: (2.0) > can ye< think back with me: over (.) the past (0.5) fourteen years (1.0) Are you able to tell us↑ (0.5) today (1.0) how many times (1.0) you have LI:::ed about (1.0) your involvement in the disappearance of (.) Arlene Fraser?',* (1-3). Here, even though HD is only a witness, and is not on trial as the defendant, Cotterill, (2000, p.404), explains that,

> One of the main aims of the opening statements by the prosecution and the defence, for example, is to prime the jury with the questions to which answers will be provided in the course of the trial.

So, looking back, the question seems to have been troublesome for HD when the DC first described the action type as *'paying Kevin Ritchie fifty pounds to keep his mouth shut↑'* (26), to which he responded with an immediate rebuttal. This rebuttal was then reformulated by the DC to clarify the description that HD had given, and consequently, re-challenged with the addition of the subordinating clause, *'if you're telling us the trut↑h',* (32), to further bring the jury into the equation of credibility, (Cotterill, 2000; Heritage & Watson, 1979). However, later in (34) when the DC suggests that HD ***'asked** Kevin Ritchie to keep quiet about the car',* HD does respond with a definite objection of *'No::wer I never **asked** Kevin Ritchie to keep quiet about the car',* (37), only for it to be justified as the precise phrase he used when questioned about the same event in 2003. Here, one could suggest that the DC intentionally altered the description to coincide with an objection from HD, to continually manipulate and challenge the situation by altering the order of events, as well as strengthening his own biased

agenda to sew "seeds of doubt in the minds of the jury", (Cotterill, 2000, p.413). As Philbrick, 1949: vi suggests,

> Lawyers are students of language by profession… They exercise their power in court by manipulating the thoughts and opinions of others, whether by making speeches or questioning witnesses. In these acts the most successful lawyers reveal [to those who can appreciate their performance] a highly developed skill, (In O'Barr, 1982, p.15).

Here, we the reader, can see that the DC is now summarising for the purpose of the jury all the evidence that ties HD to his past and present lies.

48   HD   *Just to keep him quiet*
49   *(3.0)*
50   DC   *What you said this afternoon was a <u>lie</u>↑:*
51   *(0.5)*
52   HD   *T'was a mistake if it was (1.0) It was part of the thing then*
53   *(6.0)*

Following on from HD's forced 'confession' of *'Just to keep him quiet',* (48) is a (3.0) pause. This is quite a lengthy pause, and is obviously a planned one in the DC's agenda to allow the

jury time to think about all the conflicting information they have just heard, in addition to allowing the judge time to make notes, (Heritage & Clayman, 2010). Whilst acknowledging this long pause, it is possible to see from a different trial how a pause was used for similar effect. This excerpt below is from a rape trial that Drew, (1992), investigated. Here, D's task is to find doubt in W's answers that she actively set out to meet someone and get together with them at the club, (rather than showing resistance towards them), *'where uh (.) uh (0.3) girls and fellas meet',* (22)*, Isn't it?,*(23). The witness, (W), however, responds that *'People go there',* (25) which is type cast as a rather vague way of stating the sort of people who go to these clubs. The addition of the tag question from D, *'Isn't it?',*(23), invites W to agree with D's description. However, this is cast aside in favour of *'People go there',* (25). Noticeably, D chooses to highlight this piece of evidence, along with W's non-type conforming response, (Raymond, 2003), to the jury with a (4.9) pause at line 26 before continuing with the narrative of events leading up to the climax of the case.

Excerpt 14: [Dussette 45/2B:2 Cross exam] (D = Defence, W= Witness, P = Prosecution, J= Judge). (In Raymond, 2003, p957)

                    (9 lines omitted)
16   D   It's a uh <u>singles</u> club. Isn't that wh<u>a</u>t it is=
17   = ((sound of striking mallet))
18   P   (   )
19   (0.9)
20   J   No you may have it,
21   (1.1)
22   D   It's where uh (.) uh (0.3) g<u>i</u>rls and f<u>e</u>llas <u>meet</u>.

23	D	Isn't it?
24		(0.9)
25	W	People <u>go</u> there.
26		(4.9)
27	D	(An') when you went down there

These two examples, the rape trial and 'The Murder Trial' show how significant pauses are, and when and how they are used to bring core points to the attention of the judge and the jury to create further doubt about the defendant or the witness' reliability. "Silence is an important component in conversation and depends on the location of the silence in the turn-taking sequence", (Nofsinger, 1999, p.96).

Evidently, here in my data, 'The Murder Trial', it is the juxtaposition of HD's responses from *'not paying KR fifty pounds to keep his mouth shut'*, (26) *'never asking KR to keep quiet about the car'*, (37) to suddenly giving KR fifty pounds '*Just to keep him quiet',* (48). This (3.0) pause then, (49), is strategically sequenced to give the jury the opportunity to digest what has just occurred, which in the DC's agenda, is another occasion to showcase HD's lies by multiplying them even more because of the way he organised and orchestrated his questions. With this pause comes the DC's simple declarative, *'What you said this afternoon was a <u>lie</u>↑::',* (50). This is designed so as not to be completely manipulative because of the prior talk before hand; instead, it states the obvious careful conclusion to be drawn from the question-answer sequence, detailing how HD was constrained by the DC's questions to give his pre-allocated and recorded transcript answer of two thousand and three, which therefore makes this question accountable.

This declarative then, at line 50, is designed for a 'yes' response because of the positive polarity with rising intonation (de Ruiter, 2012). Notice that the DC's declarative, acting as a

question is designed as an observation rather than an interrogative of 'Was what you said this afternoon a lie?', because an interrogative would not seem relevant here given that 'evidence' of lying between lines 26-48 is now concrete, (de Ruiter, 2012). Nevertheless, HD does acknowledge that a second pair part is needed, but instead issues a denial, accompanied by a qualifier to portray the logic behind this response, ('*T'was a mistake if it was (1.0) It was part of the thing then',* (52)*.* Austin, (1970) argues that,

> justifying an action, a speaker proposes the correctness of his action in the circumstances, that it was the right thing to do. Excuses, on the other hand, admit the faultiness of the action, but deny full (or any) responsibility for it, (In Atkinson & Drew, 1979, p.140).

71	DC	*Kevin Ritchie then ses >fuck< a few other things they were digging at trying*
72	DC	*to pin me on this fucking setting a car on fire: If that went to court I would*
73	DC	*get done↑ (wi:ar) Ken (.) an yo↑u said::*
74		*(2.0)*
75	HD	*Ooo aye: the gullible bastards sittin b'hind the front bench*
76	DC	*(0.5) >So↑< are the gullible bastards that you mentioned sitting behind the front*
77	DC	*bench↑ (.) is ↑that the sheriff or the Jury?*
78		*(1.5)*
79	HD	*°It was just a term °°I used°°*
80	DC	*MEAning what?*
81	HD	*I don't know °it was just a comment I made.*

Here, (71-73) the DC uses direct reported speech to reveal the content of HD's secret recordings with KR. *'Kevin Ritchie then ses >fuck< a few other things they were digging at trying to pin me on this fucking setting a car on fire: If that went to court I would get done↑ (wi:ar) Ken (.) an you↑u said::',* (71-73) *'Ooo aye: the gullible bastards sittin b'hind the front bench',* (75). Of course as Lakoff, (1985, p. 173), argues, "In courtroom discourse, barristers typically ask questions to which they already know the answers, to persons who know that they know the answers".

Here, the DC's question design, *an you↑u said::* (73) evidently requests that HD, himself, repeats the derogatory description of lawyers that he originally gave to KR to highlight HD's opinion of courts and lawyers, (Park, 2012). The quick *'>So↑<'*, (76) spoken by the DC with rising intonation is evaluative and necessitates a seemingly asymmetrical short response because of the single expected response of a "forced choice answer", (Luchjenbroers, 1997, p. 482), *'of the sheriff or the Jury'*, (77), to find out who HD declared *'gullible bastards'*, (75), whilst simultaneously cancelling out any chance of HD adding more information to his story of events, (Heritage & Clayman, 2010). This forced choice question once again acts as a yes-no adjacency pair question, yet it swaps a yes-no response for the *'sheriff or the Jury'*, (77), which still has the same overall effect of the DC constraining HD's projected answer. At this point, HD has read out his actual words from the transcript of two thousand and three, and is therefore in a situation where he is most likely to know some contradictory comment may arise from the DC given the normative framework of courtroom talk, (Atkinson & Drew, 1979).

It is noticeable that the DC's question of *'>So↑< are the gullible bastards that you mentioned sitting behind the front bench↑ (.) is ↑that the sheriff or the Jury?',* (76-77), appears to be foregrounded and purposely designed to showcase HD's unflattering and disrespectful perception of lawyers and courts to the judge and jury. The DC's question receives a (1.5) pause before HD offers an answer of *"°It was just a term °°I used°°',* (79). This answer carries the same traits of a non-conforming type response, which would usually contain no 'yes' or 'no' answer, (Raymond, 2003), because it does not answer the question of if it was '*the sheriff or the Jury?;* but instead uses a vague and quiet explanation of *"°It was just a term °°I used°°',* which is a rebuttal from HD that he is not going to orient towards the damaging credibility goal that the DC is presenting and trying to confirm. This indistinct response, (79), occasions the DC to question *'MEAning what?'* (80), because even though he got HD to repeat his original derogatory comment, (*'Ooo aye: the gullible bastards sittin b'hind the front bench',* (75)) and therefore gives the jury access to his version of events, (Holt, 1999), no conditionally relevant selection between the '*sheriff or the Jury',* is made by HD. What is more interesting, though, is the open-ended question that the DC demands in line 80, *'MEAning what?',* because open-questions are usually avoided during cross-examination because it is the DC's goal to create doubt in the jury's mind by creating this display of focusing on the witness's lack of respect for the legal system and challenging witnesses to high-control answers such as yes or no, (Atkinson & Drew, 1979; Hale, 2004; Luchjenbroers, 1997), to disable their rights to give detailed responses in their own words. Instead, the DC jumps on the witness's defensive attack on the legal system (80) and exploits it for the jury to see. Here, HD proceeds to respond to the DC's question with an equally unsatisfactory answer of *'I don't know °it was just a comment I made',*(81). Keevallik, (2011, p. 205), suggests that this answer "implies a dispreferred response although it does not state it".

Concentrating once more, on my data, 'The Murder Trial', this sequentially patterned dispreferred response from HD was originally stated in line 79, *"°It was just a term °°I used°°',* and followed up at line 81 with *'I don't know °it was just a comment I made',* even though the DC had adjusted the question design to an open question after acknowledging that HD's answer of line 79 was not particularly robust, and consequently tried to manage the problem source of HD not being able to differentiate between *'the sheriff or the Jury',* (77) in issuing the insertion sequence of *'MEAning what?',* (80) to really try to get HD to orient towards the nature of the question in giving him full control of how he answers the troublesome question, (Hale, 2004; Nofsinger, 1999). It is also conspicuous that this open question, (80), appears to be exhaustive in its final open-ended question design to get HD to affiliate and comply where previous 'yes-no' and 'forced choice' question and answer designs have failed, because open questions are nearly always avoided by defence lawyers during cross-examination because of the witnesses ability to overturn the agenda in hand and leave the defence lawyer with minimal control of them, (Danet, 1980; Hale, 2004; Heffer, 2005). HD, in line 81 does not affiliate in any way with the DC's invitation to explain his response of 79, and instead re-iterates his previous explanation with a few differences in word choices, *"°It was just a term °°I used°°',* (79), and *"°it was just a comment I made',*(81), which further showcases his unwillingness to co-operate especially given the fact that he is offered an open question, which is not constraining by its question design because it affords HD full ownership of the information and turn in action. The only *'constraining'* part in this turn sequence is HD himself, who is *'constrained'* by his own previous and present answers, and in turn gives vague answers to avoid 'damaging his credibility further' with impending challenges from the DC. It appears that if he shows himself to be "conversationally inept" that he can cancel out future turns by disabling them before the DC has the opportunity to question him, (Lakoff, 1985, p.174-175).

99	DC	*If that's the truth no̲w, >TtHhat< is a lie↑::*
100	HD	*°°No°°*
101		*(0.5)*
102	DC	*It's no̲t a lie?*
103		*(0.5)*
104	DC	*They >can't< bo̲th be true*
105		*(3.0)*
106	HD	*>Ii̲:t's< a comment th[at I made*

In line 99 the DC issues a positive declarative of, '*>TtHhat< is a lie↑::',* after hearing HD's latest contradictory answers. This declarative acts as a question seeking confirmation from HD because of its implied and accusing tone. Of course, it is a logical question based on HD's previous conflicting answers, (see lines 90-98), and one which further portrays him as a liar, which was the original question at the start of this investigation, ('*Mister Dick̲: (2.0) > can ye< think back with me̲: over (.) the past (0.5) fourteen yea̲rs(1.0) Are you able to tell us↑ (0.5) t̲oday (1.0) how many times (1.0) you have LI:::ed about (1.0) your involv̲ement in the disappearance of (.) Arlene Fraser?').* This supports Cotterill's work, (2000), in that the original question is continually played out through the nature of the questioning. Here, the DC is painting a logical picture of HD and his positive declarative, '*>TtHhat< is a lie↑::',* expects a negative response even though it invites a type-conforming 'yes' because the DC will not envisage HD admitting this straight away, (Atkinson & Drew, 1979). HD's quiet response of '*°°No°°',* (100) acknowledges the question, but his tentativeness marked by '*°°No°°*' does nothing to conceal possible guilt because of the weak commitment in his voice. Here, the DC asks the grammatically structured question of '*It's no̲t a lie?',* (102), to reformulate the gist of what HD has just said, (Heritage & Watson, 1979), whilst checking its meaning to ensure this

is what HD is saying because the '°°No°°' is very quiet, and the question is an important one which has consequences for how the next turn will be managed. So, moving ahead, '*It's not a lie?*', (102), is not responded to by HD who is the only person to which the question is directed because of the courtroom rules for only two speakers to be involved in the question-answer normative framework, (Heritage & Clayman, 2010). However, the (0.5) gap at line 103, which in hindsight is not a long pause is again re-taken by the DC who uses the silence from HD which reiterates "the importance of the courts in determining guilt and innocence", (Heritage & Clayman, 2010, p.173), to further comment that '*They >can't< both be true*', (104). Consequently, it marks the DC's question as manipulative, because HD's previous answers have determined this rational summary. Following this, a (3.0) pause occurs, whereby the video shows the DC staring quizzically at HD signalling that a concrete answer is most definitely needed from HD to re-establish his credibility as a reliable witness, whilst of course nicely aiding his own agenda of ensuring that HD is positioned as an untrustworthy witness. Furthermore, this (3.0) pause could easily be translated as possible guilt because of a gap where a denial would surely have been readily spoken had that been the case. Meanwhile, after the (3.0) pause comes a response from HD in the form of '*>Ii:t's< a comment th[at I made*', (106), which is reminiscent of his response in line 81 when the DC asked him '*is ↑that the sheriff or the Jury?*', (77), which similarly was not a vigorous answer in relation to the question.

110   JUDGE   [Mister Dick, whether you're telling the
111   JUDGE truth or telling lies in this court (.)is not a matter for me, it's a matter for th::e
112   JUDGE Jury. What is a matter for me: is::: if a witness wilfully refuses to answer
113   JUDGE questions that he must understand: or claims not to be able to remember
114   JUDGE things that he must be able to remember:
115   (0.4)
116   HD   >°°ye:p°°<

117   JUDGE <u>Fen</u>ces with questions, tries to avoid answering question<u>s</u>: it can amount to

118   JUDGE (.) a contempt of court

119   HD   yes

120   JUDGE of which the individual witness: may be punished: (0.4) I have come to the

121   JUDGE view ↑you've been behaving in that way

122   ((HD nods slightly))

123   JUDGE Now when the questioning continues I want you to bear in mind the

124   JUDGE warning that I've given yo[u

125   HD   [°yes°

126   JUDGE D'ye understand?

127   HD   yes

This extract now deals with the issue of the judge entering the conversation, which means that something has gone wrong with the current speakers and that the normative framework of courtroom interaction is not being effective or adhered to correctly, (Heritage & Clayman, 2010).

The adverb '*No<u>w</u>',* (123), which is stressed on the final syllable marks the word as important and final following the Judge's previous observations that HD may be in danger of *'a contempt of court',* (118), because he *'<u>Fen</u>ces with questions',* and *'tries to avoid answering question<u>s</u>:',* (117), and acts as a powerful statement for HD to take notice of. This is followed with an imperative of *'I want you to bear in mind the   warning that I've given yo[u',* (123-124) to really make HD aware of the fact that his answers have been noted and are not acceptable, and that any further continuation of this style of answering will not be tolerated and could result in him being '*in contempt of court',* (118), which involves serious consequences. This imperative, (123-124), which functions as a question because of the tone and the message to be sought from the warning invites an affiliative and biased 'yes' response and

acknowledgement from HD, which is partially built on fear that he has been found out for not answering the questions properly even though he has given responses. The verb 'want', (123) is not about asking, but demands that HD *'bears in mind the warning',* rather than ignores it, and appears to carry more weight to its meaning given that it is now the Judge "who has become the examining party in the turn-taking system", (Atkinson & Drew, 1979, p. 61). This is further emphasised by HD's slight overlapping response of '*[°yes°',* (125), from where he appears to pre-empt just a little too early the end of the Judge's 'TCU', (Sidnell, 2010, p.41). Despite this collaborative affiliation from HD that he acknowledges the warning from the Judge, the Judge still asks the question, '*D'ye understand?',* (126) to mark his authority as the one in the position to ask questions, (Heritage & Clayman, 2010), as well as not simply taking HD's quiet, '*[°yes°',* (125), as a solid and reliable acknowledgement. After all, list-like sequences which the Judge has uttered from the beginning of his "examining party in the turn-taking system", (Atkinson & Drew, 1979, p.61), from lines 110-126, usually warrant continuers because of the nature of the sequence, (Heritage & Maynard, 2006). Evidently, '*D'ye understand?',* (126) is a constraining question that pre-allocates an affiliative 'yes' from HD because it acts as a final conclusion to all the background information such as, *'Fences with questions',* and *'tries to avoid answering questions:',* (117) to validate HD's comprehension of the situation. One could also suggest that it bears similarities to the swearing of the oath at the beginning of a trial to show that all parties are aligned to the same task in action, (Heritage & Clayman, 2010).

35	DC	>What's a< <u>rend::ering</u> plant?
36		(1.0)
37	HD	There steam >co↑okers<
38		(1.5)

39	DC	*They >had< another purpos↑e*
40		*(1.0)*
41	HD	*It was er the meat and bone industry >they came from<*
42		*(0.5)*
43	DC	*What did it do with meat and bone?*
44		*(1.0)*
45	HD	*If you steam cook long enough (.) everything falls to be-°b->bits<*
46		*(2.0) ((DC stares))*
47	HD	*It's for reducing (°°hmmm°°) (2.0) fallen: stock*
48		*(1.0)*
49	DC	*>So< for turning↑ (1.0) dead animals:: >into meal:<*
50		*(1.0)*
51	HD	*Yes*
52		*(5.0)*
53	DC	*Your farm has (.) >never< (.) been fully and properly searched?=*
54	HD	*=No:::w ((HD shakes head))*
55	DC	*°°No°°*
56		*(3.0)*

Here, Stokoe & Edwards, (2008), argue "that 'silly questions' inquires about obvious facts, are used to gain on-the-record statements…", (In Tracey & Robles, 2009, p.137). Here at line 53, the DC makes this 'fact', *'Your farm has (.) >never< (.) been fully and properly searched?=',* common knowledge to the jury by presenting it as a negative declarative with rising intonation to accommodate the second pair part response of 'no' from HD. Notice how the question is asked after a previous (5.0) pause before which the DC had questioned HD about '*a< rend::ering plant?',* (35), and its '*purpos↑e',* (39) to which HD replied that *'There steam >co↑okers<',* (37), which *'If you steam cook long enough (.) everything falls to be-°b-*

>*bits<*', (45). Here, the trepidation of HD's answer of '*be-°b->bits<*' is evident in the repair, stutter and speed in which he says it, highlighting his fear for what the DC is going to do with this information and how he could manipulate it. Sure enough, the DC does use this 'new' information to his advantage in carefully embedding the statement of line 53, '*Your farm has (.) >never< (.) been fully and properly searched?=*', to create further doubt in the jury's mind to show that significant evidence is missing to further point towards HD's positive guilt in being able to cover up evidence, (Atkinson & Drew, 1979; Cotterill, 2000). HD immediately responds with the preferred type-conforming '*=No:::w*', (54), response in addition to him shaking his head. It could be suggested that HD pre-empts what the DC could say next and therefore gets his '*=No:::w*' in quick before any other such presuppositions are made. Interestingly, the DC repeats, albeit quietly HD's response, using his own tone of ' *°°No°°*', (55) which serves to validate HD's response as well as pointing at his own biased conclusions of HD's actions and behaviour throughout the cross-examination appearance.

4.4 Analysing the DC's use of repeats and/or formulations.

57	DC	*Reme↑mber saying to Kevin Ritchie about the police↑, >I just sat< and fucking*
58	DC	*looked at them an fucking - I never even smiled at them I just fucking waited*
59	DC	*until they gave up:*
60		*(4.0) ((HD looks worriedly at the DC))*

Lines 57-59 sees the DC question HD through direct reported speech, '*>I just sat< and fucking looked at them an fucking - I never even smiled at them I just fucking waited until they gave up:*', as to whether he remembers his enraged rant about the police in a conversation he

had with KR. Here, the opening yes-no question of *'Reme↑mber saying to Kevin Ritchie about the police↑',* marks the issue as important given its tag-like placement at the forefront of the question, in addition as something to focus on, as well as asking HD to remember something before it is even made explicit. Here, the *'Reme↑mber'* tag at the beginning is designed for a positive affiliation before the situation is made explicit because of its coercive design, (Raymond, 2003, Lakoff, 1972). This very turn has of course already been built upon with the DC's prior pre-sequence of *'>On the first October ninety nine< the police (1.0) showed you transcripts:: of (.) secret recordings (0.5) of your conversations with Kevin Ritchie:',* (54-55). Here, the DC hints at a date that an event took place indicating that it involved some clandestine conversations with KR, but does not attempt at this point to specify what or which specific content is to be discussed. It is noticeable here from the DC's positive declarative question design though, that he prefers an affiliative 'yes' from HD. As Sidnell, (2010, p.87), suggests, "speakers can design or compose their YNIs to provide for a second type of preference". This preferred 'yes' however, does not happen, perhaps because HD wants to avoid answering. Instead, HD clears his throat though at line 56, which coincides with the anticipatory accusation that HD may gauge is coming his way, given the nature of the setting, (Atkinson & Drew, 1979). Firstly, the negative connotations of 'secret recordings' with the possible accomplice, KR, which the DC is trying to portray, could signal a dispreferred stance from HD without him verbally having to say anything.

As previously mentioned, HD's clearing of the throat is heard in the (1.5) pause after the DC's initial pre-sequence where he lays out the foundation for what is to be discussed. Upon no formal verbal response from HD, the DC continues to develop the reason for his original pre-sequence further in issuing an insertion sequence of, *'Reme↑mber saying to Kevin Ritchie about the police↑, >I just sat< and fucking looked at them an fucking - I never even smiled at them I just fucking waited until they gave up:',* (57-59). Here, to us, the reader, the insertion

sequence fulfils several linguistic techniques; the DC being the narrator in giving the jury access to HD's original perspective through direct reported speech, (repeats), and evidence in which he discusses the police. The reported speech which the DC uses to direct the question may or may not be accurate, because as Sternberg, (1982, p.108), suggests, "tearing a piece of discourse from its original habitat and recontectualizing it within a new network of relations cannot but interfere with its effect". What is readily noticeable, though, is why the DC chooses to select this specific piece of evidence to repeat to the jury. Whilst not wanting to contradict future sections of this report, this same transcript is analysed further in the section entitled, 'reported speech'.

140	HD	*I-I (.) once..hhhh referred to her a s a >greedy <u>bitc</u>h< wi money<u>:</u> It didn't really*
141	HD	*come out a my <u>head</u>: <u>it</u> was just what was goin on: at the time*
142		*(0.5)*
143	DC	*It <u>didn't</u> come out of your <u>he</u>↑ad, >but< it came out of your <u>mouth</u>?=*
144	HD	*>That's correct<u>:</u>< yes*

Lines 140-144 nicely follow on from the DC's challenging statement of lines 136-138, *'You held her<u>:</u> Arlene Fraser on a high regard↑ an' you liked her, y-you ag::reed with that when the Advocate Deputy said it: ↑but we've also heard what you said about her in taped conversa↑tions'.* Here, there is an important design to point out in the initial statement, *'You held her<u>:</u> Arlene Fraser on a high regard↑ an' you liked her, y-you ag::reed with that when the Advocate Deputy said it:',* which demonstrates,

> How the defence lawyer summarizes and offers simply for agreement
>
> those aspects of the story that he takes as unproblematic and then

produces information-seeking questions for the parts that he disputes…, switching from collaborative narration to challenging questioning, (Coulthard & Johnson, 2007, p. 109).

The switch is definitely evident here, with the trigger, *'but',* (137), marking the contradictory and other-goal oriented agenda to coincide with the DC's role in creating doubt in the jury's mind. So, whilst it may appear that the DC is being reasonable in re-issuing an affiliative piece of evidence that does not compromise HD, he then goes one step further in presupposing HD's negative comments about her from *'taped conversa↑tions',* (138). Added to this, is the notion that a response is required because of the question-like nature of the design that seeks an answer from the increased prosody in *'conversa↑tions',* (138), (Atkinson & Drew, 1979; de Ruiter, 2012; Heritage, 2002; Koshik, 2005). This is met by a one second pause, which is then advanced by HD's dubious and at first tentative admission of *'I-I (.) once..hhhh referred to her a s a >greedy <u>bitch</u>< wi money<u>:',</u>* (140) which highlights his reluctance and hesitation in saying this out loud, knowing the condescending comments it will naturally receive from the DC, given his role to discredit and find fault with his testimony. Here, HD explains the reason behind this remark with, *'It didn't really come out a my <u>head: it</u> was just what was goin on: at the time',* (140-141), and in doing so, shows how his answer was influenced at that moment in time, (Austin, 1970).

However, the constraining question of *'↑but we've also heard what you said about her in taped conversa↑tions',* (137-138) sees the DC get the precise negative formulation answer that he is anticipating, including a qualifier of *'It didn't really come out a my <u>head: it</u> was just what was goin on: at the time',* (140-141), which in fact gives the DC and the jury greater 'access', (Holt, 1999), to the relevant details of the trial. The DC repeats the upshot

(formulation), of what HD has just said, '*It <u>didn't</u> come out of your he↑ad, >but< it came out of your <u>m</u>outh?=',* (143) to show the irony of what he has just said whilst repeating it for the jury. It is noticeable that he only repeats *'It <u>didn't</u> come out of your he↑ad',* and not *'<u>it</u> was just what was goin on: at the time'.* Instead, he appropriately deletes HD's second part to suggest that he is not interested in the context in which it was said, but rather the fact that he said it at all, which showcases his possible motive *'and invol<u>ve</u>ment in the disappearance of (.) Arlene Fraser?',* (3).This again, sees the DC linking the original question to this important point in the examination, (Cotterill, 2000). The DC goes on to repeat that *'It <u>didn't</u> come out of your he↑ad, >but< it came out of your <u>m</u>outh?=',* (143) to re-ascertain that he was the person responsible for this description and not anybody else, whilst using HD's description to his advantage in highlighting just how stupid and weak it sounds. Of course, if it was in his head and not said out loud, it is unlikely that it would be questionable, because no-one would know about it, and it would remain an internal thought. However, the question that '*it came out of your <u>m</u>outh?=',* (143) is justified with an immediate affiliation of *'=>That's correct<u>:</u>< yes',* (144) from HD, and demonstrates that it was a verbal communication from '*taped conversa↑tions',* (138), and is therefore a valid piece of evidence to portray another side of HD's character to the jury to enable them to make the rightful verdict when questioning HD's reliability and character, and actions leading up to '*the disappearance of (.) Arlene Fraser?',* (3). As Harris, (2005, p.217), explains, "Trials are hybrid genres with the inter-mingling of narrative and non-narrative modes of discourse". And it is these layers of background information, leading to direct reported speech, indirect reported speech, direct speech, and evidence that aids cross-examination to become the challenging and hostile setting that it is. The switch in narrative and formulation from *'y-you ag::reed with that when the Advocate Deputy said it: ↑',* (136-137) to a now constraining imperative for him to reveal a negative and less appealing description of Arlene Fraser will no doubt have been registered and

acknowledged by HD who now knows that he has no alternative but to reveal what he did say about her. Also, it is to be noted that HD has to answer the question given his recent warning of *'contempt of court'*, (118) by the Judge who said that he should now *'bear in mind the warning that I've given yo[u', (123-124),* which acts as an instruction and summary for him to comply or else suffer the consequences. This once again highlights how conversation in cross-examination is sequentially ordered, (Sidnell, 2010), from the foundation that what occurs previously in a set conversation is very much oriented to in the present and continuing conversation, (Heritage, 1984a).

4.5 Analysing the DC's use of tag questions.

Lakoff, (1985, pp.174-175), argues,

> that a reluctant witness who is subjected to tag after tag is basically in a no-win situation: if he responds, he may damage the case for his defence; if he does not respond, he may not only risk being found in *contempt of court,* but may also risk being labelled conversationally inept; a finding which could be more damaging due to social biases.

With Lakoff's findings in mind, I shall show how my data, 'The Murder Trial', demonstrates how HD deals with the DC's questions that contain tags.

1   DC   *Mister Dick: (2.0) > can ye< think back with me: over (.) the past (0.5) forteen years*

2   DC   *(1.0) Are you able to tell us↑ (0.5) today (1.0) how many times (1.0) you have LI:::ed*

3	DC	about (1.0) your invol<u>ve</u>ment in the disappearance of (.) Arlene Fraser?
4		(0.5)
5	HD	°°No°° (.) >I< can't put a figure on it
6		(1.0)
7	DC	It's <u>too</u> many time<u>s</u> to put a figure on it isn't i↑t
8	HD	I don't know
9	DC	<u>YOU</u> >Don't know↑< if it's too many times?
10	HD	°°T[ch°°

As previously discussed in section 4.3, here at lines 2-3, the DC re-aligns HD to the question in hand, that of, *'Are you able to tell us↑ (0.5) today (1.0) how many times (1.0) you have LI:::ed about (1.0) your invol<u>ve</u>ment in the disappearance of (.) Arlene Fraser?'*, by re-phrasing the question to see if this syntactic structure and word choice makes the question any more answerable. Of course, we already know that the DC has a strong presupposition that HD has lied, which is strengthened by HD's admission when asked if he is able to tell the jury how many times he has lied, to which he answers *'°°No°° (.) >I< can't put a figure on it'*, (5). What is not concrete evidence though, is exactly just how many times HD has lied which could have a significant bearing on his reliability throughout this trial. In line 7, the DC challenges HD's response of *'°°No°° (.) >I< can't put a figure on it'*, (5), and uses HD's response to make a positive declarative plea of *'It's <u>too</u> many time<u>s</u> to put a figure on it,* (7), swiftly followed by a positive tag of *'isn't i↑t'* which includes upwards intonation to warrant the question as definitely worthy of an answer, (Hobbs, 2003; de Ruiter, 2012). Moreover, the *'isn't i↑t'*, tag which is placed at the end of the question puts pressure on HD to follow the DC's positive polarity and agree with the question. The whole question design *'It's <u>too</u> many time<u>s</u> to put a figure on',* (7) is what Raymond, (2003, p.947), calls a "type-conforming" question, because the polarity of the question typically prefers a 'yes' answer;

That is, speakers can manipulate the *design* or *composition* of their YNIs to provide for a second type preference within the sequence-one that operates in some independence of a FPP's action-type preference, (Raymond, 2003, p.943).

So, here, this tag '*isn't i↑t'*, (7), further acts as a marker of certainty to which the DC firmly believes in the agenda that he is investigating, (Lakoff, 1985). Interestingly, the sequential placement of this first tag, *(isn't i↑t)* runs parallel to the DC's primary leading question, '*Mister Dick: (2.0) > can ye< think back with me: over (.) the past (0.5) fourteen years (1.0) Are you able to tell us↑ (0.5) today (1.0) how many times (1.0) you have LI:::ed about (1.0) your involvement in the disappearance of (.) Arlene Fraser?'*, (1-3) with this question design (*'It's too many times to put a figure on', (7))* being an initial manipulative question to get HD to admit his lies. The tag question, '*isn't i↑t'* is a question that prefers a 'yes' answer in the first instance from the certainty of the tag, but it is also a question which the DC will suspect will be problematic and constraining for HD, because it would portray him as an even bigger liar than what he may already be if he were to continue to orient towards the bias and presupposition of the question, (Lakoff, 1985; Luchjenbroers, 1997) So, here the question is working in favour of the DC's agenda because he is able to reverse the meaning of HD's answer, '*°°No°° (.) >I< can't put a figure on it'*, (5), to '*It's too many times to put a figure on it isn't i↑t'*, (7).

Bearing in mind that witnesses rarely admit to telling lies at the outset of cross-examination, this positive declarative (7), which is also an insertion sequence to get HD back on agenda of how many times he has lied, sets HD up to show him as an unreliable witness, especially with the addition of a tag question to make the question more worthy of a answer and one that

preferably affiliates with the DC. Meanwhile, in reality it is questionable as to what other sort of question the DC can ask HD based on his answer of *'°°No°° (.) >I< can't put a figure on it'*, (5) He cannot just leave it there, as that would defeat the object of the purpose of cross-examination. To not be able to *'put a figure on it'*, (5), suggests that it is more than what he can remember, and therefore makes the DC's question accountable and relevant.

9   DC   <u>YOU</u> >Don't know↑< if it's too many times?

10   HD   °°T[ch°°

Here, (9-10), moving on from the prior sequence, *'It's <u>too</u> many time<u>s</u> to put a figure on it isn't i↑t'*, (7), with HD's response of *'I don't know'* (8), the DC repeats HD's answer in reformulating what HD has just said, placing particular emphasis on the second person pronoun, *'<u>YOU</u>'* to highlight to the jury what HD is, and should be responsible for knowing. By reiterating HD's response, using a reverse polarity tag question at the beginning of the question design, *'<u>YOU</u> >Don't know↑'*, the DC is able to challenge the verbatim answer by extending its meaning and drawing further inferences and potential problems from the response, (Nofsinger, 1999), and in turn re-examine it for further examination. Here then, the action-type preference would be a type-conforming 'no' from HD, because he has already said, *'°°No°° (.) >I< can't put a figure on it'*, (5), and secondly, because of the negative polarity in the DC's question. However, as de Ruiter, (2012, p.1432) suggests, "Recipients of negative interrogatives also respond to them in ways that deny their status as questions",

Moving ahead through the transcript, this next sequence sees the DC summarising,

107   DC   <u>*[>It's< a lie:: Mister Dick >It's< a lie isn't it?*</u>

This declarative*, '>It's< a lie:: Mister Dick >It's< a lie isn't it?'*, (107), with added vocative address of '*Mister Dick'* to coerce HD into agreeing with him, is said after HD has given conflicting answers as to whether or not *'Nat Fraser confessed to you that he'd been responsible for his wife's disappearance and ↑death'*, (92-93). Of course, HD agreed with the DC's reported speech in lines 86-88 *('as regards Nat ↑although he's never told me what he's done: my opinion is that he was involved in his wife's disappearance:')*, when the DC read a verbatim account of HD's statement of evidence from 2003, with *'That's my opinion (.) ye:s'*, (89) and had no hesitation in recalling the event. However, this is compromised by the DC's dispreferred *'>Well'*, (91) which is associated with actions that are not straightforward, (Lerner, 2009), as he changes the description to suggest that HD's opinion was not part of the equation, because HD had solid confirmation that Nat Fraser was involved in his wife's murder because he agreed with the DC's indirect reported speech that Nat Fraser *'confessed to you that he'd been responsible for his wife's disappearance and ↑death'*, (92-93). Incidentally, we, the reader can see that this question design has been "plainly designed to imply an inconsistency in the witness's story", (Travers & Manzo, 1997, p. 52). It also shows "How hostility toward the questioner is accomplished through the pairing of negative interrogatives, (isn't it, doesn't) with particular content", (Tracey & Robles, 2009, p. 143).

However, going back to the data, and the use of tags, it is easy to see how HD was constrained in delivering the response of line 89, *('That's my opinion (.) ye:s')*, as the DC occasioned that he would 'remember' through the focal question, *'>D'ye remember in this particular statement then:<'*, (86), which acts as a tag question with positive polarity which

creates a higher degree of certainty to which HD can agree with, (Hobbs, 2003). Added to this, is the DC's real reason for the question in which he states that *'>Well it was more than your opinion<: 1.0) wasn't it?'* (91), which is strategically placed to juxtapose the previously constraining and positive insertion sequence of line 86, which was collaborative with HD's agenda in that he is here to give evidence to convict Nat Fraser. The DC's question, (91), also warrants agreement because of the tag, *'wasn't it?'*, which is further supported by the DC reporting that '*Nat Fraser confessed to you that he'd been responsible for his wife's disappearance and ↑death',* (92-93).

Moving ahead, the conversation develops into a series of biased declaratives in which the DC states once more that, *'If that's the truth now, >TtHhat< is a lie↑::',* (99). This part of the transcript is further discussed in the section of adjacency pairs. The final response from HD is heard in line 106, *'>Ii:t's< a comment th[at I made',* to which the DC intercepts HD's turn in line 106 with *'[>It's< a lie:: Mister Dick >It's< a lie isn't it',* (107). Here, it is important to note that the DC can interrupt and regain control of the conversation because he is the one in charge of the cross-examination under the institutionalised rules of courtroom interaction, while the witness has to wait until they are spoken to to give answers, (Heritage & Clayman, 2010). The DC's first *'[>It's<',* is said quickly and is followed up with the statement '*a lie::'* which is emphasised and pronounced in addition to being elongated to highlight his negative assessment, as well as promoting his version to the jury, who are the listening participants who have the overall task of determining guilt or innocence at the end of the trial, (Heritage & Clayman, 2010). However, the DC does not stop there and goes one step further in re-iterating his conclusions in repeating his *'It's< a lie'* statement, which this time, has a tag question of *'isn't it',* (107), which is designed to strengthen the conclusion, and give it a slightly pleading

tone and provoke a confession out of HD that *'it is a lie'*, (Hobbs, 2003; Lakoff, 1985). At this stage in the conversation after HD has been continually questioned about the relevance of how many times he has lied, the reader can therefore concur with Lakoff's findings (1985), that repeated and continuous tags do constrain the witness according to the barrister's main agenda of showcasing them to be an unreliable witness. HD responds with *'Okay if you want to take it as a lie, fine'*, (108), which does not help him to position himself as a credible witness, because his response neither, once more, agrees or disagrees with the polarity of the question. The DC's reaction to HD's answer, (108), which acts as a question to which he is constrained in delivering, uses another open-question, similar to *'MEAning what?'*, (80), in the form of *'What other p o ss ib le way is t[here of taking it?'*, (109). Here, the 'what' and 'possible' are stressed with particular elongation on *'p o ss ib le'*, signalling dismay at what HD is saying. Here, the Judge acknowledges the difficulty between the two interlocutors and intercepts the DC's turn mid way through his question of *'What other p o ss ib le way is t[here of taking it?'*, (109) with *[Mister Dick, whether you're telling the truth or telling lies in this court (.)is not a matter for me, it's a matter for th::e Jury. What is a matter for me: is::: if a witness wilfully refuses to answer questions that he must understand: or claims not to be able to remember things that he must be able to remember:'*, (110-114). Here, the Judge's interception acknowledges that HD is being uncooperative in giving his answers, and recognises that any future answer that HD may give to the DC in relation to *'What other p o ss ib le way is t[here of taking it?'*, (109), would be invalid and just as unhelpful as all the others based on his past and present behaviours.

25	DC	*It would be: (1.0) easier to >dispose of a body on your farm< than (0.5) to*
26	DC	*dispose of a car: (0.5) wouldn'↑t it?*
27		*(1.0) ((HD looks upwards and smirks))*

28   HD   .hah£yeah£

(Data from transcript 2).

This next question (25-26), following on from HD answering the DC's question about *'The car: and disposal of the car (1.0) .hthat >that< was another problem for↑you obviously (0.5) Mister Di↑ck=',* (13-14, In transcript 2, see appendix) is positioned directly after HD admits that he did *'try to put the police off the scent↑',* (17) *'in n:he initial stage',* (19), but denied being *'no more involved than I've said',* (23). The (0.5) pause after HD's response in line 19 could act as possible thinking time for the jury to take HD's response into consideration. However, it seems that because the DC's final positive declarative question with a tag *'because it may be that >you were more:: involved< than you've ever been prepared to say (0.5) >That's the truth isn't it?<=',* (21-22) is not justified in the way the design should have anticipated, (a positive type-conforming 'yes'), that the DC does not want to dwell on yet another one of HD's denials of *'No:> ↑ah< I'm no more involved than I've said',* (23). So, here the DC continues to "sew the seeds of doubt in the jury's mind", (Cotterill, 2000, p.413), with this next positive declarative of *'It would be: (1.0) easier to >dispose of a body on your farm< than (0.5) to dispose of a car:' (0.5),* (25-26), which is accompanied by a terminating tag, *'wouldn'↑t it?'.* This question naturally prefers a 'yes' response which is embedded as the first preference in the DC's question design, *'easier to >dispose of a body on your farm< than (0.5) to dispose of a car:'.* This question does, in fact receive a type-conforming 'yes' from HD, albeit one with an in breath and a smile voice, highlighting his possible awkwardness, yet delight in answering this juxtaposed set question. Interestingly, the DC's following question, *'You had equipment that could have been use:d (1.0) on: a human bod↑y',* (29) upon receipt of HD's answer at line 28, *'hah£yeah£',* that it *'would be easier to >dispose of a body on your farm< than (0.5) to dispose of a car'* sees HD revert back to his previous habits of resisting answers with *'hha hah.hI£don't know£',* (31). So, here it could be argued

that the tag question, *'wouldn'↑t it?'*, (26) makes HD answer, whereas the DC's declarative of line 29, *'You had equipment that could have been use:d (1.0) on: a human bod↑y'*, which carries a tone of accusation and blame, is resisted.

Please note that only a selection of tag questions have been identified here due to the constraining word limit of this paper.

4.6 Analysing the DC's use of reported speech and/or narratives.

This section shall direct the reader to instances where reported speech is used by the DC to convey HD's previous answers from the 2003 trial to the jury, and similarly, where narratives are designed in the form of story-telling to convey background information in the lead up to some significant information to help the DC to discredit HD's reliability as a witness.

57	DC	*Reme↑mber saying to Kevin Ritchie about the police↑, >I just sat< and <u>f</u>ucking*
58	DC	*looked at them an <u>f</u>ucking - I never even smiled at them I just fucking waited*
59	DC	*until they gave u<u>p</u>:*
60		*(4.0) ((HD looks worriedly at DC))*
61	DC	*You'll just have to weave your way through. Keep everything down to the*
62	DC	*barest minimum cos it's only either what y'admit to or what they catch you*
63	DC	*with that they can do ye (0.3)>Reme↑mber< giving that advice to*
64	DC	*Kevin Ritchie?*
65	HD	*°°No:: °° ((Shakes head))*

According to Li, (1986, p. 41) "a direct quote communicates a more authentic piece of information than an indirect quote in the sense that a direct quote implies greater fidelity to the source of information than an indirect quote". Firstly, it is interesting here, how the DC primarily issues HD with a pre-sequence of *'On the first October ninety nine> the police (1.0) showed you transcripts:: of secret recordings (0.5) of your conversations with Kevin Ritchie:',* (54-55) to set HD up for what is to come, and give him time to occasion what particular pieces of information he may use for his next question in the cross-examination, (Nofsinger, 1999). This pre-sequence is accompanied by a (1.5) pause, which creates suspense. O'Barr, (1982, p. 98), suggests that, "In silence lies greater ambiguity and hence more opportunity to manage its meaning". In accordance with O'Barr (1982), it is in this pause that HD is heard to clear his throat which could be a reaction to the way in which the declarative (54-55) invites a negative assessment of why HD needed to have secret conversations with KR, and indeed what these conversations revealed.

'Reme↑mber saying to Kevin Ritchie about the police↑',(57), is set up as an interrogative which usually warrants a second pair part response. However, in this case the question is asked before the content of what HD is supposed to 'remember saying to the police' is made available, therefore making the question somewhat rhetorical and in need of more detail and information before an answer can be volunteered. This pre-sequence is quickly followed with reported speech and story-telling, with scholars such as Chafe, (1982), Holt, (1996, 1999), Labov, (1972), Li, (1986) and Tannen, (1989) arguing that they bring more depth and involvement to the task in action. This issue of reported speech and narratives building more depth to a conversation will, indeed, be a core focus here in relation to my data, 'The Murder

Trial', to see if they are sequentially placed during the DC's cross-examination of HD, and what if any effect they have on the DC's overall agenda.

'*>I just sat<,* (57) is said quickly and foregrounds the beginning of the DC's narrative. It is followed with '*and fucking looked at them an fucking*, which automatically conjures up negative assessments of HD's moral judgements and perceives him to be angry and agitated by the manner in which he is speaking, such as the persistent swearing and added stress on the first syllable of '*fucking'*. Added to this, is HD's admission that he '*never even smiled at them I just fucking waited until they gave up:'* (58-59), which portrays HD as highly aggrieved and uncooperative. One could suggest here, that this reported speech has been carefully selected to incorporate "delicate work", (Holt 1999, p.527), and evidence that is needed to bring HD's guilt into fruition, without showcasing just any random comment and using the DC's position to discredit HD for his own agenda alone. It is relevant and gives the jury "a kind of access to the previous discourse, enabling them 'to see for themselves' what occurred and to form their own interpretation or assessment of the reported utterances", (Holt, 1999, p.513).

What is questionable though, is the accuracy with which the DC utters HD's original conversation, (Bakhtin, 1986; Clark & Gerrig, 1990; Tannen, 1989). Scholars such as Sternberg, (1982) argue that repeating and interpreting an original utterance is always questionable because of its precise original intention at that spoken time in interaction. For instance, do we really know if HD always pronounces the first syllable of '*fucking'* with such venom, and was there a gap which seems to act as a self-repair between '*looked at them an fucking'* and '*I never even smiled at them',* (58), or does the DC add extra linguistic variation and prosody to a series of utterances and reported speech to provide a greater negative

portrayal of HD which is transparent and biased from the direct reported speech (DRS), construction? This narrative, (58), is met by a (4.0) silence, during which HD gives the DC a decidedly worried look but does not offer any verbal communication, (60). Here, it cannot be disputed that the DC's reported speech (57-59), and 'constructed dialogue', (Tannen, 1989), has a revealing and immediate presence to it and is portrayed "as if it were occurring at the time of telling, and that it encourages the recipient [and the jury] to take part in the sense-making process", (Holt, 1999, p.517). So, the silence could be evidence that HD's answers to which he is compelled to give, (Atkinson & Drew, 1979), are not helping him, and he is thinking of how to respond to the DC's questions. However, after such a lengthy pause, the turn automatically belongs to the DC in the turn-taking system, who once again has the upper hand in using HD's silence as "an inference of guilt", (McBarnett, 1978, p.4).

Lines 61-63 of the transcript are appropriately placed here, with the DC reporting HD's original advice to KR, which is reflective of what HD himself is doing now in his conduct of giving very minimal answers and dodging questions, *'You'll just have to weave your way through. Keep everything down to the barest minimum cos it's only either what y'admit to or what they catch you with that they can do ye'*, (61-63). This advice, reported by the DC is transparent in telling HD that he is aware of what he is doing now by delivering these incoherent answers, (Toulmin & Baier, 1963), whilst showcasing his actions to the jury who will be able to acknowledge this for themselves.

'Reme↑mber< giving that advice to Kevin Ritchie?', (63) is inserted at the end of the DRS to check HD's stance on the matter and give him an opportunity to respond. Here, the '*°°No:: °°',* (65), which HD gives in relation to *'Reme↑mber< giving that advice to Kevin Ritchie?',*

(63-64) is subdued and quiet which could suggest that he may remember, but is embarrassed and reluctant to answer 'yes' based on his previous 'no' answers which will expose him as guilty, something that the DC has cornered him into through the persistent use of tag questions, (Lakoff, 1985), (See pages 110-111for the full extract) Equally, the '°°*No:: °°', (65), could be genuine in that HD does not accept the manner and tone in which the DC reported the action, (Cotterrill, 2003). Meanwhile, the '°°*No:: °°', (65) further fuels the DC's narrative with '>*Keep denying everything< an then what they can then prove in court at that time: that's a diff'rent matter:'*, (66-67), which again replays to HD and the jury the exact scenario which is taking place now in court, and proves that DRS is a useful technique for bringing events into the immediate spotlight. This imperative and declarative is followed by a direct question of *'D'ye remember that?',* 67), which is constrained in design to a minimal yes-no answer to once again check HD's understanding and to see if the turn design evokes any sort of reaction. This is met by an answer of *'°E::rm:: ° >I'm not sure<',* (69), with the *'°E::rm:: °'* being a continuer and filler which allows thinking time which in this case is extended by the '::' symbols, and justified by '>*I'm not sure<*' which could be an escaping mechanism used to "escape the pressure to answer", (Keevallik, 2011, p.201), and fulfil a turn which requires an answer. Alternatively, the speed in which it is said could also suggest panic and fear. A (2.0) pause is heard, and then the DC continues to test HD's memory to see if he is sure, (based on his answer of 69), by building on events to create a reaction and get HD 'to crack' under the pressure, which suggests bullying, which is characteristic of cross-examination, (Atkinson & Drew, 1979).

The DC continues to report HD's and KR's speech from the secret recordings,

71   DC   Kevin Ritchie then ses >fuck< a few other things they were digging at trying

72   DC   to pin me on this fucking setting a car on fire: If that went to court I would

73   DC   get done↑ (wi:ar) Ken (.) an yo↑u said::

74   (2.0)

The DC now designs this question to get HD, himself, to read and confirm his original conversation in 'forcing' him to admit his original answer which is now, ironically no longer secret. Here, HD reads the constrained answer with no real emotion apart from '*Ooo aye:',* *(the gullible bastards sittin b'hind the front bench)*, (75), and therefore does not reveal the immediate manner in which it was previously spoken, showing further resistance on HD's part to this constraining action. Park, (2012, p.614), suggests that questioners use this technique "when they possess some knowledge but nonetheless attribute the primary right and access to the knowledge to recipients". Here, the DC forcefully points out to the judge and the jury that the story that he has been presenting to them about HD has been accurate all along; that HD is a liar and has a total lack of respect for the legal setting, and therefore is an unreliable witness in this High Court case now, and hereafter because of his basic ability to reveal the truth when questioned based on his previous denials, (50-69) which the DC knows to be the truth. In affording the reported answer turn of *'Ooo aye:, the gullible bastards sittin* *b'hind the front bench'*, (75), (which the DC has full knowledge and access to) to HD, it acts as the climatic answer to this manipulative set of questioning which HD must give, given his status as a witness and his instruction to answer all questions truthfully in accordance with the court rules. Ironically, of course, the only person it reveals to be 'gullible' is HD himself, instead of his previous assessment of *the gullible bastards sittin b'hind the front bench'*, (75), which is made explicit to the judge and jury. The linguistic patterns of questioning that the DC uses, including weaving in and out of reported speech and narratives, constructs a balance between past and present actions, and thus provides a closer insight into HD's position as a

witness in this sensitive case. It also aligns HD's future answers to be questionable, helping the DC to fulfil his agenda of discrediting HD's reliability as a witness.

CHAPTER 5.

INTERPRETING RESULTS.

The premise of this project was that turn-taking constraints would occur throughout the cross-examination period in the chosen courtroom case, 'The Murder Trial'. I designed this project to focus on and highlight such constraints between the defence counsel, (DC), and the witness, HD. Here, my methodology involved investigating six main linguistic question design structures to see how they were sequentially placed, and/or designed to constrain second pair part answers from HD.

Starting with pre-sequences, the opening question *'Mister Dick: (2.0) > can ye< think back with me: over (.) the past (0.5) fourteen years',* (1), sets the scene for HD's credibility as a witness, in aligning him to cooperate and be prepared to locate and discuss some piece of information that is deemed newsworthy to the jury. Here, this pre-sequence is effective as an introduction to ease HD into this stage of cross-examination, whilst also preparing to "generate supporting evidence for next conversational actions", (Nofsinger, 1999, p.149), to avoid any disaffiliation this early on in the question-answer sequence. Meanwhile, lines 22-23, *'The police in this interview: actually even knew how much money y'ud paid for the car didn't they?',* gives HD warning of what the DC, himself, knows about the information he is presenting to HD and the jury. This supports Heritage & Clayman, (2010), in that epistemic gradients are relevant when designing pre-sequences. Here, it serves to work in parallel in that

whilst the DC is naming *'the police'* as knowing how much HD had paid for the car, it also demonstrates that he too knows the price that was paid for the car. It works to pre-warn HD that previous evidence has been recorded and that he is therefore aligning and constraining HD to agreeing with the positive polarity design of the question, whilst concealing the relevance of the price of the car and its significance to a later date. Noticeably, the question was not designed as an interrogative such as 'Did the police know how much you'd paid for the car?' because this could leave the DC with less control over HD, because he could answer no and alter the order of the DC's agenda even though yes-no responses are a common constraining feature of second pair part responses in cross-examination, (Luchjenbroers, 1997). In addition, the pre-sequences that follow show the DC directing HD to specific transcripts, (41-43 & 54-56). However, there is a difference in that the DC requests that HD looks at *'line nineteen please',* (41-42), before embarking on a narrative version of events that leads to the DC constraining HD to give the previously recorded answer of 2003. Similarly, lines 54-56 has the same effect of using transcripts from 2003 as evidence, yet builds the story that he is presenting to both HD and the jury in a negative manner because of the word choice and content, *'secret recordings (0.5) of your conversations with Kevin Ritchie:',* (55). By designing the question this way, the DC secures the constraining answer which he requires the jury to hear because he presents the question based on actual evidence, meaning that HD will risk his credibility even further if he contests it, (Lakoff, 1985).

Turning now to the second section, insertion sequences feature predominantly in this trial when an initial question has not been answered correctly or adequately. The earliest examples are seen after the initial opening question where HD responds, *'°°No°° (.) >I< can't put a figure on it',* (5) when questioned about *'how many times (1.0) **he has** LI:::ed about (1.0) **his** involvement in the disappearance of (.) Arlene Fraser?',* (2-3). Quite rightly, HD agrees with the uncertainty in which the question was designed, (*'**Are you able** to tell us↑ (0.5) today (1.0)*

how many times (1.0) you have LI:::ed about (1.0) your involvement in the disappearance of (.) Arlene Fraser?'), (2-3). However, evidently, he has inadvertently admitted that his lies are numerous even though he *'can't put a figure on it',* (5), because he has agreed with the presupposition that he has lied. This concurs with O'Barr, (1982) who argues that linguistic patterns and styles of questioning are heard by witnesses and defendants, yet they themselves are not effective in giving their answers to offer a less damaging profile without being in contempt of court, (and are therefore constrained by the defence lawyer's question structure), therefore making insertion sequences a common technique for re-addressing the original question. Interestingly, insertion sequences are continually added to this section of the conversation until its completion at line 21. It starts with the DC's logical conclusion that *'It's too many times to put a figure on it isn't i↑t',* (7), and transcends to *'[it's more than (.) ten?',* (11), *'It's more than twenty?',* (13), before finally stopping at *'It's more than a hundred?',* (17), in favour of getting an accountable answer to the question in action. Moreover, HD's response, *'I doubt it=',* (18), could equally be responding to the DC's radical suggestion of *'It's more than a hundred?'* to put an immediate stop to the damaging and embroidered lengths he is portraying him as to the jury. It could juxtapose the seriousness associated with the number of times it is that he has lied which was the original question at the outset of this cross-examination. Here, the DC's question of *'It's more than a hundred?'* is quite exaggerated in comparison to ten or twenty times, and could in turn mirror the DC's attempts at trying to replicate the lengths that he senses HD is going to now to conceal his involvement in the case, whilst simultaneously acknowledging that this is the third and final attempt that he could be heard to reformulate this question before it becomes exhausted, (Heritage & Clayman, 2010).

Interestingly, line 46 of the transcript is marked as *'**And the next question was** <u>why</u> shud he keep his mouth shut, ↑an your answer <u>was</u>:',* to demonstrate that it is building on from a previous turn. Here, it is reinstated to get HD to 'continue to orient towards the answer' which he gave in 2003, where he did say that he paid KR fifty pounds to keep his mouth shut. However, in this trial this same description was contested by HD at lines 27 and 37, but it is now reintroduced by the DC who is now in possession of all of the contradictory answers and evidence. Here, he uses it to re-invite HD to 'see' and expose his errors in constraining him to read from a transcript of his own answers of 2003 to reveal that what he has recently denied was actually a different story in 2003. This questioning technique then, helps to portray him as a persistent liar from the pre-supposition made at lines 1-3, and shows how insertion sequences are useful techniques to incorporate when backtracking between different descriptions and times. In particular, the DC uses them to build opposing versions of stories, to then dismantle them, and re-introduce conflicting and constraining information.

Tellingly, on the other hand, adjacency pairs are what govern this entire question-answer sequence of 'The Murder Trial'. Here, the DC uses several YNIs to maintain control over the witness, HD, However, the placement and question design has different effects on how HD answers the question. For example, this declarative at line 50, *'What you said this afternoon was a <u>lie</u>↑::',* is said as an observation from the DC, as opposed to a syntactic question structure that HD expects. However, this opinion from the DC signals an accusation to HD who quickly responds with *'T'was a mistake if it was (1.0) It was part of the thing then',* (52), to overshadow the DC's negative picture of him. Alternatively, it could be that HD is telling the truth, that it is a mistake, because this is a re-trial where HD is now giving evidence against the accused, Nat Fraser, rather than affiliating with him.

Lines 76-81 sees the DC issue HD with a forced-choice question-answer sequence, '*>So↑< are the gullible bastards that you mentioned sitting behind the front bench↑ (.) is ↑that the sheriff or the Jury?',* (76-77). Here, the answer is constrained to the sheriff or the jury, yet HD responds with *'°It was just a term °°I used°°'* which does not answer the question, and instead uses a vague expression which is not satisfactory given the binding precision that lawyers and courts implement, (Atkinson & Drew, 1979). However, when contested further by the DC, *'MEAning what?',* (80), he is once again met by a rebuttal of *'I don't know °it was just a comment I made',* (81), which shows that HD can also play language games with the DC to reveal the same conversationally inept witness that the DC has made, and is making him out to be throughout the course of this witness appearance, (Travers & Manzo, 1997). Conversely, the DC does use YNIs to portray obvious statements such as, *'Your farm has (.) >never< (.) been fully and properly searched?=',* (53 in transcript 2, see appendix), in order to build a progressive picture to the jury that HD's answers are based on hearsay because his property has never to this day been fully searched. It is constraining in that the question is designed to allow a contrasting version of events for the jury to follow and think about, (Cotterill, 2000).

The fourth intellectual objective in this project sought to determine the relevance of the DC using repeats and formulations during his cross-examination of HD. Interestingly, this objective has clear similarities to the sixth and final objective of investigating the use of reported speech and narratives, and so could be combined. The first example of a repeat is when the DC chooses to use direct reported speech to portray HD's original conversation about the police with KR, (57-59). Here, the DC presents a negative image of HD to the jury because he has control of what evidence to use to strengthen his case. What is questionable, though, is whether HD said this comment in precisely the same manner as the DC delivers it to the jury. Thinking about the DC's motives for using the particular unflattering comment, it

is highly unlikely that he will have been careful not to exaggerate the context. Further evidence of this is revealed in the four second pause that follows it during which time HD looks anxiously at the DC.

The following example, (141-144), is significant in that the DC gives the jury access to concrete information such as *'You held her: Arlene Fraser on a high regard↑ an' you liked her, y-you ag::reed with that when the Advocate Deputy said it:'*, (136-137), yet equally sees him change tactics to constrain HD to repeating another less than complimentary comment that he made about her, *'I-I (.) once..hhhh referred to her a s a >greedy bitch< wi money: '*, (140) Here, HD shows his discomfort in repeating it, with the addition of '*It didn't really come out a my head: it was just what was goin on: at the time'*, (141), therefore using his constraining turn as an opportunity to defend himself. However, the DC's work has been done and the answer has been heard by the jury, corroborating with Harris, (2005), that cross-examination is a minefield of language games with interchanging questioning techniques.

As pointed out in the literature review of tag questions, scholars such as Hobbs, (2003), and Lakoff, (1985), have consistently maintained the importance of tag questions aligning recipients towards greater expressions of conviction. The earliest use of a tag question is in line 7, when the DC having already established that HD has lied on plentiful occasions overturns HD's answer of *'>I< can't put a figure on it'*, (5) with *'It's too many times to put a figure on it isn't i↑t'*. Here, the addition of the tag *'isn't i↑t'*, manipulates HD into agreeing and answering the question. However, this is met with *'I don't know'*, (8), prompting the DC to continue to steer HD in his set agenda *'YOU >Don't know↑< if it's too many times?'*, (9). Here, the turns are constraining in that the DC repeats HD's answers with the addition of negative tags, highlighting his cynicism at HD's responses, and in doing so, recycles HD's response to challenge its intended meaning, (Nofsinger, 1999).

Despite this supporting evidence that tag questions are purposely intended to challenge HD, the DC's question of '*It would be: (1.0) easier to >dispose of a body on your farm< than (0.5) to dispose of a car: (0.5) wouldn'↑t it?'*, (25-26 in transcript 2, see appendix), portrays the question as unproblematic because of the positive polarity associated with the question. It serves the same purpose as using YNI's to get minimal answers to rational, straightforward questions, although, this question is not an everyday question where the disposal of bodies or cars on a farm is a normal occurrence. Instead, it is an awkward question that is made manageable because of the tag question, whilst using this question as a springboard and distraction for the next accusing question of '*You had equipment that could have been use:d (1.0) on: a human bod↑y'*, (29). In fact, the steady progression of evidence with the addition of a tag question actually makes the question, and in particular, its placement towards the end of this stage of cross-examination (as seen in the video and transcript 2, line 29) more serious and realistic.

Finally, reported speech and narratives were analysed to see what turn-taking constraints they projected for HD. As already discussed in the repeats and formulations section of this analysis, reporting HD's speech back to the jury or HD is a useful tactic in bringing the evidence into real time existence, (Holt, 1999; Tannen, 1989). Lines 57-65 see the DC repeating HD's words from 2003 when unknowingly to HD he had his conversations with KR recorded by the police. Here, the DC reads HD's verbatim account with accusing conviction, helping him to portray an unreasonable and deceitful witness who does not attempt to comply with the police. Here, we can imagine that the jury are swept along with the intonation and manner in which the DC delivers HD's account of events, and in doing so adopt the DC's register as a true interpretation of HD's conversation. The DC continues to add 'HD's voice'

to the trial in using it to build a story of unfolding events to give it more depth, (Holt, 1999). All the while the DC either uses reported speech as an introduction or to trigger events in HD's mind, such as *'You'll just have to weave your way through. Keep everything down to the barest minimum cos it's only either what y'admit to or what they catch you with that they can do ye (0.3)>Reme↑mber< giving that advice to Kevin Ritchie?',* (61-64), or he builds up a narrative of events before asking HD to join in the interaction by getting him to read out his original statements that are provided in a transcript format. An example of this is when '*Kevin Ritchie then ses >fuck< a few other things they were digging at trying to pin me on this fucking setting a car on fire: If that went to court I would get done↑ (wi:ar) Ken (.) an yo↑u said::',* (71-73). Here, the DC is playing the witness as well as the witness playing himself. At times, the DC is HD, whilst he often withdraws his characterisation of HD at poignant parts such as at line 75 (*'Ooo aye: the gullible bastards sittin b'hind the front bench',)* and instead instructs HD himself to deliver the answer. In doing so, the DC is trying to attribute guilt and responsibility to HD, whilst also making him repeat things that he knows he will be unwilling to do based on previous prompts where HD has failed to cooperate according to the DC's set agenda. Here, HD's response is highly constrained by the DC's question design which offers no other flexibility in terms of its answerability, and in doing so shows how language patterns can constrict the next turn in the turn-taking process.

CHAPTER 6.

CONCLUSION.

This project has focused on turn-taking constraints between the defence lawyer, (DC) and the witness, (HD), in a courtroom setting entitled 'The Murder Trial'. It has explored question design from the DC, paying particular attention to pre-sequences, insertion sequences, adjacency pairs, repeats, formulations, tag questions, reported speech and narratives. Focusing on these particular question designs has helped to reveal how the DC's question design influences and constrains HD's response.

Drawing upon my original premise posed at the beginning of this study, it is now possible to concur with Atkinson & Drew (1979), that careful and strategic question designs elicit constraining answers from the defendant or witness. The project was successful as it was able to identify that pre-sequences are a primary measure for introducing information which is to be expanded upon. They either occur independent of a prior sequence or they can be embedded within talk to introduce a narrative which leads to the recipient often being constrained to repeating one of their original contributions of talk. Insertion sequences, on the other hand are used to widen the discussion, and are used abundantly to realign recipients to reformulate their answers to give them greater explanation, whilst also constraining them to answer a previous unsatisfactory answer. The addition of tag questions are seen when the question carries greater consequences due to the seriousness of the question, and aim to coerce the recipient to agree with the polarity of the set question. In addition, repetitions and reported speech seem to occur alongside each other, with repeats often being introduced to point towards some significant contradictory information and reported speech giving the jury and the witness access to events as if they were unfolding before their eyes. Direct reported

speech is used at the end of a climax to provide a challenging and accusing stance, whilst indirect reported speech provides the background details of the agenda.

In summary, these findings enhance our understanding of language patterns and social actions attributed to them in a cross-examination courtroom setting, and one of the key strengths of this study is the abundance of empirical data that is available. It is unfortunate that this study did not include other witnesses from the recording, such as Arlene Fraser's solicitor, a policeman and a detective, because it would have been interesting to assess the effects of the DC's questioning on them, because perhaps they would have a better working knowledge of institutionalised talk.

If this study is to be moved forward, a better comparison of witnesses would need to be addressed to see if the same results are found with other witnesses. Indeed, future research needs to explore if the 'advocate [really does have] only one weapon: words', (Du Cann, 1986, p.112).

CHAPTER 7.

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CHAPTER 8.

APPENDICES.

A: Jefferson's transcription key, (1985);

SYMBOL	TRANSLATION
[ ]	**Overlapping Speech**
↑	**Higher Pitch**
↓	**Lower Pitch**
> <	**Faster Speech**
< >	Slower speech
:	**Elongation of previous sound**
(.)	**Micro Pause**
(1.0)	**Timed Pause (seconds)**
CAPS	**Louder Speech**
○ ○	**Quieter Speech**
?	**Rising Intonation**
£	Smile voice

(Adapted from Ten Have 1999:213)

(01:03:35)

1	DC	Mister Dick: (2.0) > can ye< think back with <u>me</u>: over (.) the past (0.5) fourteen <u>years</u>
2	DC	(1.0) Are you able to tell us↑ (0.5) <u>t</u>oday (1.0) how many times (1.0) you have LI:::<u>ed</u>
3	DC	about (1.0) your invol<u>ve</u>ment in the disappearance of (.) Arlene Fraser?
4		(0.5)
5	HD	°°No°° (.) >I< can't put a figure on it
6		(1.0)
7	DC	It's <u>too</u> many time<u>s</u> to put a figure on it isn't i↑t
8	HD	I don't know
9	DC	<u>YOU</u> >Don't know↑< if it's too many times?
10	HD	°°T[ch°°
11	DC	[it's more than (.) ten?
12	HD	I would say, °yes
13	DC	It's more than twenty?
14		(0.5)
15	HD	I:: >don't know<
16		(0.5)
17	DC	It's <u>mo</u>re than a hundred?
18	HD	I doubt it=
19	DC	=You doubt it
20		(1.0) ((HD shrugs))
21	DC	°°Okay°°

DOCUMENTARY

RESUMED (01:04:33)

22	DC	The police in this interview: actually even knew how much money y'ud paid for the
23	DC	car didn't they?
24	HD	°Mmhm yes
25		(0.5)
26	DC	They knew ↑that y'ud paid Kevin Ritchie fifty pounds to keep his mouth shut↑
27	HD	I think it was to do with the wheels
28		(0.5)
29	DC	Yo↑u wanted the alloy wheels?
30		(0.5)
31	HD	Yeah
32	DC	The car wasn't for[y↑ou:: if you're telling us the trut↑h
33	HD	[I know
34	DC	The truth of the matter is that y↑ou asked Kevin Ritchie to keep quiet about you
35	DC	buying that car: an' you gave him fifty pounds for the sile↑nce
36		(0.5)
37	HD	No::wer I never asked Kevin Ritchie to keep quiet about the car
38		(2.0) ((DC looks perplexed))
39	DC	Could you have a l↑ook please (1.5) at (.) crown production number two two two
40		(1.0)
41	DC	>This< is a transcript of your evidence from two thousand and >three<. Have a look
42	DC	at line nineteen please↑ (0.5). And you give Mister Ritchie fifty pounds to keep his
43	DC	mouth shut (.) And your: answer in two thousand and three was: what?
44	HD	Yes
45		(1.0)
46	DC	And the next question was why shud he keep his mouth shut, ↑an your answer was:
47		(1.0)
48	HD	Just to keep him quiet
49		(3.0)
50	DC	What you said this afternoon was a lie↑::
51		(0.5)
52	HD	T'was a mistake if it was (1.0) It was part of the thing then

53		(6.0)

DOCUMENTARY

RESUMED AT (01:06:01)

54	DC	>On the first October ninety nine> the police (1.0) showed you transcripts:: of (.)
55	DC	secret recordings (0.5) of your conversations with Kevin Ritchi<u>e</u>:
56		(1.5) ((HD clears throat))
57	DC	Reme↑mber saying to Kevin Ritchie about the police↑, >I just sat< and <u>f</u>ucking
58	DC	looked at them an <u>f</u>ucking - I never even smiled at them I just fucking waited
59	DC	until they gave u<u>p</u>:
60		(4.0) ((HD looks worriedly at DC))
61	DC	You'll just have to weave your way through. Keep everything down to the
62	DC	barest minimum cos it's only either what y'admit to or what they catch you
63	DC	with that they can do ye (0.3)>Reme↑mber< giving that advice to
64	DC	Kevin Ritchie?
65	HD	°°No:: °° ((Shakes head))
66	DC	><u>K</u>eep denying everything< <u>an</u> then what they can then prove in court at that
67	DC	time<u>:</u> that's a diff'rent matte<u>r</u>: (.) D'ye remember that?
68		(0.5)
69	HD	°E::rm:: ° >I'm not sure<
70		(2.0)
71	DC	Kevin Ritchie then ses ><u>fuc</u>k< a few other things they were digging at trying
72	DC	to pin me on this fucking setting a car on fire: If that went to court I would
73	DC	get done↑ (wi:ar) Ken (.) an <u>yo</u>↑u said::
74		(2.0)
75	HD	<u>Ooo</u> ay<u>e</u>: the gullible bastards sittin b'hind the front bench
76	DC	(0.5) >So↑< are the gullible bastards that you mentioned sitting behind the front
77	DC	bench↑ (.) <u>is</u> ↑that the sheriff or the Jury?

78		(1.5)
79	HD	°It was just a <u>term</u> °°I used°°
80	DC	<u>MEA</u>ning <u>what</u>?
81	HD	I don't know °it was just a comment I made.

DOCUMENTARY

RESUMED (01:07:31)

82	DC	If you're: (.) telling the truth (.) <u>he</u>'d (.) <u>looked</u> at getting a hit ma<u>n</u>: he burned
83	DC	her bod<u>y</u>: an↑ that even the teeth had been ground dow<u>n</u>:
84		(0.5)
85	HD	ye:ap
86	DC	>D'ye remember in this particular statement the<u>n</u>:< twelfth October (0.5) as
87	DC	regards Nat ↑although he's never told me what he's do<u>ne</u>: <u>my</u> opinion is that
88	DC	he was involved in his wife's disappearanc<u>e</u>:
89	HD	That's my opinion (.) <u>ye</u>:s
90		(0.5)
91	DC	><u>Well</u> it was more than your opinion<: (1.0) wasn't it? If you're telling us the
92	DC	truth, because Nat Fraser confessed to you that he'd been responsible for
93	DC	his wife's disappearance and ↑death (0.5) He's never told me what he's
94	DC	do[ne
95	HD	[yep=
96	DC	If <u>that</u>'s what you said to the police in a voluntary statement on twelfth
97	DC	October nineteen ninety nine ><u>IS</u>N'T it?<
98	HD	That's correct yeah
99	DC	If that's the truth <u>now</u>, ><u>TtH</u>hat< is a lie↑::
100	HD	°°No°°
101		(0.5)
102	DC	It's <u>not</u> a lie?

103		(0.5)
104	DC	They >can't< <u>both</u> be true
105		(3.0)
106	HD	><u>Ii</u>:t's< a comment th[at I made
107	DC	[>It's< a <u>lie</u>:: Mister Dick >It's< a lie <u>is</u>n't it?
108	HD	Okay if you want to take it as a lie, fine
109	DC	<u>Wh</u>at other p o ss ib le way is t[here of taking it?
110	JUDGE	[Mister Dick, whether you're telling the
111	JUDGE	truth or telling lies in this court (.)is not a matter for me, <u>it</u>'s a matter for th::e
112	JUDGE	Jury. <u>W</u>hat is a matter for me: <u>is</u>::: if a witness wilfully refuses to answer
113	JUDGE	questions that he must understand<u>:</u> or claims not to be able to remember
114	JUDGE	things that he must be able to remember<u>:</u>
115		(0.4)
116	HD	>°°ye:p°°<
117	JUDGE	<u>Fenc</u>es with questions, tries to avoid answering question<u>s</u>: it can amount to
118	JUDGE	(.) a contempt of court
119	HD	yes
120	JUDGE	of which the individual witness: may be punished: (0.4) I have come to the
121	JUDGE	view ↑you've been behaving in that way
122		((HD nods slightly))
123	JUDGE	Now when the questioning continues I want you to bear in mind the
124	JUDGE	warning that I've given yo[u
125	HD	[°yes°
126	JUDGE	D'ye understand?
127	HD	yes

DOCUMENTARY

RESUMED AT (01:10:10)

128	DC	><u>Arlene Frase</u>↑r< (0.5) You: recall over the years that there was mention of you
129	DC	having an affair with her?

130		(0.5)
131	HD	Yep
132		(0.5)
133	DC	Of you being sexually attracted to her?
134		(0.5)
135	HD	Ye::ap
136	DC	You held her: Arlene Fraser on a high regard↑ an' you liked her, y-you ag::reed
137	DC	with that when the Advocate Deputy said it: ↑but we've also heard what you
138	DC	said about her in taped conversa↑tions
139		(1.0)
140	HD	I-I (.) once..hhhh referred to her a s a >greedy bitch< wi money: It didn't really
141	HD	come out a my head: it was just what was goin on: at the time
142		(0.5)
143	DC	It didn't come out of your he↑ad, >but< it came out of your mouth?=
144	HD	>That's correct:< yes
145		(2.0)

Transcript 2.

Holt, N. Windfall Films. (Director & Producer). (2013). *The Murder Trial* [Streaming video file]. Scotland: Channel 4. Retrieved from https://unitube.hud.ac.uk/

Extended talk from DC interviewing HD.

(01:11:54)

1	DC	<u>All</u> of the detail about Arlene Fraser's <u>disappearance</u> an >her <u>death</u>< (.) all
2	DC	comes↑(1.0) from you: an what y↑ou say (.) >Nat Fraser< told yo↑u
3		(3.0)
4	HD	.h°<u>M</u>ost of it y↑<u>eah:</u> h I think so
5		(1.5)
6	DC	The >hit< <u>man</u> (.) <u>story</u> (1.0) >that< (1.0) c...o..m..e<u>s</u> from ↑you
7		(1.0)
8	HD	°°Ye:ap=°°
9	DC	=<u>Not</u> from anywhere else
10		(1.0)
11	HD	.h >°no°<
12		(2.0)
13	DC	The car: and <u>dis</u>posal of the car (1.0) .hthat >that< was another pr<u>obl</u>em for
14	DC	↑you obviously (0.5) Mister Di↑ck=
15	HD	=Ye:ah °that was my >own doing<
16		(1.0)
17	DC	>An< (.) the reason: <u>you</u>: (0.5) tried to put the police off the scent↑ (1.0) iz
18	DC	because you didn't want the c<u>ar</u>: found
19	HD	In n:he initial stage ↑yeah
20		(0.5)
21	DC	because it may be that >you were <u>more</u>:: involved< than you've ever been
22	DC	prepared to say (0.5) >That's the <u>truth</u> <u>isn</u>'t it?<=

23	HD	No:> ↑ah< I'm no more involved than I've said
24		(0.5)
25	DC	It would be: (1.0) easier to >dispose of a body on your farm< than (0.5) to
26	DC	dispose of a car: (0.5) wouldn'↑t it?
27		(1.0) ((HD looks upwards and smirks))
28	HD	.hah£yeah£
29	DC	You had <u>equip</u>ment that could have been use:d (1.0) on: a human bod↑y
30		(0.5)
31	HD	.hha hah.hI£don't know£
32		(1.0)
33	DC	The police were interested in a <u>rend:eri</u>ng plant
34	HD	ye<u>s</u>
35	DC	>What's a< <u>rend::eri</u>ng plant?
36		(1.0)
37	HD	There steam >co↑okers<
38		(1.5)
39	DC	<u>They</u> ><u>had</u>< another purpos↑e
40		(1.0)
41	HD	It was er the meat and bone industry >they came from<
42		(0.5)
43	DC	What did it <u>do</u> with meat and bone?
44		(1.0)
45	HD	If you steam cook long enough (.) everything falls to be-°b->bits<
46		(2.0) ((DC stares))
47	HD	It's for reducing (°°hmmm°°) (2.0) falle<u>n:</u> stock
48		(1.0)
49	DC	><u>So</u>< for turning↑ (1.0) <u>dead</u> animals:: >into mea<u>l</u>:<
50		(1.0)
51	HD	Yes

52		(5.0)
53	DC	<u>Y</u>our farm has (.) >never< (.) been f<u>u</u>lly and properly searched?=
54	HD	=No:::w ((HD shakes head))
55	DC	°°No°°
56		(3.0)
57	DC	<u>N</u>at Fraser did <u>not</u> kill Arlene Fraser↑, >nor did he <u>tell</u> <u>y</u>ou that he did:<=
58	HD	=>He surely< <u>did</u> (0.4) °.hmhherm::: ((sniffle))
59		(2.0)
60	DC	An the obvious conclusion↑ (0.5) Mister Dick >from all of this< (1.0) an<u>d</u>
61	DC	especially >your persistent lies↑< (2.0) <u>is</u> tha<u>t</u> <u>you</u>: killed Arlene Fras↑er
62		(1.0)
63	HD	<u>not</u> correc<u>t</u>

(01:13:48)