“It’s your rights, ok?”: explaining the right to silence to Aboriginal suspects in the Northern Territory

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I hereby declare that, except where it is otherwise acknowledged in the text, this thesis represents my own original work. All versions of the submitted thesis (regardless of submission type) are identical.

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Abstract

When a suspect is interviewed by the police, s/he has the right to decline to answer police questions and avoid self-incrimination. This is a fundamental procedural protection, and police are required to inform suspects of the 'right to silence', also called the 'caution', before beginning the interview. However, the way the caution is stated, both in legal texts and by police officers, is often linguistically and conceptually complex. This makes it less likely that suspects will understand their right to remain silent, especially if they are Aboriginal and speak English as a second language or dialect. Aboriginal people are over-represented in the criminal justice system, and, if they do not understand the right to silence, this may aggravate that disadvantage.

In *Anunga* (1976), the NT Supreme Court attempted to reduce this disadvantage, by requiring police explaining the caution to Aboriginal suspects to obtain evidence of "apparent understanding". However, this has led to conversations about the caution which are sometimes long and unsuccessful. Difficulties with the caution have long been acknowledged by courts, linguists and others, but regulatory guidance and police language have changed little in 20 years, and there has been no systematic study of the speech event ('caution conversation') resulting from the *Anunga* requirements.

The caution originates in a legislated text but police vary its form and content. This thesis examines transcripts in which police explain the caution to Aboriginal suspects and test understanding. It examines what is said and how it is expressed, and what is left unsaid in the caution. It compares the

transcripts with translations into Aboriginal languages, and shows that these further vary the caution text, revealing additional meaning.

The caution's meaning is partly about interaction (establishing norms for the interview speech activity) and partly informative (describing the consequences of speaking or not speaking to police).

The linguistic analysis takes place at different levels. At the conceptual level, most paraphrases arguably assume knowledge, particularly about *rights* and *evidence*. At the conversation level, the caution conversation is a complex speech activity, and the extent to which suspects can understand its purposes and mechanisms is likely to affect understanding of the right to silence. At the discourse level the way police repeat and explain the caution affects its interpretation. Multiple versions of the caution may provide different ways to understand the caution, but unclear discourse relationships between restatements of the caution can also create confusion. At the sentence level, the ambiguous roles of conditional clauses may make versions of the caution harder to understand and relate to each other. At the word-level, police lexical and grammatical choices have different kinds of equivalence in Aboriginal languages, and suspect responses suggest that modality used by police to say that silence is permissible is particularly unclear.

Analysis of existing problems in communication and alternative ways of expressing the caution can suggest ways to improve communication to attempt to demystify this aspect of the legal process.

1 Introduction

Before interviewing a suspect about a crime, police are required to inform him/her of certain rights, most importantly the right to remain silent. The statement of rights, called the 'caution', has been extensively studied in different jurisdictions. It is especially difficult to communicate with Aboriginal suspects whose first language is not English, and other suspects from diverse language and cultural backgrounds. This thesis is about the 'right to silence' caution as it is communicated in the Northern Territory of Australia (NT) between police and Aboriginal suspects.

Problems with the caution are prominent in the NT because of its large and linguistically diverse Aboriginal population. The over-representation of Aboriginal people in the criminal justice system is described as a "national crisis" by Aboriginal and Torres Strait Islander Peak Organisations (2016:11); and communication is one aspect of systemic disadvantage which can be investigated (Liberman 1981; Mildren 1999; Eades 2008).

Responding to communication difficulties with Aboriginal suspects, the historic judgement of the NT Supreme Court in *Anunga* (1976) established guidelines to improve communication of the caution. Most relevant for this study, *Anunga* requires police to obtain evidence of apparent suspect understanding of the caution. Unfortunately, some conversations resulting from these requirements have been described as a "drawn-out and virtually meaningless formality" (Goldflam 1995:36). However, this process is recorded

by police, providing evidence for the study of communication, including what suspects say about the caution.

Legal sources (separate from *Anunga*) have provided standard texts for the caution. Different ways of explaining the caution can be seen as textual evolutions modifying this original text in selective ways. The current standard text is:

> [The person] does not have to say or do anything but anything the person does say or do may be given in evidence[1]

Through the study of interaction, discourse, semantics and pragmatics, this thesis will investigate how police explain the caution and how suspects might infer its meaning from police language.

This thesis is informed by my experience as a criminal lawyer at the North Australian Aboriginal Justice Agency in Nhulunbuy and Darwin in 2012-15. During this time I saw and experienced a lot of troubled communication between Aboriginal and non-Aboriginal people in the legal process. This thesis is largely about police, but effective communication is a challenge for many people including me.

[1] *Police Administration Act* (NT) s 140(a). An almost identical text is in the *Evidence (National Uniform Legislation) Act* (NT) s 139(1)(c).

1.1 Protecting rights with words

1.1.1 The function of the caution

In the NT, many Aboriginal suspects participate in interviews, often before speaking to a lawyer. It is the only time most suspects speak on the record about their case, in a legal process which can otherwise be critiqued as 'silencing' Aboriginal people (Goldflam 1995:38; Eades 2000). Because confessions in interviews are often powerful evidence against the suspect, legal contests about the way police conduct interviews are common. If the right to silence caution is unsuccessfully communicated, the suspect misses the opportunity to consider or exercise his/her rights, and may also misunderstand the evidentiary purpose of the interview.

The caution is "an essential safeguard to those suspected of having committed offences" (*Mangaraka* 1993:[25]). It reflects the legal protection against courts drawing an unfavourable inference from a suspect's refusal to answer police questions.[2] While there may be other evidence against the suspect, silence will not be used as evidence of guilt. A related protection is that police cannot compel the suspect to answer questions.[3] While the law

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[2] *Evidence (National Uniform Legislation) Act* (NT) s 89. Section 20 provides a related protection concerning an accused's failure to give evidence at trial, a protection which has existed in the NT since 1939: *Evidence Ordinances 1939* (NT) s 9(3).

[3] Under the former common law of evidence, incriminating admissions (the likely content of the interview) had to be made voluntarily in order to be admissible. One way of arguing that the

about adverse inferences in court appears to be clear-cut, it is complicated to define what constitutes (unacceptable) police coercion (Heydon 2007; Grisso 1986; Brooks 2000; Berk-Seligson 2009; Stuesser 2002; Ofshe & Leo 1996). It is usually against suspects' interests to speak to police and create evidence which can be used against them (Leo 2008) and there is some evidence that understanding the caution makes suspects less likely to speak (Davis, Fitzsimmons, & Moore 2011), however interviews do sometimes end up providing evidence favourable to the suspect. A further serious problem is that false confessions are surprisingly common and may be related to the stressful nature of the interview (Leo 2008; Cutler, Findley, & Loney 2013; Berk-

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interview did not meet this standard was if "the will of the accused was overborne by police conduct", for example where it is argued the police have not respected the suspect's attempt to exercise the right to silence: *R v CS* [2012] NTSC 94. A confession would not be voluntary "if it has been obtained from the accused by fear of prejudice or hope of advantage exercised or held out by a person in authority, or as the result of duress, intimidation, persistent importunity or sustained or undue insistence or pressure – anything that has overborne the will of the accused" (*MacPherson v The Queen* (1981) 147 CLR 512 at 519), even if police did not intend to overbear the accused's will (*Collins v R* (1980) 31 ALR 257 at 307). Under the current law, if police did not allow a suspect to remain silent the resulting interview could be argued to be inadmissible on the grounds of unreliability of the resulting confession, unfairness to the suspect or impropriety by police: (*Evidence (National Uniform Legislation) Act* (NT) ss 85, 90 and 138 respectively). Other improprieties justifying exclusion of evidence may include, "[t]rickery, misrepresentation, … or detaining a suspect or keeping him in isolation without lawful justification": *R v Emily Jako, Theresa Marshall and Mavis Robinson* [1999] NTSC 46 at [25].

Seligson 2009). It is arguable that a successful caution could make the interview less coercive by identifying limits on police power (Kassin et al. 2010; Douglas 1998).

Most people have assumptions about silence in social interaction. Failure to answer a question may ordinarily indicate an ulterior motive such as embarrassment or guilt (Heritage & Clayman 2011:24; Heydon 2007), or be viewed as uncooperative (Kurzon 1996). The right to silence therefore protects suspects from the ordinary inference about silence (Heritage & Clayman 2011).

1.1.2 The caution as a policy

Caution conversations in this study are strongly shaped by *Anunga* (1976) Guideline 3:

> Care should be taken in administering the caution when it is appropriate to do so. It is simply not adequate to administer it in the usual terms and say, "Do you understand that?" or "Do you understand that you do not have to answer questions?" Interrogating police officers, having explained the caution in simple terms, should ask the Aboriginal to tell them what is meant by the caution, phrase by phrase, and should not proceed with the interrogation until it is clear the Aboriginal has **apparent understanding of his right to remain silent**. …(emphasis added)

Obtaining evidence of "apparent understanding" is a difficult task, and a large amount of police talk seems to be addressed to trying to achieve it.

The *Anunga* Guidelines apply "to persons who are being questioned as suspects" (1976:414), meaning they apply to suspects who are 'voluntarily' in

the police station as well as those under arrest.[4] It may not be clear to some people whether police are questioning them as a suspect or a witness. Suspects may incriminate themselves by things they say in interviews, whereas this is not expected of witnesses. Therefore suspects are protected by being told what they are suspected of[5] in conjunction with the caution.

The *Anunga* Guidelines are incorporated into Police General Orders (*GP* 2015, *Dumoo* 1998, Douglas 1998). If police do not follow the guidelines, they

[4] The practice of cautioning suspects who are not in custody (have not been arrested) is reflected in the *2015 translations* recorded in Aboriginal languages, which include two versions for each language, 'in custody' and 'not in custody', reflecting the different rights that suspects have (such as the right to leave if not in custody and the right to contact someone if in custody). The right to silence is the same in each case.

[5] Once police investigation has progressed beyond general enquiries to a stage where police believe a particular crime has been committed by the suspect, fairness requires that any suspect be informed of the nature of the crime about which s/he is being questioned, because the suspect's decision about silence then takes on additional importance (*R v Szach* (1980) 2 A Crim R 321 at 341, *R v Emily Jako, Theresa Marshall and Mavis Robinson* [1999] NTSC 46). It is not generally necessary for police to name the particular alleged offence, but rather to provide enough information for the suspect to "understand what they are being questioned about and to enable them to make an informed decision as to whether they should exercise any of their rights, including whether to speak or remain silent" (*The Queen v BL* [2015] NTSC 85 at [60]). In *Gudabi v R* (1984) 52 ALR 133 at 143, it was acceptable to refer to "trouble" instead of "rape"; the detective said that was his practice when speaking to Aboriginal people.

therefore breach their own orders and this is an avenue for courts to exclude interviews from evidence.[6]

The *Anunga* Guidelines are an influential piece of policy which has shaped 40 years of practice in this area in the NT and to some extent elsewhere (Douglas 1998). The guidelines are expressed to be the view of the court, Muirhead and Ward JJ agreeing with Forster J's judgement (*Anunga* 1976:413). Forster J's observations are "based partly upon my own knowledge and observations and partly by evidence I have heard in numerous cases" (ibid:414). There is no particular indication that Aboriginal people (or other experts) were consulted about the content of the *Anunga* guidelines, however some of Forster J's remarks about Aboriginal languages closely resemble comments by Yankunytjatjara translator/interpreter Yami Lester (1973).[7] Forster J also suggests that "[m]ost experienced police officers in the Territory already" seek evidence of apparent understanding, as required by guideline 3

[6] Breach of Police General Orders may be an 'impropriety' (*Dumoo v Garner* [1998] NTSC 8), though in *R v GP* [2015] NTSC 53 at [53] Barr J found it was merely arguable that breaching an *Anunga* rule in a Police General Order was improper. Impropriety triggers a discretion to exclude evidence under s 138 *Evidence (National Uniform Legislation) Act* (NT). More narrowly, failure to actually deliver the caution to a suspect who is under arrest (or de facto arrest) is always deemed to be improper (s 139).

[7] Lester worked as an interpreter including in the Supreme Court at Alice Springs (Lester n.d.), and his observations about language could possibly have been made in court, forming part of the evidence Forster J drew on.

(*Anunga* 1976:415), perhaps implying that guideline 3 reflected existing best police practice. There have been some judicial suggestions that the Anunga process and the language of the caution should evolve (*Gudabi* 1984, *Mangaraka* 1993:[25]), however enforcement of the guidelines does not seem to have markedly changed.

The caution is a compromise encoded in a choice of language, balancing fairness to suspects and limited police resources. If suspects exercise the right to silence (which presumably requires understanding it), or if interviews are unable to be used because caution understanding requirements have not been met, police may have to gather more evidence to prove crimes. The *Anunga* guidelines are said to "have as their object the assistance of investigating officers in conducting their inquiries in such a manner as to be fair to the person being interviewed while at the same time serving the public interest by not unduly inhibiting the investigating process" (*Gudabi* 1984:145). It would be possible to tell suspects something different, or nothing, instead of the caution. Standard legal advice in my experience is 'don't talk to the police', but arguably it is not the role of the caution to give advice. On the other hand it is arguably "wrong in principle, to recognize a … right only on the condition that it not be exercised very often" (Davis et al. 2011:96). The investigation of how the caution is explained and how it may be understood can inform consideration of whether it is a meaningful or appropriate compromise.

Variations of the caution text may vary the compromise. I will argue that translations reveal premises which are unstated in police language. This may

not vary the caution's compromise if it merely reveals information which the caution would ordinarily imply, however it is often not clear what information the law intends to be part of the caution. If an effective translation or paraphrase causes more suspects to understand the caution and decline interviews, that may increase both fairness to suspects and the demands placed on police resources.

1.1.3 The two-audience problem

Historically, police produced written records of interviews. Problems with written confessions (Gibbons 1987, 1990) included cases of 'verballing' (confessions falsified by police), in some cases identified by linguistic analysis (Eades 2013). From 1992, the NT phased in compulsory electronic recording of interviews with suspects,[8] shedding new light on police interviews and probably changing the nature of interviews (Gibbons 1996; Carter 2011). This study includes conversations recorded between 1993 and 2015, spanning most of the period during which recordings have been produced.

Most caution conversations are recorded in a police interview room, usually a soundproof room with a table and chairs and audiovisual recording equipment. Two police officers usually sit at the table with the suspect. Interviews are recorded by police in their entirety, including formalities like

[8] *Police Administration Act* (NT) ss 139, 141, 142, introduced by the *Police Administration Amendment Act (No. 2) 1992* (NT).

identifying people in the room, ensuring the suspect is not unwell or intoxicated, stating that everything is being recorded, and explaining the caution.

The caution involves a 'two-audience problem', because police language must in theory be simultaneously intelligible to the suspect and acceptable to the court hearing the recording (Gibbons 2001:448; Heydon 2005:39), and suspect language similarly has two audiences. The objective of the *Anunga* caution is not understanding (which is impossible to measure directly), but evidence of apparent understanding. Those two outcomes could be more or less similar, depending firstly on what police accept as evidence of understanding, and in a small minority of cases which are contested in court, on what a court will accept as evidence of understanding. Supervision by the absent audience can motivate police to take more care with the caution (Rock 2007:233) and provide guidance about how to deliver it.

Indirectly, the two-audience problem influences the interaction (Carter 2011) because if the interview is used as evidence (of a confession it contains), the judge or jury will likely watch the whole interview including the caution exchange. The two-audience situation arguably results in a kind of textual transformation, because a live conversation becomes a recorded artefact replayable by various people, and sometimes read in transcript. This is unlike non-recorded conversation in which much of the discourse constructed by participants need not end up 'on record', and aspects of the discourse can never be fully or accurately quoted (Linell 1998). Police and (if the caution is

successful) suspects should therefore be conscious of the additional audience all the time. (I will refer to this as *two-audience awareness*).

One problem related to the two audiences is the risk of suspects prematurely talking about the alleged crime during the recording before the formalities are complete.[9] Perhaps wanting to avoid this, police sometimes state the caution briefly before completing other formalities, which can be described as a 'pre-announcement', discussed at 2.3.

Clark (1992:106) discusses the place of 'overhearers' in communication, arguing that because speakers work with their addresses to monitor understanding of the discourse, addressees understand as well as they need to while overhearers understand as well as they are able to. The question is, at different times, which of the caution's audiences is the overhearer.

[9] There is a risk that confessional statements by the suspect before the caution is complete will make the interview inadmissible as evidence, because it may seem that the suspect has prematurely committed to the interview and started to incriminate him/herself, making the subsequent caution less meaningful. In *R v Echo* [1997] NTSC 177 at [13], Martin CJ found that "[t]he difficulty [with the caution] was compounded by the accused's commitment to take part in the interview prior to any proper attempt being made to caution him on that occasion". In *R v Inkamala* [1996] NTSC 18, police also had to stop premature confessions by Inkamala, though these may have resulted from interpreting by the prisoner's friend (who was not a trained interpreter).

1.2 Language in the caution

1.2.1 Previous caution studies

There is a history of studying the way language affects Aboriginal people in the Australian legal system (Eades 2013). McKay (1985) analysed the impact of the *Anunga* rules and linguistic problems with the caution. Cooke (1996:280) showed how a Yolngu suspect did not understand the caution and thought she had to answer the questions. Mildren (1997) and Cooke (1998) discussed the *Anunga* rules and proposed particular language to better explain the caution. Other linguistic studies of Australian cautions have focused on non-native speaker suspects (Gibbons 1996; Nakane 2007), while Heydon (2005) balances some of this research by studying police interviews with speakers of Standard Australian English, but does not focus primarily on cautioning.

Studies have analysed caution talk (Rock 2007; Russell 2000; Rock 2012; Cooke 1998), asked police and/or suspects about the caution (Cotterill 2000; Rock 2007) and focused on the suitability of scripted language for future cautions (Gibbons 2001; Kurzon 1996). In this study, there is no opportunity to question participants (and many cautions took place years ago). However the requirement to test understanding probably means that NT police and suspects say more than caution participants in other jurisdictions. For example, in England and Wales, police are advised to explain the caution in their own

words if it appears the suspect does not understand it[10] and some paraphrasing takes place (Rock 2007, 2012; Cotterill 2000; Russell 2000). New South Wales Police are advised to ask comprehension questions if they "feel [suspects] do not understand the caution"[11] (Gibbons 2001:447; Eades 2010:139). Neither requirement seems equivalent to the need for NT police to elicit evidence of apparent understanding before continuing.

Previous research into cautions has led to the *Guidelines for communicating rights to non-native speakers of English in Australia, England and Wales, and the USA* (Communication of Rights Group 2015), a process described in Eades & Pavlenko (2017). The *Guidelines* establish evidence-based best practice which is relevant to aspects of this study.

1.2.2 Intertextuality

The caution can be viewed as a *text* which undergoes various transformations (Rock 2007). A text is a unit of language, deployed in the

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[10] *Police and Criminal Evidence Act 1984* (UK) Code C 2014, note 10D, p 35. Section 10.7 says that "Minor deviations from the words of any caution given in accordance with this Code do not constitute a breach of this Code, provided the sense of the relevant caution is preserved".

[11] The suggested question is "What do you understand by what I have just said?". NSW Police Force (2015) *Code of Practice for CRIME (Custody, Rights, Investigation, Management and Evidence)*, p 63, available from http://www.police.nsw.gov.au/__data/assets/pdf_file/0007/108808/Code_of_Practice_for_Crime.pdf, accessed 14 May 2017.

world in some situation which entails relationships with other texts and information (De Beaugrande 1980). No text can be independent of contexts (Linell 1998), but a text may be identified where speakers view a body of language as a unit, capable of being lifted from one context to another (Bauman & Briggs 1990).

Legislation specifies the standard text of the caution (at least for suspects who are under arrest[12] or de-facto arrest).[13] The legal text has itself evolved, importantly replacing "you are *not obliged* to say anything" [14] with 'you *do not have* to say anything'.[15] However adherence to the standard text in practice is

[12] *Police Administration Act* (NT) s 140(a), *Evidence (National Uniform Legislation) Act* (NT) s 139(1).

[13] *Evidence (National Uniform Legislation) Act* (NT) s 139(5), also s 139(2).

[14] The standard text can be traced back at least to the 1918 English *Judges' Rules*, which said "Do you wish to say anything in answer to the charge? You are *not obliged* to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence" (Home Office Circular 536053/23 of 1930, Rule 5, quoted in Abrahams 1964:18, emphasis added). The Judges' Rules were, like the *Anunga* rules, not rules of law, but were adopted around Australia in various forms: *McDermott v R* (1948) 76 CLR 501, *R v Lee* (1950) 82 CLR 133. McKay (1985:42) gives the then-current NT caution as "You are *not obliged* to answer any question unless you wish to do so, and anything you say will be written down and may later be given in evidence. Do you understand that?" (emphasis added).

[15] The legislated texts are in the third person and differ in the inclusion of *doing* as well as *saying*. "the person does not have to say anything" (*Police Administration Act* (NT) s 140(a)); "the

neither required nor sufficient, largely because *Anunga* Guideline 3 requires police to explain the caution "in simple terms" and test understanding. Police initially say something similar to the written caution text, transforming it into interactive oral language. In many cases they then transform it further by paraphrase. Police spontaneous caution paraphrases have been found by previous studies in English-speaking jurisdictions to be often unsatisfactory (Cotterill 2000:7; Shuy 1998:53; Baldwin 1994:67). It is not surprising, given identified problems with the caution, that paraphrasing it is difficult (Russell 2000:41), and this study will investigate the effectiveness of police paraphrases. Translations are a further kind of transformation of the caution text.

Previous studies have examined the comprehensibility of caution texts (Davis et al. 2011; Gibbons 1990; Gibbons 2001; Kurzon 1996; Rogers, Hazelwood, Sewell, Harrison, et al. 2008), and their comprehension by individuals or populations, particularly on psychological measures (Fenner, Gudjonsson, & Clare 2002; Eastwood, Snook, & Chaulk 2010; Rogers, Rogstad, Steadham, & Drogin 2011). Rock (2007) advances the analysis of comprehension and comprehensibility by highlighting the need to move beyond a 'transmission' model of text as containing inherent meaning, linking sender to receiver and transmitting the sender's intentions. The transmission

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person does not have to say or do anything" (*Evidence (National Uniform Legislation) Act* (NT) s 139(1)(c)).

view arguably imagines language without sociolinguistic context, and viewing the caution as "propositional information" may also ignore its "social message" about the "power and authority of the person using it" (Gibbons 2001:448). A better approach is to recognise that "readers create meaning using texts and their existing knowledge of texts" (Rock 2007:19). Different prior knowledge (context) can explain why identical forms mean different things to different people (Maryns 2006), and accordingly, communication is not successful or unsuccessful but can result in information becoming apparent to hearers in varying degrees (Sperber & Wilson 1995:59). Further, Goffman's (1981) 'participation frameworks' reveal that there is no such thing as one sender, as the caution involves police saying words which are authorised and written by others (Rock 2007, Heydon 2005).

Despite the need to consider sociolinguistic context, it can be difficult to avoid using transmission as a metaphor when talking about communication (Rock 2007). While this study closely examines linguistic problems which may be seen as 'interfering with the signal', I consider how these problems interact with context both inside and outside the conversation. Context is defined and further discussed at 2.2.

1.2.3 Non-standard English

An obvious feature of the sociolinguistic context of caution conversations in this study is that all suspects probably use Standard Australian English

('SAE') as a second language ('L2')[16] or second dialect ('D2').[17] In many cases, information about suspects' first language ('L1') is available, and in other cases suspect language and comprehension does not seem native-like (though it is beyond the scope of this study, and probably the quality of the data, to conduct forensic language assessments). Where the suspect's L1 is not known, this usually means this was not discovered during the police and court processes, and/or that the court did not think it was necessary to include in the judgement.[18]

SAE spoken by non-native speakers ('NNS') is expected to display effects of *transfer* from the speaker's L1 (or D1). Transfer can have 'positive' or 'negative' effects on the language being learnt, and can affect both

[16] L1 means a language spoken 'natively', that is acquired as a child. It is possible to have more than one L1. L2 means a language acquired (usually incompletely) later in life, and it is possible to learn more than one L2.

[17] For example, one suspect in the study (Age) is said to be a native speaker of English, though it is not clear how the court established this. It is beyond the scope of this study to conduct a language assessment, but it is possible that he was a native speaker of a variety of Aboriginal English.

[18] An exception is that in some cases, courts decide not to publish details including suspect's language and community of origin, probably for privacy reasons. For example *R v GP* [2015] NTSC 53.

production and reception of language (Ellis 2015). The caution is also delivered to children,[19] and one suspect in this study (KR) was 14 years old.

This study considers differences between SAE and Aboriginal languages, however it is impractical to attempt a detailed consideration of all the suspect L1s in this study, and this reflects the difficulty policy-makers in the NT face in accounting for linguistic diversity. The translations considered in this study are in two languages, Djambarrpuyngu (a large 'traditional' language by Australian standards spoken by Yolngu people) and Kriol (a widely-spoken English-lexified contact language). Translations give an indication of language differences which will be relevant to some speakers, but do not account for the diversity of language in the NT. There is significant variation among Yolngu languages (Schebeck 2001)[20] and Kriol (Munro 2000). So even among target speakers for a given translation there may be different language backgrounds

[19] Fourteen is the youngest age at which children are presumed to be subject to criminal responsibility, however a child as young as 10 can be prosecuted if it is proved that at the time of the offence "he [sic] had capacity to know that he ought not to" engage in the relevant conduct: *Criminal Code* (NT) s 38.

[20] Djambarrpuyngu is the only Yolngu language included in the *2015 translations*. This means it will be the closest available recording for many speakers whose L1 is not Djambarrpuyngu. Many Aboriginal people (including interpreters) are multilingual and may be able to communicate about the caution in various languages (Lawrie 1999). It is outside the scope of this study to investigate this.

exerting different influences on the interpretation of police language and translated language.

While learner English may contain errors and transfer, L1 Aboriginal varieties of English and Kriol are rule-based languages (Eades 2013). Some suspect utterances are 'nonstandard' relative to SAE, and may be learner language or usage which is standard in another variety. Differences are sometimes recognised by courts:

> Care must be taken in considering the written word as found in the transcript of the interviews because many words in Kriol appear to be the same as, or similar to, words in English. On occasions, and depending upon the context, those words may have a quite different meaning in Kriol. (*R v Roberts* (2009) 158 NTR 1 at 11-12)

This study is not an attempt to describe the Englishes spoken by suspects, and the limited information about their background does not support an assumption that they all speak the same kind of Aboriginal English (though see Harkins (2000) on similarities among Aboriginal Englishes).

Speakers ordinarily design utterances to be understandable by their audiences (Clark 1992), though often the onus is on Aboriginal speakers to *accommodate* (adjust communication to more closely resemble another speaker's language (Dragojevic, Giles, & Gasiorek 2014)) to SAE when speaking to non-Aboriginal people (Simpson 2013), including in court settings (Koch 1990). NT police undoubtedly know something about their audience from experience of policing (though interviews are sometimes conducted by federal agents who may be less familiar with NT Aboriginal people). In any event, living and working in the NT does not mean that non-Aboriginal people

share an understanding of Aboriginal people's experiences (Habibis, Taylor, Walter, & Elder 2016). Even 'light' varieties of Aboriginal English may involve important differences in communicative style when compared with SAE (Eades 2008, 1994). When speaking to NNS in general, native speakers ('NS') may use 'foreigner talk' including simplifications of language (Long 1983) and a variety of communication strategies for the negotiation of meaning (Tarone 1980). It is also possible to use knowledge of cultural differences to promote misunderstanding (Eades 2003).

1.2.4 Legal language

Adjusting the caution for an audience may be more difficult because it is legal language. Literate legal texts may be "autonomous" and "decontextualized", tending to be independent of their potential audiences (Gibbons 2003). The impersonality of legal texts (Maley 1994) makes them general and can be linked to *performativity*, having the capacity to *do* something (Rock 2007:10). The original text of the caution is general and impersonal, however police in this study do considerable work particularising the caution text for suspects. So while the caution has textual roots in 'written language of the law', language used to "lay down the law", in conversation it rapidly transitions into 'spoken legal language', which is language used to "talk about the law" (Kurzon 1997).

Of course, legal language is widely criticised and may be difficult to understand for non-Aboriginal people. Findings from this study may be

relevant to communicating legal concepts with suspects from other backgrounds.

1.3 The caution in conversation

Below is an example of the caution as it plays out in conversation reflecting some of the influences and requirements discussed above.

Extract (1): Dumoo (1996) [21]

1. Lindsay: Now Basil do you agree that before we started this talk I took the plastic off these three cassette tapes?
2. Dumoo: Yeah.
3. Lindsay: And I put them in that machine.
4. Dumoo: Yes.
5. Lindsay: And do you agree this machine's now working?
6. Dumoo: Yeah.
7. Lindsay: Now I advise you Basil that our conversation is being recorded on this machine and when we're finished I'll give you one of the tapes. Do you understand that?

[21] This is perhaps the least serious case in this study, about bringing alcohol into a "protected area" (alcohol is banned in many Aboriginal communities in the NT). The structure of the caution conversation does not obviously differ from more serious cases, but it is possible that Lindsay was less thorough in testing understanding of it because the crime was not very serious. This case was nevertheless appealed to the Supreme Court, which found that failure to comply with *Anunga* guideline 3 (which was included in a relevant Police General Order) meant the interview was improperly obtained and should be excluded from evidence: *Dumoo v Garner* [1998] NTSC 8.

8. Dumoo: Yes.
9. Lindsay: Now Basil I want to talk to you about some grog, some liquor that was taken into the restricted area on Wednesday night. Do you understand that?
10. Dumoo: Yeah.
11. Lindsay: Before we go any further I'll advise you that you don't have to talk to me if you don't want to. Do you understand that?
12. Dumoo: Yeah.
13. Lindsay: So do you have to answer my questions?
14. Dumoo: No.
15. Lindsay: Okay. Now if - if you don't want to answer my questions, or if you don't want to answer one question, you tell me - you tell me that you don't want to answer it. Okay.
16. Dumoo: Yeah.
17. Lindsay: And anything that you do say will be recorded on this machine and may later be used as evidence in court. Do you understand that?
18. Dumoo: Yeah.
19. Lindsay: Who might listen to these tapes in court?
20. Dumoo: Judge.
21. Lindsay: Judge. Now when the Judge listens to these tapes and he - that Judge will hear what you're saying now. Now if he thinks that you're guilty what can he do to you?
22. Dumoo: Lock me up.
23. Lindsay: Yeah. What other sort of things can he do? Could he make you pay a fine?
24. Dumoo: Yeah.
25. Lindsay: Or make you do that work?
26. Dumoo: Yeah.
27. Lindsay: What's that work called?
28. Dumoo: (No reply).

29. Lindsay: The community work?
30. Dumoo: Community.
31. Lindsay: Do you want to answer my questions Basil?
32. Dumoo: Yeah.
33. Lindsay: Okay. What can you tell me about Wednesday night?
34. Dumoo: Went to Daly, brought 6 carton, drinking all night and had one carton left and Paul came along and maybe a dozen left.

Lines 1–8 are *about* the recording of the conversation, but the fact that they are said also shows Linsday's attention to the second audience: it would be strange in normal conversation to ask Dumoo to confirm events which have just happened. Dumoo goes along with these questions, and this could be because he recognises they are for the recording, or because he recognises police authority in the interview.

The caution is typically explained in two parts: the 'right to silence' ('you do not have to say or do anything' in the standard text) and the 'consequences of speaking' ('but anything you do say or do will be recorded and may be used in evidence'). Lindsay explains the right to silence at line 11, then after Dumoo's superficially correct answer at line 14, discusses the consequences of speaking in more detail. Dumoo produces one-word answers (except for line 22), but Linsday seems to accept these answers as evidence of apparent understanding. We see in line 34 that Dumoo is capable of producing a complete utterance in SAE in response to a non-caution question.

If formalities including the caution are successful, police typically proceed directly into the substantive interview in one continuous recording.

Line 31 above is unusual for this study, marking Dumoo's opportunity to make a decision about silence (if he understood the caution) before Lindsay asks about the crime in line 33. In other cases police do not mark the end of the caution as clearly. However Police seem to treat the caution and the following interview differently. Although police say 'you don't have to answer questions', they do not seem to view this as applying to questions about understanding during the caution, sometimes insisting that suspects answer those questions.[22]

1.4 Data

This study includes two kinds of data. The first is 33 caution conversation transcripts, most of which are incomplete. Information about these conversations is summarised in Appendix 6.3, where the following information is given for each transcript where known: suspect name, source

[22] In some cases, (including *Jako* 1997 and *Cumaiyi* 2003) suspects fail to respond to questions about whether they understand the caution, or give answers which might mean that they do not want to answer. Police sometimes insist on answers and/or continue to ask comprehension-checking questions, implying they may not view these incidents as attempted exercises of the right to silence. This could be because the 'questions' which do not require answers are seen to be substantive questions about the crime, not comprehension questions. This thesis focuses on how police explain the caution, rather than how they test comprehension. Evaluation of different kinds of evidence about suspect understanding, including attempted exercises of the right to silence, is a topic for further analysis.

document, interview date and location, suspect age and L1, charge(s), and the court's decision about the caution.

The second kind of data is broadly described as 'translations' of the caution, and consists of 10 complete paraphrases, front-translations or translations plus other sources which contain aspects of paraphrase relevant to the caution. These sources and related documents are summarised in Appendix 6.4.

1.4.1 Transcripts of cautions in recorded interviews

This study examines transcripts of recorded cautions from (public) court judgements where the caution was in issue. Judges are sometimes required to decide whether recorded interviews containing confessions should be admitted as evidence in a criminal trial against the suspect, and the content of the caution conversation is frequently relevant to this decision (Douglas 1998). Accordingly, court decisions often reproduce transcripts of the caution conversation. The extent to which the caution and other exchanges are included reflects the judge's assessment of what was relevant.

This study is unlikely to involve a representative sample of caution conversations with Aboriginal suspects who encounter the criminal justice process, because cases contested in court (and therefore examined in this study) tend to involve serious offences (in which the evidence is examined more carefully), and/or cautions which appeared to defence lawyers to be defective. Linguists or other experts are occasionally involved in these cases, but only if

engaged by lawyers.[23] Two police officers appear to each be involved in more than one caution in this study (though this is not entirely clear), which could make the sample somewhat less representative of police practice.

Thirty three transcripts are studied, but many include only parts of the caution. It is not always clear whether published transcripts start from the beginning of the caution, but this can be identified where there is a transition from another topic to the caution. I also study three complete cautions transcribed for Conversation Analysis by McLaughlin (1996). Cautions in this thesis relate to cases in the NT Supreme Court, NT Court of Summary Jurisdiction (now called the NT Local Court) and the NT Youth Justice Court.[24]

Police explain rights and information other than the right to silence, which could be described as 'cautions', for example whether the suspect is under arrest or not, the right to notify someone, the right to have a 'prisoner's friend' in the interview, and so on. These matters are not the focus of this study

[23] Examples of expert linguist involvement in cases in this study include *Todd*, *Anthony* and *Moonlight* (1995), all of which were described by McLaughlin (1996) after some involvement in the legal process, and *Rankin* (1998). A recent example from outside the NT is *WA v Gibson* [2014] WASC 240.

[24] Some additional rules apply in the Youth Justice Court but these do not obviously affect the analysis of conversations in this study: see eg *Youth Justice Act* (NT) ss 15, 18. The most prominent requirement is that the youth must not be interviewed without a support person present.

because they are less critical to the interview process and less frequently reported by courts.

Suspects' rights are also discussed outside the interview room. Shortly after arrest police deliver a "section 140" caution,[25] containing the right to silence, usually recorded on a handheld recorder in a cell. This caution may be less thorough than the main caution delivered with the interview, but in some cases, section 140 conversations are considered by courts (and reported, making their way into this study) because they are relevant to suspects' understanding of the caution.

A problem for the close study of language is that the quality and origin of court transcripts is unclear. Legal and police transcripts have been criticised for omitting hesitations and disfluencies (Eades 1994:243), and being inaccurate (Bucholtz 2000). Many transcripts in this study do record hesitations and incomplete sentences, perhaps reflecting the careful linguistic analysis that courts engage in. In some cases, judges comment on gesture and potential inaccuracies in transcripts. However it cannot be assumed that all transcripts have been carefully made. Transcripts generally exclude gesture, eye gaze, intonation, and pauses, all of which can be important for the interpretation of interaction and speech. The three transcripts from McLaughlin (1996) are more

[25] Because it is intended to comply with section 140 of the *Police Administration Act* (NT). Section 141 requires recording of the conversation.

detailed and reliable (transcription conventions are reproduced in Appendix 6.2).

The focus of this study is on what police say in English, however some cautions in this study involve interpreters or interpreting by another person such as a 'prisoner's friend' (a support person, often a family member of the suspect). There is now a professional NT Aboriginal Interpreter Service, but untrained interpreting can create doubt about the accuracy of the interpretation and ambiguity about whether the interpreter is advising and supporting the suspect or conveying what police say (Cooke 2009a).[26] The nature of the transcripts does not allow interpreting to be examined (though back-translations are sometimes included), and I will avoid assumptions about what was said in languages that are not transcribed.

Quotes from cautions will be identified by the italicised name or initials of the suspect, and the year of the interview. In many cases the interview happened in a different year to the court decision, and quotes from judgements will be identified with the (italicised) name attached to the judgement, and the year in which it was delivered. Speaker names are included in transcripts, or if not known, initials are used for suspects and P for police. I have also corrected spelling errors in the transcripts where no phonological insight is affected.

[26] *Anunga* (1976:414) suggested that an interpreter might be a suitable prisoner's friend, but this was decades before a professional interpreter service existed (see Lawrie 1999).

1.4.2 Translation: linking text and audience?

A second type of data considered in this thesis is what can broadly be called 'translations' of the caution. A recommended alternative to spontaneous paraphrase (Communication of Rights Group 2015:3) is a pre-written paraphrase, addressing known difficulties based on some approach to language and communication. Related to written paraphrase is "front-translation" (Cooke 1998:312), an English text designed to be suitable for translation into a target language or language group, and possibly, easier for speakers of that language to understand in English (ARDS, NAAJA & AIS 2015).

This study examines written paraphrases, front-translations and translations of the caution designed for Aboriginal people in the NT. Unlike caution conversations, these are not spontaneous language but recorded oral texts or written texts. This study is about how police explain the caution, and uses translations for comparison, rather than to evaluate whether translations are effective for communicating with actual suspects in actual conversations.

Any transformation of a text involves choices of language and decisions to include and exclude content. Converting legal language to plain English arguably requires it to be more precise and exposes ambiguities (Adler 2012:71). Translations of the caution are consistently longer than the original text, and seem to reveal content which is implied by the caution but which translators may consider was not obvious to the target audience. Translators may have insight from knowledge of Aboriginal languages (and in some cases being Aboriginal people), and potentially from testing the translations during

their development. Additional content and language may be required because when cultures are very different and lack a shared "conceptual framework", paraphrastic explication may not be possible and communicators may have to resort to explanation (Cooke 1998:63).

Making the caution available in Aboriginal languages is probably the best way to improve its accessibility. It might be expected that good translations (plus versions of the caution in English) will make police explanation redundant, however this does not appear to be the practice. Most translations or recordings of the caution are called 'preambles', because police will still administer the caution themselves in compliance with *Anunga* guideline 3 (Cooke 1998:194; Aboriginal Interpreter Service 2017; *Robinson* 2010). Over-reliance on recorded translations could "gloss over the problem of understanding" and "merely legitimise the charade of the Caution" (McLaughlin 1996:55). It is not possible to produce a perfect translation or explanation of the caution or a version which will guarantee understanding (Cotterill 2000), particularly given variation within and between Aboriginal languages.

The *2015 translations*, currently in use, are recordings in 18 Aboriginal languages which can be played on police iPads, with English subtitles. They aim to increase suspect understanding and reduce the frequency of legal challenges of interviews (Aboriginal Interpreter Service 2017).

Many translation sources, in addition to text or a recording in an Aboriginal language, include English text. It is not always clear whether

English texts are front-translations (used to produce the translations) or back-translations (a translation from the other language back to English). In some cases I have included and identified my own back-translation. In quotes from translations, I gloss Djambarrpuyngu language following Wilkinson (1991) and Greatorex & Charles Darwin University (2014). Kriol glosses follow Lee (2014).

1.5 Unsuccessful cautions as a window on equality of outcomes

1.5.1 Putting suspects in an equal position

The caution, required to be said to every suspect before interviewing, potentially ensures a basic level of equality in awareness of rights. The justification for the right to silence in Australian law is unclear (and it is not a constitutional right, unlike other jurisdictions), however it is arguably related to (among others) the presumption of innocence and the privilege against self-incrimination (O'Sullivan 2007). The *International Covenant on Civil and Political Rights* links these two ideas with equality before the law.[27]

[27] *International Covenant on Civil and Political Rights*, GA Res 2200A (XXI), UN GAOR, UN Doc A/6316 (1966), entered into force 23 March 1976, Article 14: "1. All persons shall be equal before the courts and tribunals... 2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. 3. … everyone shall be entitled to the following minimum guarantees, in full equality: … (g) not to be compelled to testify against himself, or to confess guilt".

The variability of context between speakers and situations is a problem for the law's expectation that the same information can be delivered "again and again" by the caution (Rock 2007:25). NT law does not assume that the same treatment is appropriate for all suspects; the *Anunga* Guidelines require significantly more of police when explaining the caution to NNS Aboriginal suspects and "are designed simply to remove or obviate some of the disadvantages from which Aboriginal people suffer in their dealings with police" (1976:415). There is a history of Aboriginal people being punished under laws they may be uninformed about, potentially being unaware of their rights under those laws (Coombs 1985). *Anunga* probably established a 'difference' approach to communication in the legal system, recognising that different communication strategies are often required with Aboriginal suspects and perhaps making institutions more "hospitable to diversity" (Rampton 2001).

Failure to successfully adjust institutions' communication practices in recognition of sociolinguistic variation may aggravate disadvantage that suspects already face. For example, attempts by US interviewees to invoke rights using hedged language such as "I think I will talk to a lawyer" are often deemed legally ineffective (Ainsworth 2008:9). Hedging is more likely to be used by people who are relationally powerless (ibid), which may mean that socially disadvantaged people face additional barriers to benefiting from legal protection, because of ways that US courts interpret language.

The ‘difference approach’ to Aboriginal people in the legal system has been critiqued as ignoring or even obscuring power relations as a factor in communication (Eades 2008:32). Studies of interaction can reveal the negotiation and exercise of power (Heydon 2005; Haworth 2006), and some critical sociolinguistics approaches argue that small-scale interactional power relations constitute and are the same thing as larger structural power dynamics (Eades 2008). The caution is concerned with limiting power (to require answers to questions) in the interview room, and this study investigates how the caution may achieve that outcome, also noting ways in which suspect perceptions of the role and authority of police might influence understanding of the caution.

Broad questions about what the caution is supposed to achieve are exposed by the study of meaning and inference, because it is not clear what content the caution is intended or required to convey. These policy questions can be informed by linguistic analysis, but also require consideration of the objectives of the caution and the legal system as they apply to Aboriginal people.

1.5.2 Cautions in this study

The study of relatively unsuccessful cautions in this study may reveal whether mitigating inequality through language is a realistic strategy. Undoubtedly, for some suspects (Aboriginal or not) the caution presents few difficulties and the conversation in which it is explained may be short and

straightforward. However if the caution's role is to place suspects in a reasonably equal position, then it needs to work for suspects who are disadvantaged, including by linguistic and cultural distance from the Anglo-Australian justice system. Otherwise, the caution and the right to silence may benefit 'professional criminals' (Leng 1994) and native English speakers, while feeding the "accumulation of disadvantage" Aboriginal people face in the justice system (Cunneen 2001:35). Of course, problems identified in relation to Aboriginal suspects may also apply to non-Aboriginal English-speaking suspects (Heydon 2005), though not always to the same extent.

The caution process may be acceptable if unsuccessful cautions cause rejection of interviews, however this requires an effective and consistent mechanism to test understanding. Only a small number of caution cases are actually tested by courts, and there is some evidence that even when it is doubtful a suspect understands his/her rights, police may take a chance and interview the suspect anyway because if the interview is ultimately excluded police are no worse off (Criminal Justice Commission (Qld) n.d.:669). However it is also my experience that NT police sometimes terminate interviews recognising that the caution could not be communicated successfully. This was seen in *Rankin* (1998), where the first interview was abandoned at the caution stage and an interpreter engaged.

Police may not know at the outset whether a suspect will readily understand the caution, so this study may discover strategies that police use to explain the caution generally. In unsuccessful cases, police may then try more

variations on the caution language hoping to overcome miscommunication. It is in these difficult cases that better approaches to caution language are most needed.

1.6 Structure

This thesis attempts to understand how police explain the caution and how suspects understand it. Police explanations of the caution are produced in an interactional context, and Chapter 2 considers the caution as a speech activity. It investigates the relationship between suspects' understanding of 'what is happening' in the conversation and understanding the meaning of the caution, as well as the context available to suspects to develop that understanding.

In conversations, police produce numerous utterances about the caution, which have relationships with each other and together build up some meaning. Chapter 3 examines the iterative process through which police paraphrase and explain the caution, and asks how meaning evolves across discourse.

Having examined the interactional and discursive setting in which police language is used, Chapter 4 considers the meaning of specific language used to explain the caution and how suspects may infer the caution's meaning from that language. This analysis reveals some evidence about what suspects understand, as well as identifying meaning underlying the caution and evaluating how effectively different paraphrases may express that meaning.

2 Context, purpose and interaction

2.1 An uncooperative activity?

The caution is an attempt to get things done with language. It can be considered an *activity*, meaning "work that is achieved across a sequence or series of sequences as a unit or course of action … a relatively sustained topically coherent and/or goal-coherent course of action" (Heritage & Sorjonen 1994:4). This definition does not presuppose that goals are shared between the participants in the activity or that the work to be achieved is equally meaningful to them. It is often claimed that communication is 'cooperative', however this should be distinguished from more technical claims that hearers interpret utterances based on an assumption that the speaker intends to be cooperative (Davies 2007). These claims are often about everyday conversation, but the caution activity may be different for three reasons: it is institutional, (in this study) it involves NNS suspects, and it has two audiences.

Grice (1989:26) argues that "each participant recognizes … to some extent, a common purpose or set of purposes, or at least a mutually accepted direction." As a result, speakers will be expected to make their "conversational contribution such as is required … by the accepted purpose or direction of the talk" – the 'Cooperative Principle' (ibid). Grice recognises that the extent to which purposes are shared will vary, and (ibid:39) that speakers can opt out of the Cooperative Principle. Clark argues that speakers in everyday conversation, in order to contribute to discourse, "try to establish for each utterance the mutual belief that the addressees have understood what the speaker meant well

enough for current purposes" (1992:144). While Clark's speakers act unilaterally, they produce utterances aimed at accumulating "common ground". Clark acknowledges (1992:140) that participants can be more or less sincere in performing the acceptance of contributions. Both approaches involve a degree of purpose which speakers orient to, however some critiques argue that accounts like Grice's do not describe communication in situations such as police interviews where there is a power imbalance (Harris 1995).

In contrast, Relevance Theory provides an account of the interpretation of utterances without assuming that participants in communication necessarily have a Gricean common purpose or mutually accepted direction (Sperber & Wilson 1995:161), arguing instead that the only purpose communicators need to share is "to have the communicator's informative intention recognised by the audience". Shared knowledge of a purpose is, for Sperber & Wilson, only one contextual factor, but one which makes understanding easier by creating shared contextual assumptions. Communicators are normally interested in knowing whether their informative intention has been fulfilled, and if this interest is recognised by participants, it may create an expectation that the hearer will provide some response about his/her understanding (1995:62). Relevance Theory argues that interpretation of utterances is driven by relevance, which is achieved by balancing the cognitive effort required for interpretation with the cognitive outcomes (changes to the hearer's assumptions about the world) resulting from interpretation (Sperber & Wilson 1995:125).

I will adopt a Relevance Theory approach and question, rather than assuming, whether there is a mutually accepted direction or purpose against which speakers measure understanding. This approach is particularly appropriate for institutional interaction, where professionals and lay people start with different understandings. Professionals have institutional goals, and are likely to develop standard practices through repetition of activities (Drew & Heritage 1992), but habituation may mean it is not obvious to them that outsiders are unaware of institutional purposes, and/or that institutional language may be difficult to interpret without a knowledge of those purposes. A meaningful question is whether the suspect *collaborates* with the progression of routinised institutional interaction, or resists (Drew & Heritage 1992:44). Suspects have no real choice about the caution's direction, and some of them may accept that direction and collaborate, or resist (Newbury & Johnson 2006), while in other cases the required direction may not even be understood.

For a NNS communicator, shared understanding may be reduced and institutional goals may be even less obvious. NS-NNS communication has been argued to require a higher degree of cooperation to overcome linguistic limitations and construct utterances as part of a coherent text (Knox 1994). However Foster-Cohen (2004) points to evidence in NS-NNS communication that speakers engage in individual efforts to solve problems or pursue individual goals rather than necessarily pursuing joint goals, arguing that Relevance Theory can account for these individuals' communicative efforts without presupposing cooperation, in contrast with Clark's approach.

A further reason why participants in the caution may not share goals is the 'two-audience problem', which introduces tension between the policy objective of actual suspect understanding and what courts will accept as evidence of apparent understanding in conversation. Aside from communicating with each other, participants (if they have two-audience awareness) may be motivated by how the conversation will appear on the recording. If police could induce the suspect to say things that create the appearance of comprehension, this might be a rational (if not ethical) way to meet their objectives.

So the question is whether the caution exchange transitions from an institutional activity whose objectives and practices are familiar to police to a joint activity whose goals are known to suspects, giving them the possibility of collaborating with those goals. Understanding the activity is likely to affect suspects' ability to infer how individual utterances relate to the progress of the activity, and therefore suspects' ability to contextualise the meaning of those utterances and the meaning of the caution.

2.2 Context and relevance

Given that police start with the knowledge about what the caution is and how its steps unfold, we can ask to what extent police share that knowledge using language. Police can choose to say things which increase the amount of *context* accessible to suspects for interpreting the caution. Context can be defined as a set of premises used to interpret an utterance, a subset of the

hearer's assumptions about the world (Sperber & Wilson 1995:15). It is likely that every utterance is linguistically underdetermined (Carston 2002), so hearers use context to interpret every utterance they encounter. Context is not limited to ideas which a speaker has in mind but includes facts which are *manifest*, meaning perceptible or inferable from observation or existing knowledge (Sperber & Wilson 1995). The set of facts manifest to a person is that person's *cognitive environment* (ibid:39). Clark (1992), instead of focusing on individual cognitive environments, models communication in terms of "common ground", meaning knowledge, beliefs and suppositions that speakers share. The question of how speakers can determine what is shared between them is critical, and they may take common ground to include, for example, previous utterances in the conversation, information available due to physical co-presence (such as objects in the immediate environment), and community membership (Clark 1992:69).

Of course, speakers will never share exactly the same assumptions about what their common ground is (Clark 1992:68), and contexts are ambiguous and overlap with each other both inside and outside the discourse (Linell 1998). Sperber & Wilson argue that it can be manifest that particular information is shared, including when it is part of the immediate physical environment, and such information is "mutually manifest" or part of a "mutual cognitive environment" (1995:41). Arguably, every person's cognitive environment overlaps to greater or lesser degree with every other person's (Carston 2002:68), assuming that at minimum they share "background", knowledge

common to humanity about matters such as walking and eating (Searle 1980). However information can be more or less manifest and more or less relevant (Sperber & Wilson 1995). Important questions for the caution include the extent of shared context between the participants, mechanisms for determining what is shared, and how common ground is accumulated. The caution does not seem to draw on easy sources of shared context: not much is physically observable in the interview room other than the participants and the recording equipment, and the participants are not members of the same community.

Sperber & Wilson (1995) recognise that hearers have multiple, contexts, which may be organised and retrieved in 'chunks', some more accessible than others. One way of modelling different kinds of context is hierarchical levels like those proposed by Cronen, Johnson, & Lannamann (1982).

Table (2): hierarchy of context (adapted from Cronen et al. 1982)

Cultural patterns: broad patterns of social order orienting individual experiences and legitimising ways of knowing and acting.
Life scripts: a participant's concept of self.
Relationship: participants' sense of the relationship between them, perhaps reflecting their experience of past interactions.
Speech events (episodes): sequences of interaction which participants see as bounded, composed of speech acts.
Speech acts: each performance of an utterance with a recognisable intention.
Content: what is said as part of individual speech acts.

Cronen et al (1982) argue that these levels of meaning can provide context for each other, in ways which will differ among individuals. For example a warm, friendly relationship may form context for an episode of teasing, leading a hearer to interpret the intent of a particular speech act as humorous rather than

insulting, an interpretation not attributable to the words or manner of delivery of that speech act itself. Conversely, an episode may jeopardise a relationship between two people because one reinterprets the other's past actions in light of that episode (ibid). Ultimately, events and relationships are constituted by individual speech acts (and behaviour), so it must be the case that these smaller units can build up context for higher levels. However a single unusual speech act is unlikely to cause an immediate re-evaluation of a long-standing relationship for example, so it may be that speakers reconsider higher levels of context incrementally or only when countervailing context accumulates a particular weight.

Even if levels of context are interpreted loosely, it is useful to model context as residing at different levels of generality, potentially predicting how long different types of context will remain relevant. There will be many speech acts in a speech event and many speech events in a relationship between two people, whereas life scripts and cultural patterns may remain somewhat constant context for many relationships, events, and so on that a person experiences. Assumptions held by speakers at higher, more general levels may be more resistant to dislodgement by contradicting context.

In relation to the sharedness of context, everything from the relationship level down to the content should be characterised by historical co-presence of the participants, so this may be assumed to be shared context, subject to language and action having been understood, as measured by techniques for monitoring the accumulation of common ground. Some cultural values, on the

other hand, are often incorrectly assumed by speakers to be universal, though many speakers have experience of other cultures. It is arguable that some Aboriginal people would need 'bicultural competence' to participate in a police interview (McLaughlin 1996). NT police on the other hand likely have some experience of Aboriginal cultures.

The recognition that context includes social and personal factors like relationships, identity and culture may also help to avoid over-rationalisation which could otherwise result from modelling communication in terms of 'premises' and 'inferences'. Separate consideration of different levels of context can help to identify factors which may be relevant to the caution. For example, in some cases there may be no relationship history between the suspect and questioner. In other cases, they may have had previous interactions or the suspect may have been apprehended and arrested by the questioner hours before the interview. Alternatively, a suspect might consider past interactions with the police institution as forming relationship-type context (cf Anderson et al. 2008) and use that experience to interpret interactions with new police officers. On the other hand, police institutional processes, values and rules might be considered a kind of police cultural pattern.

Most importantly, I will argue that the caution is concerned with context at the level of the episode or speech event. One police officer put it this way:

Extract (3): Inkamala #2 (1995)

> Lade: **You might think up here**, "I don't want to talk to that policeman about that trouble". That's your choice. Do you understand that? So you've just got to **remember**

> **that all the time** that, "I don't have to talk to this policeman. He can't make me talk to you - to him".

Lade suggests the desired outcome of the caution is some *thinking* which should be remembered "all the time". A suspect who keeps a version of the caution in mind all the time may use it as context for each speech act (question) which follows in the speech event (interview). Rather than speech acts being interpreted as ordinary questions which to some extent require answers, questions should be interpreted as subject to the right to silence such that answering is optional. To achieve this, the content of the caution, usually spread across multiple speech acts, must be accepted by the hearer as providing context for the interview speech event.

The contents of a hearer's context or cognitive environment also determines what is *relevant* for that hearer, because a relevant interpretation is one which generates positive cognitive outcomes (changes to context) for the hearer, with a reasonable investment of cognitive effort (Sperber & Wilson 1995).

In ordinary conversation, inability to find a relevant interpretation with an acceptable investment of cognitive resources might lead a hearer to request clarification (Heritage & Clayman 2011:22); however suspects have limited opportunities to do this in police interviews because police initiate adjacency pairs, with rare exceptions (Heydon 2005:97). Among many factors, the stress of the police interview (Davis et al. 2011) may reduce the cognitive resources available to process utterances. If a hearer thinks a message contains "deliberate and unnecessary obscurity", the hearer may doubt genuine

communication is intended and justifiably refuse to make the processing effort (Sperber & Wilson 1995:157). Ordinarily the hearer expects the speaker to avoid this outcome by being informative.

However, assumptions about relevance may operate differently in difficult intercultural situations. Interpretation of implicature in English by NNS has been found to differ from NS interpretation, especially where knowledge of culture was identifiably involved in the implicature (Bouton 1992, 1988). More specific to the kind of speakers involved in this study, studies of interactions between NT Aboriginal people and medical staff have found serious miscommunication which was under-recognised by medical staff (Lowell et al. 2012; Anderson et al. 2008; Cass et al. 2002). These medical studies are instructive because there are relatively few accounts of what Aboriginal people actually think about interactions with non-Aboriginal professionals (Habibis et al. 2016). Some patients thought staff were deliberately withholding information about their health (Anderson et al. 2008) even speculating that staff were 'hiding the stories' because they would make more money if sickness got worse (Lowell et al. 2012:206).

The inference that staff were 'hiding the stories' is, on one view, predicted by Sperber & Wilson (1995:274): where it is mutually manifest that a speaker is knowledgeable about a topic, but the speaker produces an utterance which is not as informative as it could be, this generates a (non-Gricean) implicature that the speaker is reluctant to reveal more information and may express "a refusal to cooperate". The informativeness of the utterance depends

on how it is targeted to the hearer's context; and in the studies above, medical staff overestimated patients' knowledge about non-Aboriginal biomedicine (Lowell et al. 2012; Anderson et al. 2008; Cass et al. 2002), suggesting relevant information was left out. If it appeared that speakers were uninformative and uncooperative, it is perhaps not surprising that Aboriginal patients speculated about ulterior motives for withholding information.

When an utterance is produced, it carries a presumption of relevance, an implied assertion by the speaker that to the best of the speaker's knowledge, it is worth processing (Sperber & Wilson 1995:156). Accordingly, hearers will ordinarily work quite hard to find a relevant interpretation of the utterance. However if new information cannot be connected to any currently accessible context, it is 'irrelevant' and there is no point, and no pathway, to interpreting it. For NNS, inability to process language may make it harder to find a relevant interpretation. In addition, experience of unsuccessful communication may shape a hearer's relationship with speakers and institutions (relationship-level context), potentially affecting the hearer's expectations about the informativeness of future language, and how hard the hearer will work to interpret future language from those sources. Sometimes, hearers may end up with no relevant interpretation of an utterance.

In caution conversations suspects do not seem to speak freely enough to reveal what kinds of context affect their interpretations. However ARDS (2007) reported that Yolngu people had significant distrust of the non-Aboriginal legal system and police, and felt that non-Aboriginal people lacked

respect for Yolngu people and law. This kind of distrust could affect suspects' assumptions about how informative police intend to be, similar to the above mistrust towards medical staff. ARDS (2007) also found significant misunderstandings about legal concepts including the caution. We can also ask how much police know about suspects' cognitive environments. Police may know little about a suspect at the start of an interview (Rock 2007), and have limited opportunities to find out, though police ask some questions about suspects' backgrounds, and comprehension checks attempt to find out what suspects know about the caution. Police may wrongly estimate how difficult utterances are for suspects to process and whether suspects have sufficient context to interpret utterances.

I will now consider ways in which police can, and to some extent do, provide context for the caution.

2.3 Framing and announcements

One way police may provide context for the caution is by *framing* it (Goffman 1974, 1981). By marking the beginning of the caution and also saying something about what they are about to say, police can set up "structures of expectations" (Tannen 1993:16). Rock (2007:224) found that framing may be used for "marking, dividing and solemnifying" a caution. Police in Rock's study believed that this function was meaningful for suspects, marking an "official starting point".

Topics that police must address (including the caution) are dictated by requirements and procedures determined outside the interview (discussed at 1.1). The caution may have no identifiable connection to the topic which precedes it. While police may have the interactional licence to disjunctively change topic (Heydon 2005:111), a sudden transition into the caution might leave the caution in an unmanageably ambiguous position in the discourse. Russell (2000:41) suggests that police felt the need to "announce" the caution with metalanguage because they lacked confidence in its illocutionary force, noting that they employed "read-aloud" delivery which may sound "unnatural" and therefore may make the intention of the caution unclear. An announcement may provide a link into the caution and orient the suspect to features of the talk which will follow.

The following example, already seen in extract (1), includes two 'announcements':

Extract (4): Dumoo (1996)

1. Lindsay: Now Basil do you agree that before we started this talk I took the plastic off these three cassette tapes?
2. Dumoo: Yeah.
3. Lindsay: And I put them in that machine.
4. Dumoo: Yes.
5. Lindsay: And do you agree this machine's now working?
6. Dumoo: Yeah.
7. Lindsay: **Now I advise you Basil that** our conversation is being recorded on this machine and when we're finished I'll give you one of the tapes. Do you understand that?

8. Dumoo: Yes.
9. Lindsay: Now Basil I want to talk to you about some grog, some liquor that was taken into the restricted area on Wednesday night. Do you understand that?
10. Dumoo: Yeah.
11. Lindsay: **Before we go any further I'll advise you that** you don't have to talk to me if you don't want to. Do you understand that?
12. Dumoo: Yeah.

The announcement in line 11 suggests that the interview cannot "go any further" until the 'advising' (the caution) is complete. Notably, Lindsay uses the future tense to refer to 'advising' which he then does straight away. This can be contrasted with the announcement in line 7 which does not have a *before* clause and where *advise* is in the present tense. Perhaps in line 11 Lindsay anticipated the caution continuing over multiple turns, whereas the advice in line 7 was contained in one turn and Lindsay did not intend it to take any longer. The qualification "before we go any further" probably implies that Lindsay will not proceed with his intention to "talk to you about some grog" (line 9)[28] until the advising is complete. Lindsay's three 'do you understand?' tags may also foreground that understanding is a goal of the caution, further discussed at 2.3.2.

[28] To be precise, Linsday said "I *want* to talk to you", expressing volition. If he had said "I *will* question you", this could be criticised for suggesting that the questioning is inevitable and obscuring Dumoo's right to make a choice before questioning happens. So on one view of the regulatory framework, Lindsay's wording was the most appropriate, even though it was not explicit about the intention to ask the questions in the near future.

Conversation (4) shows that Lindsay revealed something about the structure and goals of the caution at its outset. This does not guarantee, however, that Dumoo then knew what to expect. Dumoo only responds with "yes" or "yeah", exercising no apparent agency and merely consenting to the progress of steps in the caution.

Some cautions include pre-announcements:

Extract (5): Todd (1995)

1. P1: we- we're gonna ask you some questions/ .. ok?
2. Todd: {[low]yeah]
3. P1: ==alright/
   and ah,. .I'll I'll go into it a bit more but
   .. yo-you don't have to answer
   =any of our questions/
   .. unless you wish to do so
   ==do you understand that as well?
   .. .I'll explain that a bit more to you
   in a minute too//
   ... um, .. (are) you currently / .. *drunk?
   <3.2> at this particular moment?
4. Todd: ==nah:: [shake]

In line 1 of (5), P1 identifies a future step in the conversation. Extract (5) may contribute to framing the caution because P1 says "I'll go into it a bit more" and "I'll explain that a bit more to you", foreshadowing detailed explanation. However, the pre-announcement in line 3 is brief and disjunctive. P1 asked about Todd's understanding but then moved on without an answer to ask "are you currently drunk?". Questions about intoxication and health are another component of the *Anunga* guidelines (to ensure the suspect is in a fit state to

undertake an interview), and (5) shows how police must manage numerous topic changes before they can start the substantive interview. As in (4), P1 reveals something about the caution, but it is doubtful whether this is enough to orient an unfamiliar suspect to what will happen.

2.3.1 Understanding vs formality

Other announcements in this study are varied but reveal two broad patterns: an explaining–understanding frame and a formality–requirement frame.

Of the transcripts in this study involving a clear transition from another topic to the caution, only three did *not* include a clear announcement. In those cases, the first speech act containing the caution was introduced with *now*. In 18 conversations, there was a clear announcement.

As seen in lines 9-11 of (4), announcements typically follow a statement about the topic of the interview in a separate turn. Announcements typically have three elements:

Table (6): Announcements

Orientation to structure of interview	*Allusion to requirement or formality*	*Description of speech act or required outcome*	*Source*
but before we can talk to you about that,	I need to	give you that caution again.	*Lawrence* #1 (2016)
before either myself or Agent Adams speaks with you or ask you any questions,	you must	understand that	*BM* #2 (2014)

	I'll just also formally	advise you that	*Age* #1 (2010)
now before – um – myself or constable Cox talk – ask you any questions in relation to the – um – the matter that matter – the death of – ah – Matthew Walker,	I'm obliged to	tell you that	*Age* #2 (2010)
but before we do that	I need to	make sure that you understand your right as a person, ok, very important, alright	*Jawrarla* (2006)
but before I get you to talk to me about that	I'll	explain to you that	*Cumaiyi* (2003)
Before we go any further	I'll	advise you that	*Dumoo* (1998)
now before you make any other comment	I have to	advise you again as you were advised last night that	*Spencer* #2 (1998)
before I ask you any questions about that matter	I have to	tell you that	*Jako* (1997)
well again – um – Howard,	we'll have to	inform you that	*Echo* #2 (1996)
now before we talk about that	I want	you to know some very important things. You've got to listen very carefully to what I say next. okay? all right? now you listening to what I'm saying?	*Inkamala* #2 (1995)
now before I ask you any questions about these matters	I have to	caution you that	*Marrmowa* (1994)

and before we go any further,	I must	tell you that	*Mangaraka* #2 (1994)

The relative uniformity of the above announcements over 22 years is surprising. There appears to be no requirement in law or in Police General Orders to announce the caution, however police may be following a 'script', a written plan for the interview including the caution, which may be an aide-memoire or have some status as a police-internal policy. This is not transparent to the researcher.

Most announcements focus on the speaker and the speech act ("*I* have to *tell* you"), however some focus on the suspect and the outcome ("*you* must *understand*"). Speech act verbs used in announcements range from *tell* (nonspecific) to *advise*, which suggests that the caution contains useful information, and *explain* which suggests the police intend to convey information effectively. Many announcements use modals (*have to*, *must*, *need to*), which will be further discussed at 4.1, and some use the future tense (*'ll*) which may have some modal meaning. As discussed above, future tense may foreshadow the expected duration of the caution, hinting at the complexity of the activity. It is notable that future tense was also used with Age and Echo where there was no *before* qualification.

"I want you to know some very important things [etc]" leaves little doubt for Inkamala that the caution is important and the speaker wants Inkamala to understand it. However a larger number of announcements included statements like "I'm obliged to tell you that", describing procedural requirements, and

potentially distancing police from investment in the explanatory exercise. Heydon (2005:49), using Goffman's (1974, 1981) participant frameworks, reasons that the phrase "I must inform you that" indicates that a police officer was *animator* only of the caution. That is, despite saying the words, the police officer is neither the *author* of the caution text nor the *principal* requiring its use and taking responsibility for its content. This may establish a contrast between the first presentation of the caution, preceded by an announcement, and subsequent reformulations in which police can assume authorship (Rock 2007:144).

The idea that police deliver the caution because it is required could be interpreted to mean that the speaker is disinterested and the caution is a mere formality. Chief Justice Martin said of the conversation below that "[t]he attempted caution was cast in the mould of an afterthought, some formality that must be undertaken" (*Echo* 1996:[10]).

Extract (7): Echo #2 (1996)

1. Baird: Okay. Now, are you happy or do you want to tell us about the - some other things that happened?
2. Echo: (inaudible).
3. Baird: Partake in a - in another interview?
4. Echo: Yeah.
5. Baird: Sorry?
6. Echo: Yeah.
7. Baird: Okay. Aright. Well again - um - Howard, we'll have to inform you that - that you don't have to because as - as - as Senior Constable Blanch did. Okay. Anything you do say will be recorded and may later be used in evidence. Do you understand that?

Line 7 announces the caution, incompletely refers to a previous caution, and delivers an "attempted caution", failing to express the right to silence. The 'mere formality' interpretation is supported by Baird's apparent lack of focus on the caution and the incompleteness of his language, as well as the procedural announcement "we'll have to inform you that". The manner of oral delivery may also contribute to whether the caution is heard as a mere formality (Davis et al. 2011).

Other announcements and cautions are more sincere and careful than Baird's, and an alternative interpretation of announcements is that the caution is required because it is important, and it has something to do with external authority. There is no obvious evidence about how suspects understand references to formality in announcements. There is only one reference by police in this study to the existence of an external authority, which was not in an announcement:

Extract (8): Marrmowa (1994)

> Potts: ... Okay I'll explain the caution to you again, right, **the law says** that when you speak to police you don't have to answer any of their questions that they ask. Okay, do you understand that?

While it may be assumed by some suspects that police speak for the law when they deliver the caution, this depends on knowledge about the legal system (which suspects may lack, see 4.1.3). Potts alone among police in this study considered it worthwhile to clarify that the caution is about the law.

The indirectness of police references to authority can be contrasted with front-translations, which make clear that the law is involved in the caution on

up to four different levels, set out in the table below. Though no single translation in this study refers to the law in all four ways, they are all reasonably accurate.

Table (9): Roles of the law in the caution

	Translation references to law	*Summary*
1	"Police think that maybe you **broke the law**. The police will ask you questions about this trouble." (ARDS, NAAJA & AIS 2015)	The reason for and subject of the interview is a possible offence against the law.
2	"**The law says** that when police officers want to ask a suspect about breaking the law, the police officers must warn the suspect to think carefully about telling his story." (ARDS 2015, English text)	The law requires the caution to be said.
3	"**Australian law says** you can be quiet. You can sit and not talk." (Mildren 1997:11)	The caution contains information about the law.
4	"the judge and other people in court … will listen to your words to decide if you did **break the law** or you didn't **break the law**." (ARDS et al. 2015, also English subtitles to *2015 translations*)	The court process decides whether a crime has in fact been committed, potentially using the interview as evidence.

Police announcements refer indirectly to the second level, however the requirement to say something does not by itself make that utterance important or anything more than a formality. The information in levels 3 and 4 makes it clear that the caution is important, and Potts's clarification in (8) is about level 3. It might be possible to infer relationships between the levels, for example that the law requires the caution to be said *because* it contains legal rules which

are relevant. However suspects may need to be familiar with non-Aboriginal law to make this kind of inference. The references to law in the above front-translations provide context missing from police language which may make the 'unimportant formality' frame a less likely interpretation.

The clarification in (8) is one of many examples where police add additional context in later reformulations of the caution. Context is not limited to the announcement or the initial delivery of the caution, however these are key opportunities to frame the activity before confusion sets in. Introducing information later on may lead to uncertainty about its relationship to earlier statements, especially if the first version of the caution is viewed as carrying particular 'authority'. This will be investigated further in Chapter 3.

2.3.2 You understand. Do you understand?

Police talk a lot about *understanding*. The two-audience problem means that some *understanding* talk may assist the suspect and some may be aimed at labelling evidence of apparent understanding for the recording.

In conversation (4), Lindsay ended each of lines 7, 9 and 11 with "Do you understand?". *Understanding* questions may not frame the caution in the sense of projecting expectations forward, but they are arguably frequent enough to form context by continually foregrounding understanding as a goal of the activity, consistent with some announcements.

Another meaning of 'do you understand?' is shown by the following example:

Extract (10): Anthony (1995)

1. P: =d=-do you have to talk to me?
2. Anthony: .. only if you want to//
3. P: sorry?
4. Anthony: ah you ... [{high} yeah]
5. P: <2.2>do you have to talk to me?
6. Anthony: ==sure<l.4>[{low} ah]
7. P: ... yes?
   == no? alright//
   d-do you understand,
   .. do you understand
   what I've told you?
8. Anthony: yeah//

At line 2 Anthony appears to demonstrate confusion about the content of the caution. At line 6 Anthony not only answered the question incorrectly, but probably misunderstood it, giving an uncertain answer about agreement or intention when the question attempted to test his knowledge about obligation. Then at line 7, P asks "do you understand what I've told you?". It is clear Anthony does not understand, and making him admit or deny it is probably face-threatening (Rock 2007) and unlikely to help Anthony's comprehension. From 92 "do you understand" questions in this study there are only three clear negative answers,[29] suggesting that they are not useful for actually

[29] BM and Age said "no" or "nah" respectively in response to "do you understand that" questions followed by a proposition. Cumaiyi said "no" to "do you understand that?" at the end of a police

investigating understanding (Rock 2007:206; Mildren 1997; Eades 2010:137). The intention of line 7 is more likely to be about increasing the salience of understanding: 'are you focusing on the issue of whether you've understood what I've told you?'. Given this pragmatic interpretation, P's question has some potential to progress P's goals (presumably to obtain evidence of apparent understanding).

The above pragmatic interpretation may also explain the use of 'you understand' *preceding* a formulation of the caution, foregrounding understanding as the topic or desired outcome of the utterance.

Extract (11): Cumaiyi (2003)

1. Butcher: You sure you want to talk?
2. Interpreter: (language)[30]
3. Cumaiyi: (language)
4. Interpreter: yeah
5. Cumaiyi: Yeah
6. Interpreter: I'll talk

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turn. Rankin answered "no" to "Have you been – you understand what the job of the court is?", but she could have been answering the partially expressed question 'have you been to court'. There are also numerous inaudible or zero responses to 'do you understand' questions. In Russell's (2000) study, all police said "do you understand" and all suspects said "yes". In Rock's (2007:206) study, 97% of detainees gave positive answers to this question and (unlike this study) none admitted complete incomprehension.

[30] In many transcripts, "language" means that something was said in a language other than English.

7. Butcher: Okay Dominic **you understand** that by asking you that I'm not making you talk, okay. If you wanna' talk its gotta be your free choice, your own will.

In line 7 Butcher appears to be reconfirming that Cumaiyi's willingness to talk is voluntary. The inclusion of "you understand" makes Butcher's assertion that "I'm not making you talk" less overbearing: rather than asserting a state of affairs she focuses on Cumaiyi's understanding of that state of affairs. Line 7 appears to contain two declarative statements, but untranscribed intonation may have made them questions.

Extract (12): Spencer (1998)

1. Kelly: Okay. Now before you make any other comment I have to advise you again as you were advised last night that you do not have to say anything about any of this trouble unless you wish to do so. **Do you understand that**?
2. Spencer: I do understand.
3. Kelly: **So you understand** that you have a right to be silent and you don't have to answer questions from police?

Line 3 reformulates the right to silence, but it may also claim to summarise what Spencer understands. Importantly, it is prefaced with *so*, which in police interviews can have a specialised role of evaluating and labelling previous discourse and leading the topic to its next logical phase, potentially combining pragmatic meaning with *so*'s semantic meaning of identifying a causal link between utterances (Johnson 2002). *So* in line 3 may suggest a causal link from Spencer's claim of understanding to Kelly's claim that Spencer understands the additional information in line 3, helping to construct Kelly's turn as a confirmation-seeking question rather than an information-seeking question (Jones 2008; Newbury & Johnson 2006). The

repetition “Do you understand”, “So you understand” also helps to link Kelly’s two turns textually.

Extract (13): Echo (1996)

1. Baird: Okay. So can I if you don't want to say anything do you have to say anything?
2. Echo: No.
3. Baird: So **you understand** your right you don't have to say anything if you don't want to is that right? (Echo)

In line 3 Baird uses *so*, and similar to Kelly’s utterance in (12), claims to draw a logical conclusion from prior talk. Both Kelly and Baird’s *so*-prefaced turns could be classified as *upshots* (Candlin & Maley 1994) because they go beyond summarising the previous utterance, calling on it to introduce new content. Baird appears to claim, on the basis of Echo’s answer “no”, that Baird understands ‘his right’ (a claim not supported by evidence).[31] Baird’s positioning of the claim as being about Echo’s understanding, rather than the truth of the right in general, may contextualize Baird’s talk but it may also be a claim for the recording.

So police references to *understanding* may have a range of overlapping functions in discourse, including asking suspects to focus on understanding, framing utterances about understanding rules rather than the existence of rules, and summarising upshot claims about understanding, claims which may be

[31] Echo’s ten preceding answers were monosyllabic. This interview was rejected by the court on the basis that the right to silence was not understood.

intended for the audience of the recording. Talk about understanding can be a way to label and close interactional tasks (Lindwall & Lymer 2011), and some references to understanding may be attempts to complete a step in the caution, negotiating the tension between wanting the suspect to understand and wanting to move on.

Of course, it is possible to identify understanding as an objective while avoiding assertions and questions about understanding. This is sometimes seen in announcements, and in the second example below an understanding question follows.

> Also **I need to make sure**, this is really important Gerard, this is the important bit, your rights. **That you understand** you don't have to talk to me about this ganga (*Jawrarla* 2006)

> Potts: **I want you to understand** you don't have to talk to me, right, if I, if I say something, if I ask you a question, you don't have to give me an answer. **Do you understand** that? (*Marrmowa* 1994)

It is arguable that by saying "I want you to understand … Do you understand", Potts also frames the caution activity as being about teaching and then testing (discussed at 2.4). There is no particular evidence about how suspects interpret this.

2.3.3 What is outside the frame

The decision by some police (or police policy) to announce the caution implies an intention to convey something, to frame the caution to some extent. Frequent 'do you understand?' questions may provide additional context about the purpose of the caution activity.

However there are other ways of framing the caution which police do not seem to adopt. NT legislation requiring the caution to be given uses various speech act verbs: "caution",[32] "inform",[33] "warn",[34] and "give the person in custody the information".[35] Police use of the word *caution* in this study is rare, unlike Russell's (2000:40) study where it appeared in the majority of announcements. The word *caution* is unlikely to be helpful unless police have clearly told the suspect what it means (Rock 2012). Rock (2007:150) gives an example of a suspect not understanding a reference to "that caution" even after being told in two different ways what it meant.

Police in this study also did not speak in terms of *warning*. Cotterill (2000) found tension in whether British police viewed the caution as *warning* or *advice*. One reason for *warning* may be that the Anglo-Welsh caution contains additional negative consequences: "it may harm your defence if you do not mention when questioned something which you later rely on in court".[36]

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[32] *Evidence (National Uniform Legislation) Act* (NT) s 139(1)(c). *Caution* is used as a verb: "caution the person that the person does not have to…"

[33] *Police Administration Act* (NT) s 140.

[34] *Police Administration Act* (NT) ss 140, 141 section headings. Note that these headings do not form part of the Act for the purposes of interpretation (*Interpretation Act* (NT) s 55(2)) so the references to 'warning' do not have legal status but perhaps reflect the assumptions of drafters.

[35] *Police Administration Act* (NT) s 141.

[36] *Police and Criminal Evidence Act 1984* (UK) Code C (2014) s 10.5 sets out the standard English caution: "You do not have to say anything. But it may harm your defence if you do not

The US equivalent of the caution is called the 'Miranda *warning*', and its original form refers to the possible use of evidence *against* the suspect.[37] In this study, police occasionally refer to the use of evidence 'against' suspects (see 4.3.2).

The lack of focus on *warning* in this study may also reflect *Anunga*'s focus on achieving apparent understanding. However the lack of warning contributes to a situation in which the caution is generally not framed as something which affects suspects. While saying something ordinarily constitutes a claim that it is relevant (Sperber & Wilson 1995), the announcements in (6) do not suggest *how* the caution is relevant to suspects. Some of them suggest that explaining and understanding the caution is a requirement *before* questioning can proceed, but do not say that the caution will *affect* the interview, that it establishes rules which are fundamental to the speech event. An arguable exception, not in an announcement, was seen at 2.2 in extract (3), asking Inkamala to remember the caution "all the time".

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mention when questioned something which you later rely on in Court. Anything you do say may be given in evidence." It also specifies a Welsh language text.

[37] "Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him": *Miranda v Arizona* (1966) 384 U.S. 436 at [444]. However wording used to deliver the Miranda warning is diverse and varies from state to state, and courts have declined to regulate its wording closely (Rogers, Rogstad, Steadham, & Drogin 2011).

Further, despite numerous references to understanding, there is no example of police clearly explaining the mechanism for measuring this goal, namely comprehension-checking questions. Rock points out that police may "signal whether cautioning is in the frame of informing or testing, for example; if they do not, detainees must figure this out for themselves" (2007:223). The testing function of the caution will be discussed below.

Police announcements of the caution therefore tend to frame only immediate steps in the activity. They perhaps address what is most salient at the start of the caution, explaining why a significant topic change is happening (because it is required) and framing the forthcoming turns as being about understanding. Slightly more distant steps including the need to ask questions to test comprehension, the future transition to the interview speech event and the fact that the right to silence applies (and is fundamental) to that speech event, are not signposted by police; however this is seen in translations.

Translations of the caution, written or recorded, cannot engage in comprehension testing so may not be expected to announce it. However the relevance of the caution to the interview and the suspect can be made clear at the outset with a statement that the caution constitutes rules that apply in the interview:[38]

[38] The differing numbers of rules or laws are because some translations explain additional rights such as the right to contact someone while under arrest, the right to have a 'prisoner's friend' present in the interview, etc.

Balanyamirriy	ŋunhi	dhu	bilitjuman-dhu		nhuna-ny	
at.the.time	TEXD	FUT	police-ERG		2SG.ACC-PROM	
dhä-birrka'yun	ŋunhi-ŋuwuy		mari-puy,		rom	ga
question	TEXD-ASS		trouble-ASS		law	IMPV
barraŋga'yun	walal	dhu	bilitjuman-dhu		walal	malthun
instruct	3PL	FUT	police-ERG		3PL	follow
ḏämbumiriw-gu	gämurru-w.		Dhiya-ŋ	dhäwu-y		ŋunhi
four-DAT	lesson-DAT		PROX-INSTR	story-INSTR		TEXD
ŋarra ga	lakaram,	dhu	ga	dhawaṯ-maram		dhuwal
1SG IMPV	tell	FUT	IMPV	come.out-CAUS		PROX
mala gämurru	nho-kal,	yurr	Djambarrpuyŋu-kurr.			
PL lesson	2SG-OBL	but	Djambarrpuyngu-PERL			

'During the time when the police are going to ask you about that trouble the law says that the police will follow four rules. This story that I'm telling you will bring out these rules, but in Djambarrpuyngu language.' (*1998 Djambarrpuyngu* translation, English in original)

When the police talk to you about this trouble, the police must follow two laws carefully.
Listen carefully to these two laws.
Law number one says this: … (subtitles to *2015 in-custody* translations)

Police could say something like the above when they begin the caution, and also explain that they intend to ask questions to find out if the suspect has understood what is said.

2.4 The teaching–testing function

The caution conversation starts with an announcement and perhaps a distinct initial statement of the caution, but then seems to transition into an open-ended pattern of explaining and comprehension testing, until comprehension evidence is satisfactory. This can be described as a teaching–testing cycle. Police do not announce the nature or purpose of this speech

activity, though announcements seen at 2.3.1 variously suggest that police will *tell*, *inform*, *advise*, or *explain*. Procedurally, police need to ask comprehension-testing questions to elicit evidence revealing whether the suspect understands the caution, required primarily for the audience of the recording. Below is a conversation involving teaching and testing.

Extract (14): BM #1 (2014)

1. Hall: Ok, mate. Do you understand, mate, that before you say anything to me that you do not have to say anything to me?
2. BM: No.
3. Hall: Ok. And that anything you do say may be given in evidence?
4. BM: Yes, sir.
5. Hall: Ok. So wh, explain that to me what that means?
6. BM: Ah - I don't know to s, how it happened.
7. Hall: Ok, no, not about that, mate, about that caution I just gave you, that you don't have to say anything but anything you do say may be given in evidence. Can you explain that to me? What does that mean to you?
8. BM: Um - I haven't a clue.
9. Hall: Ok. If you don't wanna' talk to me, do you have to talk to me?
10. BM: Only in your presence.
11. Hall: Ok. If I put questions to you and you don't wanna' answer them, does that mean you can be quiet?
12. BM: No.
13. Hall: Ok, mate. So, if I ask a question, do you have to answer me?
14. BM: Yes, sir.
15. Hall: Alright. But if I ask a question, you don't have to answer me, you have the right to remain silent. Ok?
16. BM: Yes.

17. Hall: So if I ask you a question and you don't wanna' answer, you don't have to tell me, ok?
18. BM: Yep.
19. Hall: So what, so if I ask you a question, do you have to, do you have to, do you have to tell me the answer?
20. BM: No.
21. Hall: Ok. And if you do tell me, who might hear that one? Who's gonna' hear that evidence?
22. BM: Evidence.
23. Hall: Yep. Will the Magistrate listen to that stuff?
24. BM: Nup.
25. Hall: Ok, if you do tell me something, ok.
26. BM: Yeah.
27. Hall: …if you do decide to speak to me, that can be given as evidence, that means like the magistrate will hear it or the jury, or other people will hear it. Do you understand that?
28. BM: Yes, sir.
29. Hall: Ok. Do you want anyone notified that you're here? [39]

[39] Extract (14) is from BM's 'section 140' conversation, which normally happens shortly after arrest and not in the interview room, contrasting with other cautions which take place as part of the same recording as the substantive interview. This is why, in line 29, instead of going on to interview BM, Hall asks if he wants someone notified of his arrest, which is a right that detainees have. In cautioning BM, Hall may have accepted a lower standard of comprehension because this was not part of the main interview and because the caution would be repeated at the start of that interview. However given that Hall went through the caution process, there was every possibility that (14) would affect BM's understanding of the caution on future occasions. This conversation was examined by the court because it was relevant to understanding.

Hall begins this conversation optimistically, all but ignoring BM's disclaimers of understanding at lines 2 and 8 and *testing* knowledge of the caution at lines 5, 9, 11 and 13. Hall begins to allocate more talk to *teaching* at line 15, which is a statement and also includes new language about the caution, "you have the right to remain silent". BM gives an apparently correct answer at line 20, causing a topic change to the use of the interview in evidence. Further questioning turns including lines 21 and 23 are suggestive, followed by another overtly teaching turn at line 27 after unsatisfactory answers from BM.

This comprehension-checking process perhaps aims for what Clark (1992) describes for ordinary conversation as the accumulation of 'common ground'. Clark argues that speakers and hearers must "mutually accept" that the hearer has understood the speaker's reference[40] "before they let the conversation go on" (1992:115).

Importantly, Clark's speakers work with hearers until the hearer has understood the speaker's meaning sufficiently for present purposes. This describes to some extent what police appear to do, however it is still unclear to what extent suspects can infer the purposes of the caution as a whole, or teaching–testing steps in particular. Rock (2007:152) argues that cautioning police shift *footing* (Goffman 1981) from investigator to teacher, and if this

[40] Clark limits this discussion of *reference* to Noun Phrase reference.

footing shift is not recognised, the caution's pragmatic intent may be clouded.[41] In particular, the comprehension-testing process involves asking suspects to talk about knowledge (the caution) which may appear to 'belong' to police and in which police are the experts, in other words police 'epistemic territory' (Heritage 2012). Rights to know and articulate information can be negotiated in interaction (ibid), possibly by signalling a shift in footing. Some police utterances such as "tell me what you think all that means to you" (*Todd* 1995) may give suspects a degree of permission to talk about the meaning of the caution.

Meanwhile, police goals are affected by the two-audience problem. Police probably work with suspects until they produce acceptable evidence of understanding, rather than understanding itself (which is also impossible to measure directly). It is doubtful whether the ongoing checking of reference in the conversation is actually mutual. In (14), Hall had minimal grounds to be confident that BM understood what was being said, noting (as discussed above) that asking 'do you understand?' is unlikely to be effective for checking mutual reference. The contrast between Hall's use of "mate" and BM's use of "sir" is some evidence of a power difference in the interaction, and it also has the effect that it is unclear whether BM's "Yes, sir" answers indicate agreement,

[41] After the caution, police presumably shift footing back to investigator, and we can ask how clearly this is signalled, but this is not directly relevant to this thesis.

confirmation of understanding, or submission. Perhaps the equivocal evidence of understanding was sufficient for Hall's purposes.

There are a number of ways in which suspects could potentially infer the teaching–testing purpose which is central to the caution activity. However they are somewhat circular, and it seems clear that the best way for police to make sense of this would be to explicitly tell the suspect at the outset that they will ask questions to find out if the suspect understands the information.

Suspects could infer the purpose of the comprehension-checking activity from the nature of speech acts or sequences. Gumperz (1982:131) argues that "contextualization cues" including (relevantly) conversational openings and sequencing strategies can signal "what the activity is, how semantic content is to be understood and *how* each sentence relates to what precedes or follows". Hearers can recognise cues and discourse patterns if they share relevant conventions or previous experience with speakers (ibid). Recognition of the teaching–testing pattern in the caution might pre-orient suspects to its goals (precise explanation followed by testing, rather than for example negotiation of meaning). Otherwise, discourse strategies may fail where there is a mismatch of expectations about "each participant's rights and obligations within the discourse" (Reeders 2008:105).

Some comprehension-testing questions such as "Tell me what that means to you" (*Todd* 1995, *Mangaraka* #1 1993) give some indication of a testing purpose. Beyond individual turns, the caution displays patterns of informing

followed by testing, which can be more clearly structured than those seen in (14):

Extract (15): Dumoo

1. Lindsay: Before we go any further I'll advise you that you don't have to talk to me if you don't want to. Do you understand that?
2. Dumoo: Yeah.
3. Lindsay: So do you have to answer my questions?

This three-part structure (delivery of information, minimal receipt, *so*-prefaced comprehension check) can be seen in 14 interviews in this study, though there are many other comprehension checking forms. Heydon (2005:28) argues that in police interviews, by "formulating the gist of prior talk, and obtaining agreement to formulations, participants are able to check their mutual understanding of the talk's intended meaning". Exchanges like (15) match this description to some extent. If Dumoo recognised the structure, he might infer that Lindsay was attempting to test comprehension of line 1. Another way Dumoo might understand line 3 is by understanding the purpose of the interaction and awareness of the two audiences.

2.4.1 Co-construction and consensus

Another kind of activity that might be suggested by police speech acts is a negotiation of consensus about meaning or action. Reeders (2008:121) observes in relation to Yolngu information-giving exchanges that many participants contribute to explanations, and "[a]ny new topic goes through a process of collaboration and consensus and the goal seems to be to reach a

collectively ratified version rather than to merely hand over knowledge." This contrasts with typical non-Aboriginal "explanation as one person telling someone else about something that they know" (ibid:108), which somewhat inevitably describes police explaining the caution. Consensus may fill a role equivalent to 'checks and balances' in Yolngu governance (Morphy 2007; ARDS 1994:86), and the caution is a check on state power, but one which works in a very different way (see 4.2.2). Liberman (1981) describes traditional Aboriginal approaches to deliberation through consensual exchanges involving repetition and affirmation of previous utterances in which direct contradiction of ideas is avoided, but alternative ideas can be raised in due time. This consensual approach can be linked to Liberman's (1981) description of *gratuitous concurrence*, a strategy of accommodation to non-Aboriginal speakers by agreeing with them, (which is now well-recognised in the NT legal system). Some studies of narrative in Aboriginal languages have found that co-construction including cross-speaker repetition is a prevalent or even "canonical" discourse style and that "collaborative narratives are highly interactive, despite the fact that often many of the participants have only secondary knowledge of the events, or even no knowledge at all" (Hill 2010:240).

Comprehension checking invites suspect formulations of the caution and can involve co-construction in the sense that police sometimes repeat parts of suspect responses:

Extract (16): Todd (1995)

1. P1: wh-what do you reckon that means t-
   .. as far as you're concerned/
2. Todd: I don't (answer) it's okay,
3. P1: it's okay/
   .. alright/

Extract (17): Moonlight (1995)

1. P: ... what what can a judge do/
   to someone that's done something wrong?
   what can a judge do for them?
2. Moonlight: ah yeah, lock up //
   =(x) .. (x)=
3. P: they =can lock= ("h") im up,
4. Moonlight: yeah//
5. P: or fine him?
   or::/
6. Moonlight: ==or give him fine,
7. P: ==yeah
8. Moonlight: ... or bond
9. P: ==or bond yeah
   ok,

Extract (16) shows P1 repeating part of Todd's probably correct answer,[42] and (17) shows both speakers repeating parts of previous utterances, at lines 3, 6 and 9. Police repetition of (parts of) suspect answers could signal confirmation (Schegloff 1996:180), or "adopt" language and coordinate

[42] This conversation is also discussed at 2.4.2 and 3.2, in extract (22).

perspective between interlocutors (Bean & Patthey-Chavez 1994:211). This can be contrasted with oral proficiency interviews, where bare repeats of interviewee language have been analysed as conveying minimal acknowledgement without alignment (Kasper & Ross 2003:90). Oral proficiency interviews are institutional talk like the caution, however interviewees taking a test are likely to understand the objectives of that interaction. In the caution it is unclear how suspects may interpret police 'adoption' of their language, however they may infer that police aim for a degree of consensus by accepting suspect contributions into a negotiated version of the topic under discussion.

Suspect attitudes consistent with negotiation can be most clearly seen in answers to the common question 'do you have to answer?'. In a number of cases this question seems be interpreted as a negotiation of whether the suspect *will* answer, rather than a comprehension test about a rule.

Extract (18): Lawrence #1 (2015)

1. Miller: … if we ask you a question, do you have to answer that, do you have to say anything?
2. Lawrence: Yeah, it's ok.

Extract (19): BM #1 (2014)

1. Hall: … if I ask a question, do you have to answer me?
2. BM: Yes, sir.

Extract (20): Anthony (1995)

1. P: do you have to talk to me?
2. Anthony: ==sure

Extract (21): Age #1 (2010)

1. Walters: So if I ask you a question do you have to tell me answer.
2. Age: Yeah I answer it.

The suspects above may be saying that they will talk, rather than whether they have to talk. This possibility was recognised by Riley J in *Thomas* (2006:[10]):

> The accused was then cautioned again and when asked whether he had to talk to police he responded: "Yeah. I have to tell the truth". It is unclear whether, in the context of the conversation, he was saying that he was obliged to talk with police or whether he was indicating a desire to voluntarily tell the truth.

The comprehension-testing intention of 'do you have to talk' questions is inconsistent with an interpretation about whether suspects will talk. Suspects give a variety of answers to these questions including 'yes' and 'no', but polar answers generally do not reveal how suspects have interpreted the question. If suspects understood the teaching–testing purpose, they should interpret these questions differently. At 4.1 I will investigate the possibility that the above interpretation is also influenced by linguistic ambiguity in the modal expression *have to*.

In a classroom setting, when the student's answer is followed by teacher feedback, this establishes the teacher's "epistemic supremacy", revealing that the teacher was knowledgeable about the subject of the question (Heritage & Clayman 2011:28). If police identifiably evaluate suspect responses, this may clarify that police have adopted a teacher–assessor role and the purpose of the activity is testing knowledge.

2.4.2 Police feedback: right and wrong answers

Police can respond to the content of suspect utterances, and/or to utterances themselves as steps in an activity (Bakhtin 1986). By responding to content, police may provide *feedback* (eg Hewings 1992) about whether the suspect's understanding is (apparently) correct. However many acknowledgement tokens appear to respond to the progress of the activity rather than the content of suspect responses. The much-studied three-part sequential structure in teaching or instructional interaction can be labelled initiation–response–evaluation ('IRE') (Zemel & Koschmann 2011) or initiation–response–feedback[43] (Coulthard & Brazil 1992).

Feedback from police may help to establish the purpose of the comprehension-checking activity (if the purpose has not previously been made explicit). If suspects understand the teaching–testing purpose and discourse structure, the interpretation of feedback in individual turns may then allow them, like students, to 'learn' whether interpretations of the caution are correct or incorrect. However this requires feedback to clearly distinguish different types of answers.

Ambiguous police feedback has already been seen. In (14), BM gave a series of answers to comprehension checks which were incorrect, inappropriate or disclaimed understanding. Hall's responses at lines 3, 5, 9, 11, 13 and 15

[43] Coulthard & Brazil propose renaming the third step "follow-up", arguing it should be defined on exchange-structural rather than semantic grounds (1992:70-71).

began with "ok" or "alright". These receipt tokens may mark BM's responses as (minimally) acceptable steps in the activity. BM's answers do not suggest correct understanding or allow Hall to progress the activity, however they do represent good-faith responses to the questions, completing adjacency pairs and continuing the interaction. The core function of *okay* in police interviews may be to express agreement or acknowledgement, however non-core uses of *okay* for discourse management may include expressing 'positive' meaning related to "the effective, cooperative accomplishment of interactional tasks" (Gaines 2011:3312).[44] There is little evidence of how BM interpreted the *ok* tokens, particularly as intonation is not transcribed.

Hall's "ok" and "alright" responses may serve to keep the interaction moving through unsuccessful question–answer sequences. This could be consistent with a police approach of progressing the caution activity one step at a time, rather than announcing and then tracking its structure, (see 2.3.3).

BM eventually gave a superficially correct answer at line 20, bringing the sequence of reformulations to an end:

19. Hall: … do you have to tell me the answer?

[44] An example is when the suspect makes "a statement which the interviewer does not agree with or cannot support, but if, in the interest of moving on to the next question, the interviewer inserts okay, this task management use, while not specifically communicating agreement or support, is an indication of having taken a satisfactory step in the process" (Gaines 2011:3312). It should not be assumed that *okay* as a receipt token indicates approval of the *content* of the previous utterance (Beach 1995).

20. BM: No.
21. Hall: Ok. And if you do tell me, who might hear that one? …

This 'correct' response is received with "Ok. And". *And*-prefacing may indicate topic shift to the next step of an activity (Heritage & Sorjonen 1994). In line 21 Hall did move to the next step (explaining the consequences of speaking), and along with *and,* this seems to be the the only way BM's 'correct' answer was distinguished from 'incorrect' answers.[45]

Extract (14) also contains an unusual (for this study) example of a 'third position repair' (Schegloff 1992; Kitzinger 2012):

5. Hall: Ok. So wh, explain that to me what that means?
6. BM: Ah - I don't know to s, how it happened.
7. Hall: Ok, no, not about that, mate, about that caution I just gave you, that you don't have to say anything but anything you do say may be given in evidence. Can you explain that to me? What does that mean to you?

In most unsuccessful comprehension checks, the problem is in the answer, but line 6 appears to show complete misunderstanding of the question, which relied on anaphoric "that" to ask about BM's understanding of the caution. Line 7 reflects normal practice for instructional contexts, where "the instructor sees his or her own initiating query as the source of the trouble", then redesigns the question and re-initiates the IRE sequence (Zemel & Koschmann 2011:476).

[45] Line 3 of (14) also begins with "Ok. And" and follows a denial of understanding, however *and* appears to be a syntactic conjunction in this case (joining line 1 "Do you understand, mate, that …" and line 3 "And that …") rather than a discourse marker.

Line 7 is identifiable as a third-position repair because Hall explicitly rejects the topic, saying “no, not about that, mate”, then clarifies what the question is “about”, re-initiating the sequence. A likely reason for the repair was concern that BM was speaking prematurely about the incident under investigation, which would disrupt Hall’s topic management, display BM’s lack of orientation to the comprehension checking exercise, and detract from evidence of understanding. This repair contrasts with other turns where Hall gave no clear signal that BM’s answers were inappropriate or that Hall’s preceding turn had been misinterpreted.

Problematic feedback can also be seen below:

Extract (22): Todd (1995)

1. P1: ok/ now now do you understand
   .. what it means when I say I'm gonna ask you questions
   ==but you don't have to answer (them)/
2. [*nod*] <3.0>
3. P1: wh-what do you reckon that means t-
   .. as far as you’re concerned/
4. Todd: I don’t (answer) it’s okay,
5. P1: it’s okay/
   .. alright/
   so,.. if yo- if I ask you a question/
   [*nod*] ... and you don't wanna answer it/
   ... do you think that I can force you to answer that question?
6. Todd: <3.2> I don't understand/
7. P1: .. alright/
   what if you do an-understand the question
   ==do you think you can be forced to answer it?

8. Todd: ==I think so,
9. P1: ==you *do?
10. Todd: yeah
11. P1: ==alright/
    ==as as I say
    <2.0>I-I can't force you to answer the questions/ [*nod*]

    [8 turns omitted, during which P1 and P2 express some frustration, and neither 'forcing' nor 'understanding the questions' are mentioned]

12. P2: …what'd I just say then/
13. Todd: you just told me that um .. that I don't have to answer any questions unless you .. don't force me and I understand what you're talking about or something like that
14. P2: alright/
    y- you're on the mark there ok/
    .. what it means is that
    .. if.. you know what the policeman's job is?

    [7 turns omitted]

15. P2: ..so when the policeman says to you/
    do you *have to answer these questions/
    .. what's your answer?
16. Todd:<3.4> I'll answer (a few questions)
    if I .. understand/
17. P2:==ok/ .. alright/

Todd's apparently correct statement of the caution "I don't answer it's ok" was acknowledged in line 5 with a partial repetition of his turn "it's okay", and with "alright". The repetition of Todd's "it's ok" is somewhat unusual in this conversation, and together with "alright" this is some evidence that P1 was 'accepting' it, though it is unclear how Todd understood this reponse. Todd's denial of understanding at line 6 was also met with "alright". Hall's response to

Todd's apparently incorrect answer at line 8 was "you *do?", probably suggesting disbelief, but not explicitly enough to cause Todd to change his answer in line 10, which was then accepted with "alright".

Todd's incorrect statement in line 13 was also met with "alright", followed by "you're on the mark there ok". It is impossible to fully monitor talk in real time, and P2 may have focused on the correct part of Todd's utterance "I don't have to answer any questions"; but line 14 could have been interpreted as an affirmation of Todd's incorrect and overcomplicated interpretation of the caution. This could be part of the reason why he persisted in thinking that "if I understand" was a relevant answer at line 16. That response, also incorrect in that it failed to address the question about compulsion, was met with "ok/ .. alright/". *Alright* has a function related to *okay* though there is debate about what the difference is (Filipi & Wales 2003; Beach 1993). P1 and P2's numerous *alright*s left little to distinguish for Todd which of his ideas were correct (except the explicit encouragement following his most problematic statement at line 13). The meaning of conversation (22) is discussed further at 3.2.

There is also a temporal element to (for example) teacher feedback. "Roughly, positive evaluations are produced 'on time', that is, within normal turn-transition durations. And negative evaluations routinely show a delay or temporizing in their production" (Macbeth 2011:446). (22) includes transcription of pauses by McLaughlin (1996), and there are no apparent examples of delayed responses suggesting negative evaluations by police. On

the contrary, lines 9 and 17 were both *latched* to (followed immediately after) problematic statements by Todd.

A contrasting example of frank police feedback in Age's interview does not seem to have been successful. The Court found that after Age expressed the view that he "had to speak to police",[46] police failed to "retrieve the situation" (*Age* 2011:[25]-[29]).

Extract (23): Age #1 (2010)

1. Walters: Alright. Steven, I'll just also formally advise you that you don't have to say anything. Anything you do say can be recorded and may be used in court at a later date. Do you understand that? Yep – so if I ask you a question do you have to tell me answer?
2. Age: Yeah.
3. Walters: **No**. Okay, that's – **that's the thing** with this caution. Okay. If I ask you a question you can sit quiet if you want to. Do you understand that?
4. Age: Yeah.
5. Walters: So if I ask you a question do you have to tell me answer.
6. Age: Yeah I answer it.
7. Walters: Yeah **no** – **no**. you – you – you don't have to tell me anything you can sit quiet if you want.
8. Age: No (inaudible)
9. Walters: alright. so if – if I ask you a question do you have to tell me the answer?
10. Age: yeah.
11. Walters: no you don't. okay do you – do you understand that you don't have to answer my questions?

[46] This conversation and *have to* will be examined again at 4.1.2.1. It is likely that Age was saying he intended to talk, rather than whether he had to.

12. Age: nah – (inaudible)
13. Walters: okay. alright. so if I ask you a question do you have to tell me anything about that question?
14. Age: mm – yeah.
15. Walters: **no**.
16. Age: no worries.
17. Walters: okay. that's –**that's the thing** Steven you don't have to answer my questions. okay. alright. so if I ask you what colour's your shirt do you have to tell me?
18. Age: yeah.
19. Walters: **no** you can sit quiet. you don't have to tell me what colour your shirt is. you don't have to answer anything I say alright. so again just to make sure that you're (inaudible) with how this works. alright. if I ask you a question you don't have to tell me anything. okay. so if I ask you a question do you have to tell me anything?
20. Age: yeah well I tell you the truth.

Age gives an 'incorrect' answer at line 2. Walters indicates the answer was unsatisfactory with "no". Walters also identifies trouble by saying "that's the thing with this caution". Walters then reformulates the information central to the question "do you have to tell me answer" by stating "If I ask you a question you can sit quiet if you want to." Age again gives a clearly incorrect answer at line 6 (suggesting he will answer, not whether he has to answer). Walters's response again makes clear that this was wrong, and repeats the right to silence using language that has already been used. There are three further cycles of comprehension checks, incorrect polar answers, and "no" receipts from Walters. We may expect meaningful feedback to establish Walters's "epistemic supremacy", implying that each preceding question was not a 'real'

information-seeking question (Heritage & Clayman 2011:28), and potentially constructing individual turns as providing feedback. However, it is not clear that Age understands a teaching–testing IRE exchange to be happening, or that he understands negative feedback in individual turns. Age does not revise his interpretation of the 'do you have to talk' questions, shown by his consistent answers at lines 6, 10, 14, 18 and 20.

Feedback can be threatening to the learner, which may explain why the IRE structure is rare in adult-adult interactions (Coulthard & Brazil 1992), and particular interactional work is required to diminish what could be described as a threat to positive face (Brown & Levinson 1987). Comprehension-testing questions could also make suspects uncomfortable because the caution is the questioner's 'epistemic territory' (Heritage 2012) and the suspect might feel a lack of authority to talk about it. Police may be concerned that appearing critical of suspect responses could discourage the suspect from participating. However there is no evidence that negative responses discouraged Age from further responding or cooperating, possibly because of police interactional authority in the interview.

If Age did understand the feedback, it does not follow from getting an answer wrong that Age will necessarily expect the next utterance to rephrase the same content, however other language or the purpose of the activity may suggest this (these inferences will be discussed at 3.1). Walters may have failed to communicate the caution because s/he continued to repeat it using "don't have to".

2.5 Conclusion

Suspect understanding of the caution depends on context, and two important kinds of context are the purposes of the caution speech activity and the steps involved in that activity. The caution interaction is significantly affected by the two-audience problem, and it is unclear to what extent suspects are aware of this.

Police provide some context, perhaps framing understanding as one of the conversation's purposes. However police often appear to move through the caution in small steps without alerting suspects to what these steps are about, what their purpose is, or what will happen next. Police could frame the caution as something which affects suspects because it will set the rules for the interaction immediately following, but police do not consistently do this.

Police also do not explicitly describe the comprehension-checking activity which they engage in, and opportunities for suspects to independently infer its purpose may be limited. Some suspect responses to comprehension-checking questions are inconsistent with an accurate understanding of the purpose of the activity.

In unusual cases where police provide clear 'feedback' about incorrect suspect interpretations of the caution, this does not guarantee that suspects will know the purpose of that feedback, and they may miss the opportunity to 'learn' from their correct and incorrect answers.

3 Meaning in discourse

The previous chapter argued that the conversation in which the caution is discussed is a complex activity and some suspects may not have enough context to understand what is happening. The caution's 'meaning' or 'content' can only be communicated as part of that conversation, and in this study the caution is usually not explained in a single utterance but in steps in a discourse that police build up across the conversation.

This chapter will explore problems that may arise when the caution is explained across multiple repetitions and formulations. When the caution is repeated and restated, the relationships between repetitions may not be obvious and suspects may not necessarily realise that only one caution (in two parts) is under discussion. It is not predictable which versions of the caution suspects will absorb and how suspects will combine them. There is also evidence that suspects understand some versions of the caution as being subject to conditions, which may result from the interpretation of conditional clauses.

Extract (14) involves police restating and reformulating the caution multiple times, and is reproduced below.

Extract (14): BM #1 (2014)

1. Hall: Ok, mate. Do you understand, mate, that before you say anything to me that you do not have to say anything to me?
2. BM: No.
3. Hall: Ok. And that anything you do say may be given in evidence?
4. BM: Yes, sir.
5. Hall: Ok. So wh, explain that to me what that means?

6. BM: Ah - I don’t know to s, how it happened.
7. Hall: Ok, no, not about that, mate, about that caution I just gave you, that you don't have to say anything but anything you do say may be given in evidence. Can you explain that to me? What does that mean to you?
8. BM: Um - I haven’t a clue.
9. Hall: Ok. If you don’t wanna’ talk to me, do you have to talk to me?
10. BM: Only in your presence.
11. Hall: Ok. If I put questions to you and you don’t wanna’ answer them, does that mean you can be quiet?
12. BM: No.
13. Hall: Ok, mate. So, if I ask a question, do you have to answer me?
14. BM: Yes, sir.
15. Hall: Alright. But if I ask a question, you don't have to answer me, you have the right to remain silent. Ok?
16. BM: Yes.
17. Hall: So if I ask you a question and you don’t wanna’ answer, you don't have to tell me, ok?
18. BM: Yep.
19. Hall: So what, so if I ask you a question, do you have to, do you have to, do you have to tell me the answer?
20. BM: No.
21. Hall: Ok. And if you do tell me, who might hear that one? Who’s gonna’ hear that evidence?
22. BM: Evidence.
23. Hall: Yep. Will the Magistrate listen to that stuff?
24. BM: Nup.
25. Hall: Ok, if you do tell me something, ok.
26. BM: Yeah.

27. Hall: …if you do decide to speak to me, that can be given as evidence, that means like the magistrate will hear it or the jury, or other people will hear it. Do you understand that?
28. BM: Yes, sir.
29. Hall: Ok. Do you want anyone notified that you're here?

In (14) the right to silence is stated and/or tested eight times, and the consequences of speaking are stated and/or tested five times. All formulations of the caution by police, including questions, potentially contribute to the suspect's interpretation. For example, line 3 draws on line 1 and situates the consequences of speaking as a complement clause to a 'do you understand that' question. It is both a question and a restatement of the information. Line 11 is another question, but rephrases the right including, for the first time, "you can be quiet". The information is in the suggestive form of a polar question, and the likely conversationally *preferred* answer 'yes' (Pomerantz & Heritage 2012; McLaughlin 1996; Reeders 2008) would be the correct answer. Line 11 has the potential both to inform BM about the caution by reformulating it, and to elicit desired evidence of comprehension.

The utterance below syntactically combines informing and questioning:

Extract (24): Lawrence #2 (2015)

1. Miller: … So if we ask you something you can stay silent - ah - you could say, 'no comment'. […] So if we ask you something and, and you don't want to answer that, you could sit there quietly or what could you say if you don't wanna' answer the question?
2. Lawrence: No comment.
3. Miller: No comment. Yep, thanks. Now this recording, this goes to court and used as evidence, who would listen to this recording?

4. Lawrence: The magistrate.

While the syntax of line 1 is complex, Lawrence correctly answers the embedded question "what could you say", which appears to be conjoined with the declarative "you could sit there quietly" and qualified by three conditional clauses. This may be an example of police *scaffolding* (Cooke 1996) the question with relevant context, and shows the close relationship between informing and testing.

3.1 Repetition and paraphrase

The examples above involve repetition of parts of the caution. Repetition can be formal (repeating the same words) or functional (repeating the same content) (Johnstone & others 1994), and the latter may be described as "reformulation" (Merritt 1994; Blakemore 1993) or "paraphrase" (Schegloff 1996:179).

Some suspects have prior exposure to the caution, meaning a new caution is a form of repetition. Records of prior cautions are sometimes used by prosecutors as evidence that a suspect has understood the caution previously (Douglas 1998). Unfortunately repeated exposure to US Miranda warnings may not improve accurate recall; rather the interpretive memory task may be complicated by recalling past exposures, both accurate and inaccurate (Rogers et al. 2011). Chief Justice Martin in *Mangaraka* (1995:[23]) commented in relation to caution misunderstanding that "[t]he difficulty is compounded the more frequently the traditional form of warning is given", though it was not clear what aspect of the traditional form His Honour considered to be

problematic. If the suspect correctly understands the caution from previous experience, there should be no difficulty and effective comprehension checks should demonstrate understanding (unless new police language detracts from that understanding).

Within a single conversation, the procedural reason for police reformulating the caution is clear: following unsatisfactory suspects responses about the caution, the police questioner cannot progress the interview until evidence of apparent understanding is achieved. Speakers generally may use reformulation where they recognise that "the original formulation was not an appropriate means of achieving communicative success" (Blakemore 1993:101); but in the caution explicit rules require police to stop and pursue understanding. Reformulations may introduce redundancy (Kaur 2012), and may give suspects more time to absorb information (Merritt 1994:33), although police reformulations may also increase cognitive load by requiring suspects to interpret more language and respond to questions.

Police scope to reformulate may be limited by the availability of linguistic resources for NNS suspects. In situations where "ideas are complex or words are insufficient", formal or close repetition may be used to invite the hearer to make "interpretive efforts to make more of what is said" (Knox 1994:198). I argued at 2.3.2 that 'do you understand?' can have a similar refocusing intention, but this is not usually combined with repetition. So police

vary linguistic forms, perhaps operating within what they estimate[47] to be the range of language appropriate for their interlocutor. For example, in (14) Hall used varying language to mean the same thing: “say anything”, “talk to me”, “answer me”, “tell me the answer”.

While police repetitions may call for suspects to make more effort to interpret caution language, questions of how suspects recognise and interpret repetition are complex.

3.2 Recognising repetition

Suspects may not recognise that reformulations and comprehension checks are intended to be versions of the same text and test the same, invariable, information. They may misunderstand the purpose of repetitions in the discourse or think that multiple topics are under discussion rather than a single caution. Becker (1994:165) argues that in a foreign culture where fewer prior texts are shared, “the hardest thing to know in a foreign language is when and how someone is repeating”. Relationships between versions of the caution can be marked by police, or suspects may recognise that repetition is happening because utterances resemble each other.

[47] The question of how police assess suspect language proficiency is complex and will not be addressed in this study. However when police make decisions about language use (or decisions about whether to use an interpreter), these necessarily must be based consciously or otherwise on an assessment of suspect English proficiency, and such decisions should be made in a way which is justifiable.

In (14), Hall expresses the right to silence at lines 7, 9, 11 and 13, however there is little to show that these reformulations are related to each other:

Extract (14): BM #1 (2014)

7. Hall: Ok, no, not about that, mate, about that caution I just gave you, that you don't have to say anything but anything you do say may be given in evidence. Can you explain that to me? What does that mean to you?
8. BM: Um - I haven't a clue.
9. Hall: Ok. If you don't wanna' talk to me, do you have to talk to me?
10. BM: Only in your presence.
11. Hall: Ok. If I put questions to you and you don't wanna' answer them, does that mean you can be quiet?
12. BM: No.
13. Hall: Ok, mate. So, if I ask a question, do you have to answer me?

Hall's *ok* tokens at 9, 11 and 13 were discussed at 2.4.2 and may indicate minimally acceptable steps in the activity; they do not seem to signal that repetition is happening. At line 13 Hall uses *so*, which seems to have the function of moving the discourse on logically, seeking to draw a causal link between previous discourse and the new question. This may be a hint that line 13 reformulates previous information.

Otherwise, BM may recognise that Hall's utterances resemble each other. Line 11 does not obviously resemble line 7 (unless their meaning is understood, in which case there may be no need for repetition). However "don't have to" is repeated from line 7 to line 9, and "don't wanna" is repeated from line 9 to line 11, with similar verbs "say", "talk" and "answer", and BM

may recognise these connections. Even recognising that a reformulation is related to a previous utterance propositionally is not the same as inferring how that repetition is relevant in the discourse (Gallai 2013:104). In this case, repetitions are intended to give BM additional opportunities to understand the caution and correctly answer comprehension questions, and it is unclear whether BM understood this.

Individual reformulations can be linked using expressions like 'in other words' which can be loosely classed as "apposition markers" (Blakemore 1993). Police mark textual connection between formulations in various ways:

Extracts (25)

> Mora: So **in other words**, you don't have to answer our questions in relation to what we want to talk about but if you do answer those questions, they'll be recorded and might be heard in court, all right? (*KR* 2015)
>
> Lee: oh well what – **what it means** like **the first part I said to you** so do you – do you have to answer my questions and you said no and you said it's your choice to - to say – talk to me or sit quiet. **The same thing is, I'm just asking you in another way**. Do – do you have to say anything to me? You can either talk to me or sit there and be quiet.. (*Age* #2 2010)
>
> P: ==you can't understand alright/
> er I-**I'll rephrase it different way/** (*Todd* 1995)
>
> Heymans: Do you want me to **repeat** it for you? I'll **tell you again** okay? (*Mangaraka* #1 1993)
>
> Hall: Okay. **So what that means**, mate, is that anything you tell me will be recorded on this machine and the magistrate or jury or other people might be able to hear it, okay. Do you understand that? (*GP* 2014)

In the last example, as well as signalling a reformulation, Hall may indicate that s/he does not assume authorship of the caution but merely

explains what it means, perhaps preserving a distinct official status for the initial caution. Hall's reformulation appears to be a *summary* (Blakemore 1993:105) because it is 'about' another utterance (using the anaphor "that") rather than just propositionally similar to another utterance. It is possible that suspects interpret reformulations differently if they appear to carry different authority. At 2.3.1 I discussed the possibility that the requirement to deliver the caution makes police the *animator* only of the initial caution. Heydon (2013) argues that miscommunication in police interviews could be reduced by police adopting a "professional police voice", taking ownership of institutional discourse and adapting it to the interaction at hand. In participation framework terms (Goffman 1981) this would make police *principal* as well as *author* of institutional utterances.

Generally, police in this study have no hesitation in taking ownership of caution language, unsurprisingly given their difficult communicative task. Hall's use of "what that means" may be an exception, suggesting that the formulation following has less authority than the original caution. If this is the case, it is more important that the initial caution is carefully worded. Other apposition markers in (25) suggest that what follows is 'the same as' the preceding caution, or a 'repetition' of it 'in other words', implying equal status between versions while making explicit that they aim to convey the same content.

Perhaps related to the possibility that formulations of the caution sometimes have unequal status in the discourse, it is difficult to predict how

suspects will accumulate understanding when they hear multiple formulations of the caution.

3.3 Suspect interpretations of multiple formulations

The way Hall used multiple formulations in (14) may reveal assumptions about how those formulations worked. After numerous 'incorrect' answers, BM produced a 'correct' answer at line 19 and Hall moved on at line 20 to the second part of the caution. This decision implies either that BM suddenly 'got it' at line 19 and therefore produced a correct answer, or that he understood the caution earlier but something about the language of questions and answers concealed this understanding until line 20. In fact, the language in (14) was interpreted by Blokland J as evidence that BM had difficulty understanding and police should have taken more care when the caution was repeated in the subsequent interview (*BM* 2015:[66]). Conversely, Lawrence's answers "no comment" and "the magistrate" in (24), his second interview, led Grant CJ to conclude that "it would seem that the accused understood his right to silence at that time. That provides at least some basis from which to infer that he also understood the concept at the time of the first interview." (*Lawrence* 2016:[58]). This inference is cautious, perhaps because it is difficult to justify preferring one piece of language over another (such as the first interview) as evidence of a state of mind. Chief Justice Martin pointed out that "[i]t would be quite unjust to latch upon an occasional indication from the accused of an awareness of her rights as a person in custody charged with murder in the face

of so much other evidence that would negative such a proposition." (*Mangaraka* 1993:[22]). Wong (2000:408) argues that linguists historically tended to ignore repetition in language, assuming that the speaker "ended up saying" what s/he meant.

While it is the suspect's state of mind at the end of the caution that matters, that state of mind will be affected by the interpretation of multiple utterances. In situated discourse, it is not possible to 'say the same thing twice' (Rock 2007), because minimally, a repetition will have its prior version as part of its context, affecting the interpretation of the repetition. The study of intertextuality reveals complex relationships between texts inside and outside a given discourse (Rock 2013), and it is difficult to predict how hearers will contextualise a sequence of repetitions.

Unfortunately, in most cases including (14) there is limited evidence about what suspects think, however (22) allows some glimpses of Todd's evolving interpretation of the caution and is reproduced below:

Extract (22): Todd

1. P1: ok/ now now do you understand
   .. what it means when I say I'm gonna ask you questions
   ==but you don't have to answer (them)/
2. [*nod*] <3.0>
3. P1: wh-what do you reckon that means t-
   .. as far as you're concerned/
4. Todd: I don't (answer) it's okay,
5. P1: it's okay/
   .. alright/

so,.. if yo- if I ask you a question/
[*nod*] ... and you don't wanna answer it/
... do you think that I can force you to answer that question?

6. Todd: <3.2> I don't understand/

7. P1: .. alright/
what if you do an-understand the question
==do you think you can be forced to answer it?

8. Todd: ==I think so,

9. P1: ==you *do?

10. Todd: yeah

11. P1: ==alright/
==as as I say
<2.0>I-I can't force you to answer the questions/ [*nod*]

[8 turns omitted, during which P1 and P2 express some frustration, and neither 'forcing' nor 'understanding the questions' are mentioned]

12. P2: …what'd I just say then/

13. Todd: you just told me that um .. that I don't have to answer any questions
unless you .. don't force me and I understand what you're talking about or something like that

14. P2: alright/
y- you're on the mark there ok/
.. what it means is that
.. if.. you know what the policeman's job is?

[7 turns omitted]

15. P2: ..so when the policeman says to you/
do you *have to answer these questions/
.. what's your answer?

16. Todd: <3.4> I'll answer (a few questions)
if I .. understand/

17. P2: ==ok/ .. alright/

At line 4 Todd gives what appears to be an accurate statement of his right to silence "I don't answer it's ok". This could mean '*if* I don't answer, it's ok': a hypothetical clause followed by an evaluation. This interpretation is supported by the unmarked tense of *don't*, contrasting with the statement about intention "I'll answer" in line 16.

P1 then uses *so* at line 5, asking Todd to apply this knowledge to infer that police 'can't force him' to answer questions. Although Todd at line 6 seems to say that he doesn't understand P1's comprehension question about forcing, P1 somewhat unhelpfully reformulates the question at line 7 as contingent on Todd understanding "the question", apparently referring to "a question" and "that question" introduced in line 5, in other words the future question to which P1 says the caution will apply. Line 7 seems unresponsive to Todd's (unusual) admission of non-understanding, and this difficulty may be exacerbated because interpreting line 7 requires reference tracking using definiteness. '*The* question' is likely to refer to a previously introduced reference, whereas '*a* question' (line 5) is likely to be the first time this reference has been introduced. However this type of reference tracking may be unfamiliar for speakers of Aboriginal languages which do not track reference using words like *the* and *a* (eg Stirling 2008; Kim, Stirling, & Evans 2001).

At line 11 P1 says "As I say, I can't force you to answer the questions". This is the first time this has been stated rather than asked, which may reveal another problem with complex sequences of paraphrase, the difficulty of

monitoring what has been said. Speakers may think they can "can remember verbatim what they and others have said", but are more likely to remember the gist (Coulthard 1994:420). In any event, Todd appears to recall some of this preceding language when he states his understanding at line 13.[48] He seems to have correctly understood that police recognise the undesirability of two situations: police forcing Todd, and Todd not understanding questions. Line 13 suggests an inference that if these undesirable situations occur, the rules about answering are different.

If Todd correctly understood the right to silence as unconditional at line 4, P1's subsequent talk about forcing and understanding may have made his interpretation less accurate. Perhaps, rather than interpreting the discursive intention of lines 5 and 7 as reinforcing and applying Todd's knowledge, he understood them as revising or correcting his understanding and possibly making the right to silence *conditional*. Line 13 is not an acceptable expression of the right to silence: it suggests that in the likely situation where police ask a

[48] It is possible that line 11 had the positive effect of correcting a belief Todd held at line 8 that forcing was allowed, and that this is reflected in his answer in line 13. However this forensic interpretation of line 8 is doubtful. At line 5 Todd was asked "do you think that I can force you to answer that question?" and he replied "I don't understand". Line 7 was a complicated version of the same question, using passive, agentless modality "do you think *you can be forced*" to mean (presumably) 'do you think *we are allowed to force you*'. Todd's answer at line 8 repeated the syntactic frame of the question and not its content: "Do you think …?" "I think so". So it is not clear that Todd at any point thought forcing was allowed.

question which is not overtly coercive, and Todd understands it, he must answer. Conditional interpretations of the caution are further discussed at 3.5.

Following line 13, we can again ask how police language affected Todd's understanding. Todd's answer at line 16 comes after a significant amount of talk about the right to silence including several 'do you understand' tags but no conditional clauses similar to 'if you understand'. The intervening explanations of the right to silence do not seem to have displaced Todd's belief that 'if I understand' was relevant to answering the question "do you have to answer". However line 16 may be a less meaningful reflection of Todd's understanding because it is about whether he *will* answer rather than whether he *has to* (also discussed at 2.4 and 4.1).

So, while it is impossible to know what was in Todd's mind, there is some evidence suggesting that a correct interpretation (line 4) was replaced with an inaccurate conditional interpretation (line 13), then part of that interpretation may have persisted (line 16). Police should not assume that reformulating the caution repeatedly will improve suspect understanding, indeed there may be a kind of 'law of diminishing returns' (Kurzon 1996). There is no reason to expect that suspects filter out confusing influences and only accumulate accurate interpretations of the caution, unless police have an effective mechanism for testing suspect interpretations and providing feedback, as discussed at 2.4.2.

3.4 Hypothetical clauses

Todd's inaccurate interpretation of the caution at line 13 of (22) involved (semantic) conditions expressed in (grammatical) conditional clauses. I will now consider what conditional clauses may mean, at the sentence level.

Conjunctions like *if* and *unless*, which introduce conditional clauses, may have two roles: encoding relationships between clauses, and implying that the proposition in a clause is hypothetical, contrasting with declarative clauses which may suggest that the speaker projects a proposition as true. The following examples involve conjunctions which simultaneously deal in hypothetical meaning and create relationships between clauses.

> Miller: … it's your choice **if you answer our questions** (*Lawrence* #2 2015)
>
> Kelly: And it could get you in trouble **if you say something**. (*Spencer* #2 1998)
>
> P2: what will happen **if you answer the questions** .. do you think later/ (*Todd* 1995)
>
> P2: so this man .. might start asking you some questions about that trouble now / [*cough*] .. its up to you **if you want to answer him**/ (*Todd* 1995)

It is necessary to the meaning of these utterances in context that the clause introduced by *if* is hypothetical. Maintaining the epistemic uncertainty of 'if you say something' is essential; the whole point of the caution is to explain that whether the suspect says something is not predetermined, but is for the suspect to decide. Existing guidance recommends avoiding *if* and *unless* because they lack exact equivalents in many languages (Communication of Rights Group 2015), or being explicit about hypothetical meaning which is sometimes encoded using *if* (Aboriginal Interpreter Service 2016). There is overlap in Standard English between *if* and *when*, however they can distinguish whether

the speaker commits to the truth of the proposition in the clause. *If* may "set up a new mental space distinct from … the speaker's assumed construal of 'reality'" (Dancygier & Sweetser 2000:121), while distancing the speaker from "full commitment to the contents of the *if*-clause"; whereas *when* commits the speaker to the reality described in its clause (ibid:125).

Elwell (1979:267) reports that in English used at Milingimbi (an Aboriginal community), *if* was sometimes used in same semantic domain as SAE *when* or *after*. The translated caution closest to languages spoken at Milingimbi is in Djambarrpuyngu. In the *2015 Djambarrpuyngu not-in-custody* translation a hypothetical clause is marked as follows:

> **ŋunhi** nhe ga yaka djäl-mirri-yirr waŋa-nhara-w wo milku-nhara-w
> TEXD 2SG IMPV NEG desire-PROP-INCH talk-IV-DAT or show-IV-DAT
>
> walalaŋ-gal ŋula nhaku, **ŋunhi**-ny manymak.
> 3PL-ASS INDEF what.DAT TEXD-PROM good
>
> 'If you don't want to say anything to them or show them anything, that's ok.'
> (subtitles in original)

Here *ŋunhi* creates a conditional clause similar to English *if*. *Ŋunhi* can also be translated as *when*, or be indeterminate between the two English meanings (Wilkinson 1991:659). Perhaps *ŋunhi* introduces a proposition which is *irrealis* (not said to have happened). It can also refer deictically to such a proposition, as seen in its second appearance above, and another way to translate this sentence would be '*that* you don't want to talk…, *that*'s ok'. The issue for accurate expression of the caution is whether the speaker suggests that the proposition is or will be true, or merely poses it as a possibility. *Ŋunhi* does not obviously distinguish between these two possible stances in the way that would

be encoded by some interpretations of English *when* and *if*, suggesting some speakers could adopt either of these interpretations of SAE *if*.

If the distinction sometimes encoded between *if* and *when* is unclear for some Aboriginal speakers there is a risk that they will interpret utterances as suggesting that police expect suspects to answer ('what will happen *when* you answer the questions?'). There is no evidence pointing to this possibility as a specific cause of suspect misunderstandings, however it has the potential to contradict the right to silence, as well as other police statements about the caution. This possibility is most obviously applicable to conditional clauses which are about future actions (such as answering), rather than states of mind (such as wanting). The example below shows an alternative way of making clauses hypothetical, but it also shows that talk about wanting may be talk about answering, because the speaker implies that if "you like talk", some talk will happen and will be written down. This caution is said to have been used in 1935 in Alice Springs with an Aboriginal suspect.

> Suppose you no like talk, all right. Suppose you like talk, me puttem along paper, takem paper along Court. (Courier-Mail 1935)[49]

Suppose indicates that the following clause is hypothetical and the listener will be asked to think about the hypothetical and its consequences. Some police appear to recognise that *if* by itself may not reliably convey that

[49] It is not clear what language(s) the Aboriginal person actually spoke, or whether this was a good translation into Pidgin (or Kriol) that was spoken at the time.

what follows is hypothetical. It is possible to join clauses using *if* while clarifying that the speaker does not presuppose that the event in the *if*-clause will happen:

> Miller: … So **if you do choose to say something**, then that's recorded on that machine and those disks then go to the courthouse, and the magistrate will listen to those disks, lawyers, and that's the evidence. Ok? (*Lawrence* #1 2015)

Miller's inclusion of "do choose to" suggests Miller does not presuppose that Lawrence will say something. *Do* implies a contrast with 'if you don't choose', and along with *choose* (further discussed at 4.2.1.3), may suggest that the contents of the *if*-clause are only one possible choice.

If a speaker is understood to assert propositions as likely to become true (because *if* is interpreted as something like *when*), this could suggest that police are discussing a series of expected situations, rather than mere possibilities. This could make the discourse relationship between versions of the caution less clear, obscuring the intention to present multiple versions of a single text. Possible interpretations like '*when* I ask a question, do you have to answer?', '*when* you don't want to talk to me, do you have to talk to me?', and '*when* you want to answer my questions you can' may suggest (more strongly than if the clauses were understood as purely hypothetical) that each statement or question is only about situations where the condition is satisfied. This could also contribute to interpretations of the right to silence as subject to conditions.

3.5 Conditional interpretations

We can now return to Todd's 'conditional' interpretation of the caution seen in (22):

13. Todd: you just told me that um .. that I don't have to answer any questions **unless** you .. don't force me **and** I understand what you're talking about or something like that

This appears to involve conditional clauses (a grammatical category) limiting the meaning of the caution to situations in which particular (semantic) conditions are satisfied. Todd's first condition "unless you don't force me" uses language that was not presented by police in a conditional clause, but in declarative clauses such as "I can't force you…" (line 11), and questions. Todd's second condition "[unless] I understand…" reflects P1's conditional "If you do understand" (line 7).

The right to silence is always the same, and the answer to "do you have to answer?" is always 'no'. However conditional clauses may be used to highlight when the right becomes relevant. Hall produced these *if*-clauses in (14):

> **If you don't wanna' talk to me**, do you have to talk to me?
>
> So, **if I ask a question**, do you have to answer me?
>
> **If I put questions to you and you don't wanna' answer them**, does that mean you can be quiet?

The right is salient when a police officer asks questions, and even more so if the suspect doesn't want to answer them. The clauses above are probably intended to contextualise the questions, and putting them at the start of

sentences may create temporal iconicity, putting ideas in chronological order (Kurzon 1996). However they could be interpreted as limiting the meaning of the questions by making them logically conditional. A suspect might think that what is under discussion is a diversity of rules which apply in different situations, and this interpretation is more likely if the relationship between formulations of the caution is also unclear.

Anthony received a caution with a different condition:

Extract (26): Anthony

1. P: =alright=,
   == but before I ask you any .. *questions, ... in relation to *that,
   .. I must *tell you that/ .. you don't have to talk to me
   ==**unless** you want to,

   [9 turns omitted]
2. P: =d= –do you have to talk to me?
3. Anthony:.. **only if** you want to//
4. P: sorry?

It must be noted that Anthony failed to adjust the pronoun *you* to *I* in his restatement at line 3, while he did correctly process the negation (from "don't … unless" to "do … only if").[50] This suggests he reproduced language which

[50] The *Plain English Legal Dictionary (Northern Territory Criminal Law)* (ARDS et al 2015:11) avoids *unless* because it tends to put clauses in reverse chronological order. This is the case here: P's language in line 1 puts *talking* before *wanting*, but in reality, (not) wanting to talk must precede a decision to (not) talk. Anthony's statement in line 4 suggests he correctly processed

he had incompletely processed. However he accurately restated the caution as given by P: it follows logically from line 1 that ‘you have to talk to me if you want to’. To derive the canonical caution from this, Anthony would have to infer that there is in fact no compulsion because it is a contradiction to compel someone and give them a choice. It appears Anthony did not make this inference, possibly because he had not processed the language. Therefore he may have thought that this information only applied in situations where the condition was satisfied (whatever that might mean), and he may not have linked this language, at that time, with other understanding he had of the caution as a general statement.

In contrast, an apparently meaningful condition is seen in the exchange below.

Extract (27): RR (2009)

1. Richardson (police): **If he doesn't want to answer my questions** or tell me any story, what, what can he do?

   [discussion between interpreter and suspect, not transcribed]

2. Parry (interpreter): He said that he’s not going to say anything.
3. Richardson: He’s what sorry?
4. Parry: He’s not going to say anything.
5. Richardson: Ok, and that’s his choice.

---

this clause structure, though this may not be the same as understanding the meaning inside the clauses.

RR's lawyers argued that this conversation represented an attempted exercise of his right to silence. This would imply that he did not directly answer the question in line 1 about what he 'can' do, but meant to state what he was 'going to' do. Justice Riley found that the answers meant that "in circumstances where he did not want to answer questions or tell his story he was not going to say anything".[51]

It is difficult to analyse what RR may have meant because a lot is unknown about the interpreting,[52] and the meaning of question and answer depends on subtleties of modality ("can" in line 1 and perhaps "not going to" in line 2). Justice Riley's interpretation is consistent with the question. In any event, the interpretation in which line 2 is hypothetical and not a declaration of actual intention depends on treatment of the *if*-clause as a condition limiting the meaning of the question and answer. Because the answer is about what *will*

---

[51] *R v RR* (2009) 25 NTLR 92 at [62]. Justice Riley based this interpretation on "hearing the whole of the recorded discussion and taking the answer in context", not all of which is available here, and on RR's subsequent offer to tell his story. It is possible the subsequent offer to talk represented a renegotiation by RR.

[52] Conversation in the other language is not transcribed and would not have been understood by Richardson. However, Richardson could have improved the clarity of this exchange by talking to the suspect, not the interpreter ('If *you* don't want to answer my questions or tell me any story, what can *you* do?'), which might have generated a more transparent answer in the first person from the interpreter. Further, Richardson chose to confirm the answer by asserting "that's his choice", but he could have asked about the answer in a different way to clarify whether the answer was about the nature and existence of RR's choice or an actual exercise of it.

happen, it matters whether it is constrained by the condition. If the answer had been 'I can say nothing', its interpretation would not be affected by the condition.

This contrasts with the informed interpretation of the same condition in the common formulation "if you don't want to answer any of our questions, you don't have to" (*Lawrence* #1 2015). This is logically equivalent to "you don't have to talk to me unless you want to" seen above in (26), and successful processing of the *if*-clause should lead to meaning which is not limited by the condition (i.e. you don't have to answer, whether you want to or not).

It appears that in processing an utterance with an *if*-condition, the hearer must start by applying the condition. In some cases, modality (discussed at 4.1) or related semantics such as *force* (see 4.2.1.4) in the *if*-clause interacts semantically with modality in the main clause and the condition can be recognised as non-limiting. In other cases, such as (27) where the relevant clause ("he's not going to say anything") is in the future tense, the condition continues to limit meaning. It is possible that the suspect language in (26) and (27) above shows suspects at a stage of incomplete processing, further evidenced by Anthony's failure to adjust pronoun deixis. At 4.1 I will discuss evidence that modality in the caution is difficult for suspects to interpret, and in some cases suspects may never interpret these conditions correctly.

This analysis does not explain why Todd appeared to create a condition in (22) from language about *forcing* which did not originate in a conditional clause. At 3.3 I argued Todd may have recognised the undesirability of two

situations: police forcing Todd, and Todd not understanding questions. His expression of both situations using conditional clauses may not have been carefully thought out, or it may suggest that he thought the purpose of the discourse was to identify conditions which constrain or shape the right to silence.

It is unclear how the conditional suspect utterances above would affect suspects' ability to derive a coherent interpretation of the caution. However the complex variations of the caution they imply would be difficult to make sense of or operationalise as relevant to the interview speech event. Conditional interpretations may contribute to inaccurate interpretations of other clauses, for example the interpretation of "If you don't wanna' talk to me, *do you have to* talk to me?" as 'if you don't wanna talk to me, *will you* talk to me?'. Evidence of the latter interpretation was seen at 2.4, and this interpretation gives a clear role to the conditional clause: it is a question about what the suspect will do if that condition is fulfilled. The correct interpretation requires the suspect to process the condition as non-limiting context.

Conditional interpretations of the caution mean suspects are doing redundant work, trying to interpret and apply logical conditions when the right to silence is actually unconditional. This problem may be avoided by providing better initial context for the caution and clarifying the status of reformulations, as well as by avoiding difficult modality (see 4.1).

Two topics could be included in the caution's initial context: what is under discussion is one rule (so reformulations of the caution are ways of

saying the same thing, not different things), and the caution is something which becomes relevant when questions are asked in the interview.

Davis et al. (2011:92) in designing a caution comprehension study included a sentence "to alert suspects to the fact that they would receive *two* important pieces of information that they needed to understand" because learning and memory are aided by categorisation, while the suspect is "typically on the receiving end of a seamless stream of instructions and questions from the police". Once again, police could introduce the caution using a clear announcement similar to the current translations:

> When the police talk to you about this trouble, the police must follow two laws carefully.
>
> Listen carefully to these two laws.
>
> Law number one says this: (subtitles to *2015 in-custody translations*)

In 2.3.3 I argued that police announcements tend to suggest the caution is something which must be *completed before* the interview, rather than something which *will apply during* questioning. If the latter was explained, it might clarify the contextualising purpose of clauses like 'if I ask you questions'. The above translation also clarifies that the laws apply "when the police talk to you about this trouble".

3.6 Conclusion

No utterance stands alone in discourse, and when police produce many utterances about the caution it is difficult to predict how suspects will understand those utterances to relate to each other and to the police message.

There is limited evidence about how suspects interpret police discourse, but that evidence suggests police reformulations of the caution can feed confusion as well as improving understanding.

Conditional clauses used by police to contextualise caution utterances have the potential to complicate both the meaning of individual utterances and their relationships with other information about the caution. Some suspect responses suggest they may interpret caution language as containing propositions constrained by conditions. Conditional interpretations of the caution are inaccurate, and also increase the risk that suspects will not realise that only one caution is under discussion.

Caution conversations could be clarified by explanation at the outset that only one caution is under discussion and may be explained in different ways, and that the caution will affect the subsequent interview. Otherwise, complex discourse sequences might be avoided by explaining the caution in the clearest possible way from the beginning, rather than relying on a ‘scattergun’ paraphrase approach. The next chapter will attempt to identify the best ways to explain the caution.

4 What does the caution mean?

In this chapter I will investigate how police express the caution, how suspects may interpret police language, and the possibility of gaps between readily inferable information and information that suspects need to derive a reasonable interpretation of the right to silence in their individual contexts.

A core linguistic issue for the standard text of the caution is that modal expressions, especially *don't have to*, are unreliable in communicating the caution to suspects in this study. Numerous paraphrases of the right to silence are present in police language and translations. Analysis suggests that some are more likely than others to be effective.

Police separately address the 'right to silence' and the 'consequences of speaking'. Arguably, it is also necessary for the caution to address the consequences of silence, which are not mentioned in the original text, but can perhaps be inferred from the right to silence. Meanwhile, the meaning of "used in *evidence*" is complex and seems to be neglected.

4.1 The semantics of modality

4.1.1 Problems with modal meaning

Police usually start the caution conversation with a roughly canonical version of the caution involving the words 'don't have to'. The following is typical:

> Miller: … before we can talk to you about that, I need to give you that caution again. Ok? So you **don't have to** say anything today, but if you do choose to say something, then that can be used as evidence in court. Ok? (*Lawrence* #1 2015)

Of the 21 conversations examined in this study where the transcript appears to start from the beginning, in 18 police first expressed the caution using *don't have to* (or *do not have to*), reflecting the standard text. This is despite longstanding recommendations that *don't have to* should be avoided in the caution for Aboriginal speakers (Mildren 1997:11; Cooke 1998:187; see also McKay 1985). In the other three interviews, police first used *not obliged*, which was historically a standard formulation,[53] though its use attracted specific criticism from Blokland J in *BM* (2015), and *obliged* is low-frequency lexis (Davis et al. 2011). For some suspects, a standard version of the caution may be comprehensible without any further explanation. However any suspect would need to make some inferences to conclude that remaining silent is a legally accredited option which will not attract negative consequences.

4.1.1.1 Identifying modality

Don't have to is one of a number of constructions in English which deal in *modal* meaning. Modality can be defined as "the grammaticalization of speakers' (subjective) attitudes and opinions" about a proposition (Palmer 1986:16). Another (Palmer 1986:34) criterion for identifying modal verbs is that they cannot be made imperative, despite having agentive subjects. SAE

[53] The history of the caution text was discussed at 1.2.2.

modals whose meaning is contentious in this study include *(don't) have to*, *can*, and *want to*.

Modal meaning is traditionally divided into *epistemic* (relating to speakers' claims of knowledge and belief) (Lyons 1977:793) and *deontic* or *root* modality ("concerned with the necessity or possibility of acts performed by morally responsible agents") (Lyons 1977:823). Coates (1983) analyses modal auxiliaries from corpora of British English and shows how each modal auxiliary has both epistemic and deontic meanings, and that it can be very difficult to determine which meaning applies to a given usage. Language merely provides hypotheses for inferential interpretation (Sperber & Wilson 1995), and hearers distinguishing between modal meanings need context. Interpreting modals may be difficult for NNS hearers, and ARDS, NAAJA & AIS (2015:10–11) produced plain English definitions of legal terms avoiding *could*, *would*, *should*, *(don't) have to*, *can* and *need* largely because of the ambiguity of their modal meanings.

Perhaps unconventionally, I will include *want* and *wish* (when they take a propositional complement) in my consideration of modality, because in this study there is no sound basis to distinguish volition from other subjective attitudes and opinions which modify propositions. Coates (1983) includes volition as one meaning of *would*, *will* and *shall*. Eades (1983) describes several modals in Southeast Queensland Aboriginal English having something to do with the predictability of a future action, which depends on factors outside the agent's control (prediction of which is epistemic) and factors within

the agent's control (volition). *Might* in Aboriginal English means that a future action depends on factors beyond the speaker's control, unlike SAE where it suggests indecision (ibid:268) when used with a first person subject. Aboriginal English *will* is used mostly by first person agents (who can better perceive their own volition) and means a future action is predicted with some definiteness (ibid:271). *Gonna* is used for future actions with little certainty, whereas *wanna* is used to express firm intention in relation to a predictable future action (ibid:287). In Kriol, the volitive marker *wana* expresses "immediate future" (Schultze-Berndt, Ponsonnet, & Angelo in prep.).These meanings differ from SAE in the way they balance elements of volition and prediction, possibly reflecting different assumptions about the agency of individuals.

Volition can also be related to deontic modality. Coates (1983:20–21) argues that the category of deontic modality is too narrow if defined by obligation and permission, and that a peripheral meaning of this type of modality is in fact "it is important that…". Mildren, identifying *don't have to* as a problematic formulation for the caution, suggested some Aboriginal speakers may interpret *have to* as *want to* (1997:11). People may 'want' to do something because they have to do it. Police often state that they 'want' to question someone about a particular incident, but they 'want' to do this to satisfy a bundle of institutional rules and objectives requiring them to collect evidence in a particular way.

Suspects in this study are probably acting as learners of SAE as a L2 or D2. Epistemic and deontic modality are said to be present from early in second language acquisition (Dittmar & Terborg 1991), probably because adult speakers need both for basic communication (Stephany 1995), though Elturki & Salsbury (2016) found that Arab learners of English acquired *can* and *will* first, and "periphrastic" modals (such as *have to*) later. Modality in a second language is hard to master and poses considerable challenges for second language teaching (Tyler 2008), including for Aboriginal students (Moses & Wigglesworth 2008:139).

The caution importantly uses modality to create deontic meaning, about who is and isn't allowed to do what. If *don't have to* is interpreted with a meaning other than the permissive meaning police intend, even by some Aboriginal suspects, this is a serious problem. As with many difficulties in the caution, modality may be problematic for native English speakers: *don't have to* (Kurzon 1996) and *may* (Cotterill 2000, 2005) have been identified as containing difficult modal meaning in English. Rock (2007:56) argues that an epistemic reading of "the police *may* question you without a solicitor" could suggest the police have "unregulated power". Strategies to reduce ambiguity which will be discussed below may be relevant for many suspects.

4.1.1.2 Obligation and future meaning

A key problem with *have to* in the caution is that it may not be clear to some suspects that its meaning is primarily about obligation rather than future tense. Links between these two meanings can be seen in modals in Aboriginal

Englishes and Kriol (remembering that the boundary between these varieties is not clear), especially the modals *gotta*, *garra*, and *gada*. McKay (1985) noted that *gotta* often has simple future meaning in Aboriginal English. These meanings of *gotta*, possibly shared with *gonna*, are also noted by (Harkins 1994:88) in Alice Springs Aboriginal English. In SAE, *Gonna* may be used for simple future, unlike *gotta* (although the boundary is not absolute, for example 'we gotta go' likely means that we will go in the near future).

In Kriol, *gada* (also *garra*) primarily expresses future meaning, but obligation is also a frequent meaning (Schultze-Berndt et al. in prep.). *Gona* can be used for future tense but is less common than *gada* (ibid). Translations of the caution suggest that *garra*/*gada* is the most relevant Kriol modal for expressing the meaning usually contained in (positive) *have to*, as well as other meaning. The *1997 Kriol translation* of the caution displays a range of meanings of *garra* as well as *labda*:

Wanim	yu	**garra**	dum?	Yu	**labda**	jinggabat	miselp	na.
What	you	*will*	do?	you	*must*	think	REFL	now

'What will you do? You must think for yourself now'

yu	na	**garra**	jinggabat	wanim	yu	**garra**	dum
you	now	*must*	think	what	you	*will*	do

'Now you must think about what you will do' (my translations)

Although *Labda* is etymologically from 'will have to', it normally expresses practical necessity (Schultze-Berndt et al. in prep.), and its use above seems to be more about the practical need to think (because a choice must be made), than a specific obligation to think. The first line involves *garra* expressing simple future. In the second line, "Yu na garra jinggabat" seems to involve

garra expressing obligation. This is consistent with the possible collapsing of *gonna* and *gotta* discussed above (noting that in SAE, 'you will now think about…' could imply obligation similar to 'you must now think about…"). In contrast, "wanim yu garra dum" appears to refer to what the suspect will ultimately do, which appears to be about future tense and not obligation, like *gonna*.

Some speakers of Kriol or Aboriginal Englishes hearing the caution in SAE may interpret *have to* as similar to *garra*, with the potential to express either obligation or future. We will see that this may explain some suspect responses.

4.1.1.3 Modal negation

A further complication for suspect understanding of *don't have to* is the meaning of negated modals in SAE. A distinction can be drawn in SAE between negation of the modal and negation of the main proposition.

1. (a) You must [not answer the questions] = (b) You must [remain silent]
2. (a) You [need not] answer the questions ≠ (b) You need to remain silent

In the first sentence, *must* expresses the speaker's attitude that you are obliged to do the thing that follows. The proposition can be negative 'not answer the questions' or have a similar meaning without negation 'remain silent'. 1(a) and (b) express roughly the same sentence meaning, showing that the meaning of *must* is unchanged by negation. In the second example, it is the attitude (that you *need* to do the thing) which is negated, and attempting the same substitution as in 1 generates a different sentence meaning. Whereas the

speaker of 2(a) deems it appropriate for you to answer questions, the speaker of 2(b) does not. *Don't have to* has the same negative scope as *need not*, seemingly independent of word order or the fact that it can only be negated using an auxiliary (*don't*). Though some weaker deontic modals such as *may* and *can* can negate in both ways, most English modals (unlike modals in some other languages) appear to select from the two types of negation based on a *semantic* property of each modal (De Haan 1997). This means there are unlikely to be grammatical clues if a NNS suspect intends 'nonstandard' negation.

There is evidence that for some Aboriginal speakers of English, *don't have to* may have a meaning different to SAE. Cooke (1998:146–47) gives a clear example of a Yolngu speaker who says "I don't have to talk about my brother" meaning 'It is inappropriate for me to talk about my brother' (for cultural reasons). The speaker appears to remain oblivious of the SAE meaning, even though the questioning non-Aboriginal lawyer explicitly seeks clarification on this point (ibid). It appears the meaning he attributed to *have to* was consistent with SAE, however the way he intended the negation was not, following instead the way *must* negates in SAE. Further evidence is that the same speaker later said "Have to respect older brother" (ibid:147), using *have to* without negation consistently with its SAE meaning.

In Kriol, the common negative of both *gada* and *labda* is *gan* (from English *can't*), which semantically merges impossibility and negative future (Schultze-Berndt et al. in prep.). Negation of *gada* is rare, but if used would

mean something like ‘never again’ (ibid). These negative meanings, perhaps ranging between SAE *can’t* and *won’t*, do not seem consistent with the permissive meaning of *don’t have to*. A caution understood to mean “you must not answer the questions” (Cooke 2009a) would be very strange and maybe uninterpretable, and would not at all convey that the suspect is entitled to remain silent.[54]

4.1.2 Modals in the caution conversation

4.1.2.1 Suspects’ modals

The data in this study does not allow a definitive analysis of what Aboriginal suspects ‘mean’ or ‘understand’ by English modals, however it does provide some examples of suspects using English modals inconsistently with their SAE meanings.

Extracts (28): Spencer #1 (1998)

1. Spencer: **Can't** contact any legal aid, I **can't** hey, contact any interpreters. I **can** speak with my own weight.
2. Sullivan: So you **don't want** legal aid contacted?
3. Spencer: No thankyou.
4. Sullivan: And you **don't want** any interpreters?
5. Spencer: I **will not** contact any interpreters.

[54] An interpretation that ‘you must not answer the questions if you don’t want to’ may seem reasonable to some suspects. However it may then be unclear what police mean when they say ‘you don’t have to answer’ without the condition ‘if you don’t want to’.

Spencer #2 (the following day)

6. Kelly: Okay. Anything you do say from now, from now on **will** be recorded on this tape or another tape and that **may** later be used in evidence in court. Do you understand that?
7. Spencer: Yeah.
8. Kelly: Do you know what happens in court?
9. Spencer: Yeah I know. They, the tape **has to** be shown to the judge.

Spencer #3 (later that day)

10. Kelly: Can you just explain in your own, do you understand that you **don't have to** answer my questions?
11. Spencer: (inaudible) answer it.
12. Kelly: Right ho.
13. Spencer: (inaudible) I **can** answer.
14. Kelly: Okay, so but you understand if you.
15. Spencer: It's **my ability to**.
16. Kelly: Yep. So if you **don't want to** answer you **don't have** you know that?
17. Spencer: No I **don't have to** answer.

Spencer's use of modality is, from a SAE perspective, nonstandard. His use of *can't* in line 1 to express negative future (later expressed as "will not" in line 5) is consistent with the description of Kriol *gan*. There is no indication that Spencer spoke Kriol (his L1 was Warlpiri), however it is possible he spoke a form of Aboriginal English as an L2. When Spencer says "the tape *has to* be shown to the judge" in line 9, he may mean simple future, consistent with the meaning of *gada*. There is nothing (else) to suggest he thinks that there is a requirement to show the tape to the judge, and he has just been told that the tape "*may* later be used in evidence in court" (line 6). Spencer appears to

demonstrate understanding of the right to silence at line 17, and Spencer's caution was judged acceptable by the Court. While the single example of Spencer saying "has to" is only slight evidence, the ambiguous modality used by police and Spencer mean it is uncertain what he means when he says "I don't have to answer". There is no clear evidence about how Spencer might understand the negation of *have to*.

Age appears to interpret questions involving *have to* as meaning simple future.

Extract (29): Age #1 (2010)

1. Walters: So if I ask you a question **do you have to** tell me answer.
2. Age: Yeah I answer it.
3. Walters: Yeah no – no. you – you – you **don't have to** tell me anything you **can** sit quiet if you **want**.
4. Age: No (inaudible)
5. Walters: Alright. So if – if I ask you a question **do you have to** tell me the answer?
6. Age: Yeah.
7. Walters: no you don't. okay do you – do you understand that you **don't have to** answer my questions?
8. Age: nah – (inaudible)
9. Walters: okay. alright. so if I ask you a question **do you have to** tell me anything about that question?
10. Age: mm – yeah.
11. Walters: no.
12. Age: no worries.

13. Walters: okay. that's –that's the thing Steven you **don't have to** answer my questions. okay. alright. so if I ask you what colour's your shirt do you **have to** tell me?
14. Age: yeah.
15. Walters: No you **can** sit quiet. You **don't have to** tell me what colour your shirt is. you **don't have to** answer anything I say alright. So again just to make sure that you're (inaudible) with how this works. Alright. If I ask you a question you **don't have to** tell me anything. okay. So if I ask you a question **do you have to** tell me anything?
16. Age: Yeah well I tell you the truth.

Justice Blokland interpreted this conversation as indicating that Age thought he had to speak to police (his interview was ultimately rejected by the Court), however it is not clear that Age was speaking about obligation at all. The question at line 1 is intended to be about obligation, but Age's answer appears to be about intention or prediction. The preceding discussion of modality in Aboriginal English and Kriol suggests that an interpretation of *have to* as similar to *garra* could invoke either obligation or future meaning, with future a more common meaning in Kriol. Age is said to be a speaker of English, though there is little detail about this in the judgement, and he could be a speaker of Aboriginal English.

For Age, the questions 'do you have to tell me…' could have an interpretation 'will you tell me…'. Like any hearer deciding between possible meanings, Age would call on context to look for a relevant interpretation. Hearers start with the most accessible context, seeking to make a reasonable investment of cognitive effort to obtain cognitive effects by applying utterances to context (Sperber & Wilson 1995). Relevant context might include Age's

understanding of the objectives of the speaker who is asking the question, and Walters repeatedly suggests that s/he intends to ask Age questions. The question 'will you tell me the answer?' would be consistent with an objective of negotiating whether Age will answer those questions in the interview which is about to happen (discussed at 2.4.1). It would also be an interpretation that relates to the personal interaction between the two speakers, rather than a general discussion of ideas. The simple future interpretation may appear most relevant to what Age understands to be happening, which could explain Age's answers about whether he will answer.

The intended meaning of 'do you have to tell me…' is a question about Age's understanding of information, a purpose which may be less obvious, as discussed at 2.4. If Age had been told that the right to silence was a rule that would apply to the interview, it might be clear that understanding the right was at least as immediately relevant as deciding whether Age would answer questions, making it easier to see why Walters would ask about that understanding. If Age had been told that questions would be asked for the purpose of checking his understanding of the caution, this could have made a comprehension-checking interpretation of the question even more salient.

At line 6, Age gives a polar answer "yeah" to the same 'do you have to' question (and again at lines 10 and 14). Any of these answers taken alone might be interpreted as 'yeah I have to', but an interpretation consistent with

line 2 would be 'yeah I will'.[55] Numerous reformulations (all involving *don't have to*, though Walters also says "you can sit quiet") failed to address the miscommunication, evidenced by Age's final answer at line 16, which is probably still about intention.

The meaning of Age's unusual admission that he did not understand is unclear. If Age could not understand the language, he might guess the answer to the questions from the negative statements. If Age heard 'you don't (something). Do you (something)?' the answer 'no' might be a reasonable guess, especially after several repetitions of the question (and negative feedback, discussed at 2.4.2, including Walters's rejection "no you don't" in line 7). But Age appears not to have manipulated negation in this way, suggesting the question had some meaning for him and he thought that promising to answer was a desirable response. An alternative explanation of Age's denial of understanding is that he could not identify a relevant interpretation of Walters's *don't have to* statements. Noting the potential for nonstandard interpretation of negated modals, it is difficult to predict how these statements might have been interpreted, but possibilities include 'you must not talk' and 'you will not talk', both of which would be difficult to make sense of

[55] It is possible that Age did not understand these questions and the "yeah" answers were gratuitous concurrence (see 2.4.1), however there is evidence against both of these possibilities: Age was able to interpret (incorrectly) the similar question in line 1, and he gave a dispreferred answer "nah" in line 8.

in the discourse. It appears Age believed the topic was whether he would answer, and he may have failed to derive anything from Walters's language which would affect his decision about answering.

"Yeah well" in line 16 may be further evidence of rejection of Walter's preceding contribution, perhaps because it did not seem relevant. In line 16 Age reasserts what he believed to be the desirable response. He strengthens his commitment with an additional promise to tell the truth, perhaps implying he thought that his previous commitment to answer was not firm enough and the question of whether (and how) he would answer was still under negotiation. It seems that Age did not diverge at any time in (29) from his understanding that the questions were about whether he would answer. Evidence that other suspects appear to have similar interpretations was seen at 2.4.2:

Extract (18): Lawrence #1 (2015)

1. Miller: … if we ask you a question, do you have to answer that, **do you have to** say anything?
2. Lawrence: Yeah, it's ok.

Extract (19): BM #1 (2014)

1. Hall: … if I ask a question, **do you have to** answer me?
2. BM: Yes, sir.

Extract (20): Anthony (1995)

1. P: do you have to talk to me?
2. Anthony: ==sure

The interpretation of the caution as a negotiation of 'will you talk to me', apparently shared by several suspects, is a complete misunderstanding of the caution activity and the caution meaning. The analysis in preceding chapters

suggests it is not straightforward to correct this kind of misunderstanding once it arises.

4.1.2.2 Police modals

Modals other than *don't have to* are used by police in versions of the caution. Modals have already been seen in police announcements of the caution at 2.3.1, typically indicating that police are required to deliver the caution. Below, other modals are highlighted and possible intended meanings are noted, following Coates (1983:26).

Extracts (30)

> Lee: … You **can** either talk to me or sit there and be quiet (*Age* #2 2010) – *deontic possibility*
>
> Richardson: Nothing that we **can** do **can** force you to tell us that story" (*RR* 2008) – *deontic possibility, deontic possibility*
>
> Miller: … So if you **don't want to** answer any of our questions, you **don't have to**. Ok? So if we ask you something you **can** stay silent - ah - you **could** say, 'no comment'. (*Lawrence* #1 2015) – *volition, obligation, deontic possibility, hypothesis*
>
> Butcher: … Dominic if you do say anything what you say is **gonna'** be recorded on these tapes as I explained before. One of these tapes **can** be used as evidence in Court. Who **might** listen to that in court? Who **would** listen to the tape? (*Cumaiyi* 2003) – *prediction, deontic possibility, epistemic possibility, hypothesis*
>
> Kelly: And it **could** get you in trouble if you say something. (*Spencer* #2 1998) – *deontic possibility*
>
> Pfitzner: Now, if you **don't wanna** say anything to us, that's perfectly all right, okay? You **don't have to** say anything. If you **want to** say your story, you **can** say your story too. That's okay as well. Do you understand that? (*Rankin* #1 1998) – *volition, obligation, volition, deontic possibility*

The semantic descriptions noted above represent an attempt to distinguish senses of each modal using context. These descriptions probably do not capture the contextualised meaning of each modal. The difficulty of distinguishing meanings of *don't have to* is illustrated by this example.

> Mora: Alright too easy. Mate you seem pretty switched on I **don't have to** explain it that much for you (KR)

Mora's *don't have to* may be about practical necessity ('It's not necessary for me to explain it that much because you seem to understand it'), but this is difficult to distinguish from (deontic) obligation ('I am not obliged to explain it to you further because your level of understanding meets the requirements'), noting that Mora would not be explaining the caution at all of it were not for various requirements. Coates (1983:55) concludes that *have to* expresses the unitary meaning 'it is necessary'.

To reduce the need for fine distinctions between modal senses, I propose to analyse modal language with a version of Papafragou's (2000) modal domains, which can describe the meaning of modal utterances focusing on the context they invoke, applying Relevance Theory. This involves identifying a proposition P, a modal domain D, and a relationship between them. This analysis reveals that there are up to five main domains represented in police language:

Table (31): Modal domains in police language

	Modal utterance	*Modal description*	*Nature of domain*
1	"I *have to* caution you that…" "I *don't have to* explain it that much"	$_P$[I caution you] is entailed by D1 $_P$[I explain it a lot] is not entailed by D1	D1: rules about the caution speech event
2	"you *don't have to* answer" "you *can* either talk to me or…"	$_P$[you answer] is not entailed by D2 $_P$[you talk to me] is consistent with D2	D2: rules and projected roles in the substantive interview[56]
3	"tapes *can* be used as evidence in court" "it *could* get you in trouble if…"	$_P$[tapes are used as evidence in court] is consistent with D3 $_P$[you get in trouble] is consistent with D3	D3: expected legal process after the interview
4	"if you *don't want to* answer"	$_P$[you don't answer] is consistent with D4	D4: suspect's volition
5	"I *want to* ask you some questions"	$_P$[I ask you some questions] is consistent with D5	D5: police institutional objectives

These descriptions do not account for all semantic distinctions (for example between *can* and *could* in domain 3), though this should be possible with further refinement. However the difference between senses appears less critical to the meaning of the caution than what the modals are 'about'. For example, it would be somewhat acceptable to swap the modal operators and say 'tapes could be used in evidence' and 'it can get you in trouble if you talk', whereas if

[56] As I will discuss below at 4.1.3, this modal domain may also necessarily include the 'legal process after the interview'. The fact that this is not intuitive is part of the problem identified in that analysis.

suspects are unable to identify the modal domains they are unlikely to have even an approximately accurate interpretation of the modal. Hearers must recover the identity of the modal domain pragmatically, and it should be a domain which "the speaker could reasonably have intended to be optimally relevant for the addressee" (Papafragou 2000:49). So hearers need some way of knowing which domains of context are under discussion. This analysis identifies domains which police could highlight to make interpretation of modals easier.

I have repeatedly argued that it would be useful to clarify that the caution is about rules which will apply to the interview. This might provide some useful context for the interpretation of modals. The analysis above also implies that police distinguish on some levels between the caution speech event and the interview which follows it. In fact, the five modal domains represent a complicated mix of types of context including procedural or cultural information about police and legal institutions (domains 1, 2, 3, 5), speech events (domains 1 and 2), and volition (domain 4, probably not 'factual' context at all). If these contextual domains are required to explain the caution, then police could specify that they are under discussion.

4.1.3 Source of compulsion: who does not require you to answer?

Careful consideration of modality can also reveal deeper issues in the meaning of the caution and assumptions required to interpret it, and this helps to clarify the core content of the caution.

'You don't have to answer' suggests the absence of requirement to answer. *Don't have to* and related expressions can be expected to get their meaning by overturning a belief about compulsion that the hearer is likely to hold. This is predicted by Grice's (1989) 'Maxim of Relation', or by the presumption that the utterance is *relevant* (Sperber & Wilson 1995). There are many things a person doesn't have to do, but most of them are not relevant and talking about them would require the hearer to do unjustified work processing the utterances. A speaker who says 'you don't have to answer' must have a salient reason to think that the hearer might believe s/he must answer.

As noted above, if utterances are described in terms of modal domains, the identity of the domain should be a domain which "the speaker could reasonably have intended to be optimally relevant for the addressee" (Papafragou 2000:49). An utterance can be relevant by affecting the hearer's assumptions, including by contradiction an assumption the hearer holds.[57] However a speaker can only intend to talk about assumptions which the speaker is aware of. So the domain the speaker could reasonably have intended to be relevant should be one which speaker and hearer share some orientation towards. If it is not clear to the hearer what kind of compulsion the speaker has

[57] Papafragou also argues that *can* and *may* (whose permissive meaning can be related to *don't have to*) often achieve cognitive effect because the hearer's context includes an assumption that a proposition is incompatible with some domain, and *can* or *may* contradict that assumption. (2000:56). Similarly, negative utterances "presuppose the existence in the immediately accessible context of their affirmative counterparts" (2000:56-7).

in mind, a *don't have to* statement may not invoke any interpretation relevant to the hearer's context. The possibility of no relevant interpretation was discussed following example (29) in 4.1.2.1.

In the caution, the standard expression 'you don't have to say anything' without additional context is ambiguous as to the type of compulsion it denies. If deontic modality is defined in terms of the actions of "morally responsible agents", we should expect its meaning to be influenced by speakers' (potentially cultural) beliefs about forces in the world which affect moral people's behaviour. It is unlikely that suspects are not required in any possible way to answer the questions. For example, they may experience pressure from family members present or absent (Mildren 1997). In *Mangaraka* (1993:[23]), Martin CJ engaged with the question of whether persuasion by a family member is legally problematic:

> [T]he accused's mother told her to tell the truth. That may not ordinarily tell against admission of a confession made to police the voluntariness of which is not otherwise called in question. Persuasion from a person who is not in authority over the accused in the legal sense, does not of itself render a subsequent confession questionable on the ground that it is not voluntary, but when coupled with advice to the accused that the police were there to help her, may well have caused the accused to consider the purpose of the questioning was to obtain information about what had happened to her, as opposed to what she did to the deceased.

While it must be possible for persuasion by the suspect's mother to diminish the 'voluntariness' of a confession, this was not ordinarily something the law sought to regulate.[58]

As discussed at 1.1.1, many people may view silence in interaction as uncooperative or indicative of guilt. More specifically, Cooke (1998:187) reports that in Yolngu culture, silence when one is implicated in a crime is interpreted as a sign of shame or guilt. This suggests that suspects could use context from culture to try to interpret expressions involving *don't have to*. A suspect may also experience pressure to answer from his/her conscience (perhaps context about sense of self). These types of context do not seem to be modal domains that police intend to call on (as described above).

As discussed at 3.5, police often provide context using clauses like "if I ask you a question" (*GP* 2014), or even clearer, "I'm gonna ask you questions but you don't have to answer" (*Todd* 1995). These are both likely to orient participants to police asking questions as a source of compulsion, providing an accessible interpretation of *don't have to*: that even if suspects think they 'have to' answer for other reasons, they should not feel they have to answer merely because police ask questions. Butcher said something like this explicitly:

---

[58] The ambiguous role of the prisoner's friend in an interview can make it unclear whether that person speaks with *legal* authority. Even more problematic is the possibility of persuasion by an interpreter, who would ordinarily be expected to be conveying a message from police (rather than advice from the interpreter) when explaining the caution to the suspect. Blurring between the roles of interpreter and prisoner's friend (Cooke 2009a) further complicates this question.

> Butcher: Okay Dominic you understand that by asking you that I'm not making you talk, okay. If you wanna' talk its gotta be your free choice, your own will. (*Cumaiyi* 2003)

Following her statement that "by asking you … I'm not making you talk", Butcher's second sentence about "your free choice, your own will" seems to suggest that in the absence of police compulsion Cumaiyi's choice would be 'free'. It is not clear what Butcher meant by this, though it may reveal assumptions about liberal autonomy (see 4.2.2). Perhaps Butcher, focused on the interview procedure, did not consider the possibility of compulsion by other people, social norms, etc, or did not consider them inconsistent with free will.

In any event, it is correct and important that suspects should not feel compelled by the asking of questions to answer them. However, police language contrasts with the law underlying the caution, which protects suspects from two kinds of compulsion. As discussed at 1.1.1, the law states clearly that a court cannot draw an unfavourable inference from a suspect's refusal to answer police questions, effectively meaning a court cannot punish a suspect for remaining silent. The law states less clearly that police cannot compel the suspect to answer questions. Non-compulsion by the court and by police fit together if the legal process is viewed as a whole; the right to silence would be of little value if only one of them was guaranteed.

The caution in practice consistently focuses on police coercion, which is secondary in the law. It appears that there is no legal requirement for the lack of adverse consequences in court to be mentioned, and it was not mentioned at

all by police in this study. Reflecting this situation, BM said the following in his interview:

Extract (32): BM #2 (2014)

1. Hall: Okay. Before either myself or Agent Adams speaks with you or ask you any questions, you must understand that you're **not obliged to** say or do anything unless you wish to do so, okay. Now I said that to you earlier today, now can you explain to me what that means, that you're **not obliged to** say or do anything unless you wish to do so, what does that mean to you?
2. BM: Yeah, I don't have to take orders from youse.[59]
3. Hall: That's right mate. …

BM appears to have linked the impersonal "not obliged to" in line 1 with police compulsion. Hall refers to a conversation earlier that day, and BM may have been influenced by that as well as the reference to "myself or agent Adams" (the earlier conversation is discussed in Chapter 3). Using the above analysis of modal domains, perhaps BM is thinking about domain D2 (rules and projected roles in the interview), though it is not clear if BM distinguishes the interview from the caution as police do. BM's answer was accepted and it is correct, but the protection from adverse consequences in court (domain D3) was never mentioned.

[59] Line 2 appears to be excellent evidence about BM's understanding because it is unlike police language, suggesting that BM expressed his thoughts 'in his own words' rather than merely reprocessing language. The question of what kind of questions police can use to most reliably elicit useful evidence requires further investigation beyond the scope of this thesis.

Contrasting with the right to silence part of the caution, police frequently elaborate the consequences of speaking (discussed at 4.3) by talking about sentencing options available to a judge. These consequences are typically presented as what will happen "if you do talk to me" (*Anthony* 1995). However police may also encroach on suggesting consequences of *not* speaking:

> Linsday: Now when the Judge listens to these tapes and he - that Judge will hear what you're saying now. Now if he thinks that you're guilty what can he do to you? (*Dumoo* 1996)

This suggests that the judge will hear what Dumoo is saying "now", and then think about whether he is guilty. This could mean that if Dumoo exercised his right to silence (for example by saying 'no comment'), those words could affect whether the judge thinks he is guilty. This is quite the opposite of explaining that the judge will not form any adverse inference if Dumoo remains silent (and is probably not the meaning Lindsay intended). A caution reported by Cooke (1998:105) included "by what we say here, it could mean you go to gaol or maybe not", which is ambiguous about both the use of silence as evidence and the role of police in deciding whether suspects go to jail. These utterances may foreground modal domain D3 (expected legal process after the interview), but link it incorrectly with the right to silence.

Rogers et al. (2010, 2008) found that 99.9% of US Miranda warnings failed to mention that silence could not be used as evidence against the suspect, and Godsey (2006:783–4) recommends adding this to the US *Miranda warning*:

> If you choose to remain silent, your silence will not be used against you as evidence to suggest that you committed a crime simply because you refused to speak.

Godsey argues that failure to explain this is a key reason suspects may feel compulsion to speak. Rogers et al. (2010) found that 30% of pretrial defendants thought silence could be used against them. Justice Mildren proposed this (1997:12) wording for the NT caution:

> Maybe you want to be quiet and not talk about that trouble. That's all right. The magistrate won't make trouble from that.

The *1998 Djambarrpuyngu* translation also makes the protection in court clear:

Ga	yalala-ŋumirri-y	court-ŋur	bitjan	bili	dhu	magistrate
And	later-PROP-TIME	court-LOC	like.this	COMPL	FUT	magistrate

nhina	nyamir'yuna-miriw	ŋunhi	ŋayi	dhu
sit	criticise-PRIV	when	3SG	FUT

ŋäma	nhuna	mukthu-na-wuy-nydja	nhina-nha-wuy,
hear	2SG.ACC	be.quiet-IV-ASS-PROM	sit-IV-ASS

bili	nhe	bäyŋu	ŋula	waŋa-nha	bilitjuman-gal.
because	2SG	NEG	INDEF	talk-IV	police-OBL

'And later on in the court, the magistrate will just sit there without accusing you if he hears about you sitting there quietly, maybe you did not talk to the police.' (translation in original)

The above paraphrase and translation clarify that the permission to remain silent (also) extends to domain D3. Without reference by police to the legal process, it is possible but perhaps unlikely that suspects could infer the protection in court from the language of the caution. For some suspects, the circumstances of being in a police station or talking to police may suggest that what is under discussion is the legal process. In *GP* (2015:[17]), Barr J said that the suspect's attempts to exculpate himself during the interview supported

the conclusion that he knew how the interview would be used in court. We do not know GP's cultural background,[60] however one study which consulted deeply with Yolngu people about their experiences of the justice system found that some thought police "acted in a lawless way towards Aboriginal people" (ARDS 2007:14) or that the non-Aboriginal legal system "had no proper legal processes" (ibid:15). Eades (2008) also discusses perceptions among Queensland Aboriginal people that police acted with impunity. When police make decisions about arrest, bail, and laying charges, these decisions are constrained by law, but this may not be apparent (Cunneen 2001) and it may appear that police are not governed by rules.

This study reveals only two references to *law* by police. One was about the requirement to deliver the caution (discussed at 2.3), and the other tends to conflate *law* and *police*:

> Pfitzner: Do you understand that if a person – they might get in trouble with the **law**, with the police and then that person might end up in court and that's that place where they go (*Rankin* #1 1998)

Todd said this in his interview:

Extract (33): Todd (1995)

1. P2: ==what do you think will happen if you answer the questions? <2.6> do you think you might **get in trouble**?

[60] GP was charged with sexual intercourse with an underage female child. In the (2015) published judgement about the admissibility of GP's interview, the name of the community and language were suppressed, along with names of individuals, presumably to protect the privacy of that community and the alleged victim.

2. Todd: .. .i think so
3. P2: who from/
4. Todd: ==**from the police**,
5. P2: yeah/
   anyone else?
6. Todd: not really
7. P2: ==you don't think you might get in trouble from the judge later on? .. or a magistrate?
8. Todd: ==think so::/

A suspect who thinks that police make sentencing decisions or who does not know the police are governed by law may want to convince the police, rather than the court, not to punish him/her. There is a risk of circular reasoning here; suspects' words may be taken as evidence consistent with knowledge about the law because that knowledge is assumed to be obvious. If some suspects are unaware there is a rule-governed process for determining punishment, they are unlikely to infer there is a protection against silence being used against them in that process.

Of course, if a suspect is unaware of the connection between evidence and court outcomes, there may be no need for the caution to contradict this kind of compulsion to convince that suspect that silence is permissible. However, the use of the interview in *evidence* is also part of the caution, discussed at 4.3.

4.1.4 Conclusion

There is a strong risk of modality, including *don't have to*, being misinterpreted by Aboriginal suspects. *Have to* may be interpreted as conveying simple future meaning, and/or its negation may be understood inconsistently with SAE. This may make it more likely that suspects will adopt the incorrect interpretation that 'do you have to talk' questions are about whether suspects will talk.

If *don't have to* is correctly interpreted, applying it to context may also be difficult. Police modal language seem to invoke up to five different domains of obligation, and specifying that these are under discussion could make modals easier to interpret. The context police do provide tends to suggest (unsurprisingly, and somewhat accurately) that suspects should not think they have to answer questions merely because police ask them, and there is some evidence that suspects interpret impersonal 'don't have to' statements as being about police authority as a domain of obligation.

Meanwhile, the critical legal protection against the use of silence as evidence in court is not part of the standard caution text and is never mentioned by police. Discussion of the use of interviews in evidence may encroach on suggesting the opposite, that silence could be used as evidence of guilt.

The consequences of silence could be stated simply by police and *don't have to* could be avoided altogether. Other difficulties could perhaps be mitigated by providing better context to suspects.

4.2 Caution part 1: the right to silence

4.2.1 Paraphrases of the right to silence

The preceding discussion of modality shows serious difficulties with the dominant formulation of the right to silence which follows the legislation and relies on *don't have to* for its central meaning. Other studies have shown how legislation constrains the language of cautioning (Heydon 2013), however in the *Anunga* framework, police do not seem to follow the text closely. In Cumaiyi's case, it appeared that an unusual form of the caution was being used at Wadeye, though police could not remember why. Magistrate Blokland SM said this was "not perfect" but "still conveys, as a practical matter what the procedure will be and that the person has a choice", suggesting that in the future the unusual caution may lead to exclusion of interviews on the grounds of non-compliance with *Anunga* (not because of divergence from the legislated text), and recommending the adoption of Mildren's (1997) paraphrases.[61] The flexibility of caution paraphrases likely reflects the difficulty of the task set for police by *Anunga* in ensuring understanding, and perhaps, uncertainty about what works.

[61] *Tudorstack v Chula* [2004] NTMC 031 at [31]-[32]. As a decision of a magistrate (as Her Honour then was), this case is not authority but may be persuasive. Cumaiyi's interview was excluded on the basis that he tried to exercise his right to silence (but police persisted in asking questions and he ended up making admissions), rather than because the caution was irregular or deficient.

Because this study involves numerous conversations, patterns emerge in police paraphrase, along with individual police creativity. Many police officers would have significant experience explaining the caution, so police paraphrases may reveal how police understand the meaning of the caution and how they respond to communication difficulties.

My focus here is on the meaning(s) of the caution, however other aspects such as clause structure and the order of ideas can also be analysed (Rock 2007; Gibbons 2001; Davis et al. 2011; Kurzon 1996). The structure of the caution is probably critical if it is written, or said once; however the number of police reformulations and the nature of spoken language in interaction mean that difficult structures, unless repeated systematically, may be less of a problem. For example, in extract (24) (Chapter 3) Lawrence responded correctly to the question "what could you say" embedded in a police utterance which could have been criticised as containing several ambiguous clauses.

It appears from the range of reformulations and the foregoing discussion of modality that the central problem with the right to silence is expressing the permission it contains: that remaining silent is allowed and will not lead to negative consequences. A number of semantic themes emerge from police language, though they may overlap in the discourse, as shown by the following example which invokes *wants*, *choices*, *rights*, and permission to 'sit quiet' in a single turn.

> Butcher: … anything that I'm about to ask you, you **do not have to** answer if you don't **want** to. So if I ask you a question you got **two choices**. You **can sit quiet** or you can tell me your story. **Your right** to **choose** which one you **want**. (*Cumaiyi* 2003)

While it was possible to analyse at 4.1.2.1 how some suspects interpreted *don't have to*, there is little direct evidence about the effect of other paraphrases on suspects, because they tend to be introduced later in the discourse, because of the nature of the questions they generate,[62] and perhaps because police spend less time on each paraphrase. However it is possible to analyse police language, consider inferences which would be required to interpret it, and compare police language with translations.

4.2.1.1 Hierarchy of wants

Expressions in terms of 'want' (or 'wish') imply that different people want different things but some 'wants' prevail over others.

Extract (34): Dumoo (1996)

1. Lindsay: Now Basil **I want** to talk to you about some grog, some liquor that was taken into the restricted area on Wednesday night. Do you understand that?
2. Dumoo: Yeah.
3. Lindsay: Before we go any further I'll advise you that **you don't have to** talk to me if **you don't want** to. Do you understand that?

"If you don't want to" as a condition correctly suggests that the permission to remain silent is unconstrained. A limited permission might be, for example,

[62] For example, talk about *choice* leads to questions like "whose choice is it, ... if they want to talk to me?" (*Moonlight* 1995). The 'correct' answer to this question is 'mine' or 'me', but the meaning of this answer depends on the suspect's understanding of *choice*, among other things. The range of comprehension-checking strategies available to police requires separate systematic investigation.

'you don't have to answer if you don't know the answer'. It is acceptable to say in SAE 'you have to answer if you know the answer', but it would be strange to say 'you have to answer if you want to answer', because the latter involves a conflict between volition and compulsion (discussed at 3.5), showing that the permission is unlimited.

Ordinarily, it seems uncontroversial that police are in a position of power and have more ability to get what they 'want' than suspects, but the language above attempts to regulate who gets what they want. Formulations involving *want* (including (34)) usually involve an interaction between *want* and *have to*. There are three main relationships in the utterances below, which all express the core meaning of the caution, that it is acceptable to say nothing:

1. **you don't have to** talk to me if **you don't want** to (*Dumoo* 1996)
2. **you don't have to** answer our questions in relation to what **we want** to talk about (*KR* 2015)[63]
3. **you don't have to** talk to me unless **you want** to (*Anthony* 1995)

This language creates a hierarchy between the volition of different participants and the permissibility of answering. The examples above imply, if understood, that:

1. Dumoo *not wanting* to talk is equivalent to or triggers his *not having to*.

[63] This relationship is not usually expressed in a single sentence, possibly because it requires complicated syntax like "in relation to what". However, there are many references to what "we want" or "I want" to talk about, so the two ideas in this sentence are likely to be linked by police discourse.

2. KR *not having to* answer is more important than police *wanting* to talk.
3. Anthony's potential *wanting* to talk would render irrelevant his *not having to* talk.

At 3.5 I discussed evidence that some suspects appear to have misunderstood relationships between clauses, including the above example from Anthony's interview, in conversation (26). Understanding these utterances requires interpreting conditional conjunctions (*if* and *unless*, also discussed at 3.4). Suspects must also understand the two modal propositions and compare their meanings. Suspects may be able to contextualise the modal operators (*have to* and *want to*) if they can link them to the domains discussed at 4.1.2.2. Successful interpretation of the modals and the clausal relationship would then imply a hierarchy between the modal domains: the rules for the interview (D2) protect the suspect's volition (D4), even when that conflicts with police institutional objectives (D5). This is of course the crux of the caution, however the linguistic and contextual process required to understand it may be complex.

It is possible to express the priority of suspect 'wants' while avoiding *don't have to*, by licencing particular action:

> P: … so if you don't **wanna** talk to me?
> .. then then you just **tell me**
> ==you don't want to talk to me/ (*Anthony* 1995)

> Lindsay: if you don't **want** to answer my questions, or if you don't **want** to answer one question, you **tell me** (*Dumoo* 1996)

Unfortunately, the invitation to "tell me" does not make clear the consequences of saying 'I don't want to talk', a speech act which might ordinarily be

confrontational. Only P's use of "just" subtly diminishes the scale of this suggested action.

Even if the hierarchy between suspect 'wants', caution rules, and police 'wants' is understood by suspects, a remaining difficulty was identified by Cooke (1996:280) where it was "not suggested to [the suspect] why she might not want to answer a question or what can constitute reasonable grounds for an otherwise co-operative person to refuse to answer". Below, James perhaps suggests that suspect *wants* are not required to be reasonable:

1. James: Yeah, you **can** stay quiet or you **can** talk.
2. Robinson: Yeah. yeah.
3. James: **Whatever you want**. (*Robinson* 2008)

However this unusual reference to unconstrained *wants* is still inexplicit. The volition offered to suspects by the language of *wants* remains meaningless unless they are sufficiently informed about the consequences of speaking and not speaking, and confident that acting in accordance with their 'wants' is a protected option.

4.2.1.2 Alternative deontics

Police use language other than *don't have to* to express that silence is acceptable. This may indicate that police realise the need to avoid *don't have to* when suspects do not seem to understand it.

Extracts (35)

Hodgson: … is that **okay** for you to be quiet and say nothing? (*Thomas* 2006)

Heymans: do you think you **can** say nothing about this trouble to me? (*Mangaraka* #1 1993)

Heymans: so are, are you **allowed** to say nothing about this trouble to me? (*Mangaraka* #1 1993)

McKeown: So you **don't need to** say anything to me or to any other police officer (*Jarwarla* 2006)

McKeown: … so that's why **it's okay** for you to stay quiet if you just don't want to talk about that ganga, **that's okay**, alright? (*Jawrarla* 2006)

Walters: … If I ask you a question you **can** sit quiet if you want to. (*Lawrence* #1 2015)

Pfitzner: Now, if you don't wanna say anything to us, **that's perfectly all right**, okay? You don't have to say anything. If you want to say your story, you **can** say your story too. **That's okay as well**. (*Rankin* #1 1998)

Lade: if you don't want to that's **your business**. (*Inkamala* #2 1995)

Formulations like "it's *okay* for you to stay quiet" make a deontic evaluation, suggesting the relevant action is permissible. "Stay quiet" or "sit quiet" also names the permissible action, unlike "don't have to talk" which does not specify the alternative to talking. Some translations of the caution also express the deontic meaning of the right to silence using separate lexical items:

manymak	ŋayi	dhu	bäyŋu	dhäwu	lakaram
good	3SG	FUT	NEG	story	tell

nhanŋu-wuy	walalaŋ-gal	bi̱li̱tjuman-gal
3SG.DAT-ASS	3PL-OBL	police-OBL

'It's okay if (the suspect) doesn't tell his/her story to the police.' (my translation) (ARDS 2015)

Lexical deontic formulations like those above may avoid problems with the interpretation of grammatical modality such as *don't have to*. By using additional words to separate deontic meaning from grammatical function, they

may make the deontic meaning more marked.[64] However these paraphrases leave open the question 'okay according to whom?'; and an action that is merely 'okay' is not the same as a legally protected right. "That's perfectly all right", if understood, comes closer to expressing this.

The *1998 Djambarrpuyngu* translation conveys the permissive meaning of the caution explicitly using a metaphor of two ways or paths the suspect can follow, which may give the two options equal status:

> Waŋgany dhukarr, nhe dhu ga mukthun nhina, bukubak-mara-nha-miriw.
> One path 2SG FUT IMPV be.quiet sit reply-CAUS-IV-PRIV
> 'One way is you won't talk, you'll sit without saying any words.'
>
> Wiripu-ny dhukarr, nhe dhu lakaranhamirr ŋunhi-ŋuwuy mari-puy.
> Other-PROM path 2SG FUT discuss TEXD-ASS trouble-ASS
> 'Another way is to tell them about that trouble.' (translation in original)

Moonlight's interview contains further evidence suggesting that police are aware of the importance of modality. One of several examples of police accommodation to Moonlight's English (or to a variety of English that police think Moonlight speaks), below P adds "might be" to the SAE "may".

Extract (36): Moonlight

1. P: ... so, ... whatever we talk about, ==that judge/
2. Moonlight: ==Mm
3. P: ==he **may might be** listen to this tape recorder, =ok?=

[64] I am grateful to Denise Angelo for pointing this out, and for many other discussions about modality.

In line 3, 'may' would be a SAE way of expressing the possibility of the judge listening to the recording. *Maitbi* is an epistemic modal in Kriol, occurring outside the verb phrase (Angelo & Schultze-Berndt 2016:288; Nicholls 2016:348). Eades (1983:271) reports that *might (be)* in Aboriginal English is a widespread "epistemic adverbial expression, indicating that the speaker is unsure of the truth of the proposition" and does not accept responsibility for its truth. *Maitbi* can also be seen, in clause-initial position and at the beginning of a sentence fragment, in the *1997 Kriol translation*:

> lb yu nomo ensim detlot kwestjan **maitbi** dei garra kipgon
> If you NEG respond those question maybe 3PL FUT continue
>
> askim-bat yu ola kwestjan o **maitbi** najing.
> ask-CONT you a.lot question or maybe nothing
> 'If you don't answer, maybe they will keep asking you questions or maybe not' (my translation)

This suggests that P's use of *might be* in (36) was reasonably appropriate, and reflected awareness that modality is an area where meaning differs between SAE and Aboriginal Englishes.

4.2.1.3 Your choice

Police frequently talk about *choice*, especially emphasising that the choice 'belongs' to the suspect. Rock (2007:177) argues that "it's up to you" stresses that the choice belongs to the suspect.

Extracts (37)

> Lee: … **you have a choice**, … it's **your choice** to talk to me. So you don't have to talk to me. So you can sit there and be quiet and not say anything or you can **choose** to answer my questions. (*Age* #2 2010)

> Miller: … So it's **your choice** whether you say something on this recording today. (*Lawrence* #1 2015)
>
> P: **whose choice** is it, ... if they want to talk to me? (*Moonlight* 1995)
>
> P2: so this man .. might start asking you some questions about that trouble now / [*cough*] .. it's **up to you** if you want to answer him/ (*Todd* 1995)
>
> Harris: The thing is, you don't have to talk about it with us if you don't want to. detective Heymans wants to ask you some questions and you can answer them if you wish or you could sit there and say nothing. It's **up to you**. It's **completely up to you** whether you decide to answer the questions asked by detective Heymans. So you can sit back there and say nothing or you can answer the questions. You don't have to answer our questions. Do you understand that? (*Mangaraka* #1 1993)
>
> P2: this is yo-**your decision** and **your decision .. only** / [*nod*] ok? (*Todd* 1995)

To infer the permissive meaning of the caution from this language, the hearer must perhaps reason that the person who 'owns' the choice is not to be constrained by anyone else's choice, similar to the 'hierarchy of wants'. However the word *choice* alone may not make this clear, as shown by this contrasting example:

> Miller: … 'Cos the, the magistrate will hear the police story and he'll hear your story. And he listens to both those stories and then he decides whether you're guilty or not guilty. Ok? And he can give a fine or he can let you go free, or he could send you to prison, that's the **choices** he has. Ok? (*Lawrence* 2015)

The magistrate's decision about sentencing is not a free choice, but is constrained by the law in many ways. (In fact this language is counterproductive, because suspects may not know that judicial officers' decisions are supposed to be impartial and governed by rules).

A more serious problem is that *choice* as a noun may be difficult to translate into Aboriginal languages. The translations in this study contain no

nouns similar to *choice* or *decision*, but several verbs with meanings like 'think carefully', 'choose' and 'decide'. This may mean that the meaning discussed above, depending on 'ownership' of the choice, is less obvious to Aboriginal suspects. Finally, like *wants*, having a choice is not meaningful unless suspects understand the consequences of their options.

4.2.1.4 Force

Extracts (38)

> Richardson: Nothing that we can do can **force** you to tell us that story. (*RR* 2008)
>
> Baird: … Do you have to answer any of my questions if you don't want to? If you don't want to can I **force** you to answer any questions? (*Echo* 1996)
>
> P2: .. not this man,
> nor .. nor *me .. will **force** you to change your mind/ (*Todd* 1995)
>
> Heymans: ... If you want to answer my questions you can. But no-one's going to **force** you, no-one's **making** you answer my questions, you don't have to. (*Mangaraka* #1 1993)

These paraphrases situate 'forcing' as something which cannot or will not happen. The first two formulations above involve the difficult modal *can*, perhaps meaning that it is impermissible or impossible for police actions to force RR and that police are not allowed to force Echo. The last two utterances are predictions or promises that 'no-one *will* force you'. P2's utterance is the formulation most likely to refer to a lack of forcing *after* a suspect refuses to answer.

It is arguable that modal expressions are a metaphorical extension of the way entities interact with physical forces and barriers (Talmy 1988), and

paraphrases involving *force* could make this metaphor more explicit, replacing the deontic modality of *have to*. However as seen above, they sometimes introduce another modal to express that forcing is prohibited. This deontic prohibition is expressed metaphorically in the *2015 Djambarrpuyngu translation*:

> 'The police cannot force you to say anything about that trouble. The police cannot force you to show them anything.' (subtitles in original)
>
> Bäyŋu ga dhukarr ŋorra ŋamakuḻi'ŋu-w walal dhu dhur'yun
> NEG IMPV path lie police-DAT 3PL FUT push
>
> nhuna-ny wo gurukuryun waŋa-nhara-w wo milku-nhara-w
> 2SG.ACC-PROM or pressure talk-IV-DAT or show-IV-DAT
>
> ŋula nha-ku ŋuru-kalaŋuwuy mari-puy.
> INDEF what-DAT DIS-ASS trouble-ASS
>
> 'There is no way for the police to force you to tell them or show them anything about this trouble' (my translation).

The expression 'there is no way/path' uses physical impossibility to imply deontic impermissibility. It is notable that the translators used extra language and imagery to encode the firmness of this prohibition.

Force may mean overriding the 'choice' or 'want' which the suspect is entitled to exercise. Importantly, forcing formulations identify the speaker (or police generally) as the agent who will refrain from forcing. Courtroom evidence described by Eades (2008:140) involved a contest over the meaning of *force*: a 13 year old Aboriginal boy said that police "forced us" when "They told us to jump in the car", but the lawyer representing police tried to label this as merely 'telling' or 'saying', and highlighted the absence of physical force. In (32) BM understood the caution to mean "I don't have to take orders from

youse", but what are the orders that he does not have to follow? To accurately convey the caution, *forcing* must be taken to include merely asking questions, which ordinarily creates an expectation of an answer (Heritage & Clayman 2011), especially in a police interview (Heydon 2005).

By saying 'we can't (or won't) force you' and going on to ask questions, which ordinarily might seem like forcing (Shuy 1997), police appear to call on language to alter the suspect's future experience of 'force'. To achieve this, the 'forcing' language needs to specify that the illocutionary intent of future police questions must only be interpreted as non-forcing. This requires the content of police language to be adopted as context for the interview speech event.

Police *forcing* language above clearly has the potential to inform suspects about the caution, as well as ensuring that a future watcher of the recording can see that rules were transparently laid out. However some police language also appears to assert the truth of a state of affairs in which the rules are followed. "Nothing that we can do can force you" may suggest that RR being forced is impossible. "No-one's going to force you, no-one's making you answer" implies that no forcing is happening or will happen. However these claims may not observably alter police behaviour; there is nothing about the questions that police go on to ask which marks them as 'non-forcing' questions. Rather, the information is for the suspect to apply: the suspect should not 'feel forced'; and in a sense this transfers responsibility to the suspect. If the suspect does feel forced by the questions, which may not be obvious to anyone else, it is the suspect who will not be complying with the rules.

A number of translations include ‘the police can’t force you’ or similar language, as seen above. However the *1998 Djambarrpuyngu* translation describes police behaviour in a way that police themselves do not:

Ŋunhi	nhe	dhu	ga	mukthun	yan	nhina	waŋa-nha-miriw,
If	2SG	FUT	IMPV	be.quiet	just	sit	talk-IV-PRIV

ŋayi	dhu	bilitjuman-dhu-ny	yaka	nhuna	birrka’yun
3SG	FUT	police-ERG-PROM	NEG	2SG.ACC	think

yanbi	nhe	wurraŋatjarra	wo	yätjkurr.
as.if	2SG	irresponsible	or	bad

‘If you sit there without talking the police won’t think you are silly or bad.’

Ŋunhi	nhe	dhu	ga	nhina	mukthun
If	2SG	FUT	IMPV	sit	be.quiet

walal	dhu	yaka	nhuŋu	maḏakarritj-thirr	bilitjuman-dja	walal.
3PL	FUT	NEG	2SG.DAT	be.angry-INCH	police-PROM	3PL

‘If you sit there quietly they won’t get angry with you.’ (translation in original)

This information (in Djambarrpuyngyu, a Yolngu language) addresses the assumption Yolngu people are said to have that silence in the face of questions indicates shame or guilt (Cooke 1998:187). “Police won’t think you are silly or bad … or get angry with you” is a specific prediction, unlike police language, which uses *force* as a metaphor without specifying the future conditions or behaviour which will be free of forcing.

Police paraphrases also do not clearly mention what suspects should expect *after* an exercise of the right to silence. In fact, it seems that police never refer specifically to suspect behaviour like the above translation which describes what will happen “if you sit there quietly”. While police produce many utterances about states of mind like “if you don’t want to answer”

(*Lawrence* #1 2015), police in this study never say 'if you don't answer', 'if you sit quiet', or 'if you stay silent'. This means police do not say what will happen if suspects *act* on their potential desire not to answer. It is not clear why police would avoid talking about these actions.

The translation above seems to represent the most concrete and accessible way to contextualise the right to silence. Suspects need to understand the likely consequences of silence or speaking in order to be able to make a meaningful decision about their right to silence (Grisso 1986:120). Suspects could be told relatively concisely that if they stay silent, police will not react negatively,[65] and neither will the judge (paraphrases addressing the latter were seen at 4.1.3). Even if suspects do not know *why* police allow silence, if it is sufficiently clear that silence will not be punished, they may see silence as a reasonable option. This would not be a perfect version of the caution, but may be a practical way to avoid calling on abstract and culture-specific ideas to give sense to it.

[65] While it is true that police should not react negatively in the interview or insist on answers to questions, it may be that police have some discretion to 'punish' a silent suspect by, for example, refusing bail or laying additional charges, even if this seems contrary to the spirit of the right to silence. If police *told* a suspect they were considering these actions, that would likely be an improper inducement to answer questions. However there may be situations in which lack of suspect cooperation is a legitimate consideration (whether made explicit or not) in police decisions.

4.2.1.5 Your rights

Right are not part of the standard text of the right to silence, but police often use them in paraphrase. Like *choices*, rights belong to someone.

Extracts (39)

> Miller: And you, what you've got is a, a **right** to silence. (*Lawrence* #1 2015)
>
> Mora: It's **your rights**, ok? So, you're not obliged to say or do anything unless you wish to do so, alright anything you do say or do will be recorded alright and may be used as evidence later on (*KR* 2015)
>
> Hall: Alright. But if I ask a question, you don't have to answer me, you **have the right** to remain silent. Ok? (*BM* 2014)
>
> Trew: This is **your choice** it's **your right** not to say anything or (inaudible). (*Cotchili* 2005)
>
> Kelly: So you understand that you **have a right** to be silent and you don't have to answer questions from police? (*Spencer* #2 1998)
>
> McKeown: … But before we do that I need to make sure that you understand **your right** as a person, ok, very important, alright. Now first of all do you know we have three cassette tapes in this machine?... (*Jawrarla* 2006)
>
> Potts: If ah Jimmy has anything that he doesn't understand you are **perfectly entitled** to um talk between the two of you if you're not quite a hundred percent sure what I'm asking. (*Marrmowa* 1994)

In a study of comprehension of Miranda warnings (based on US prisoners said to be 'fluent in English'), *right* was among the more problematic words and said to be misunderstood by 55.9% of suspects, possibly because it is polysemous (Rogers et al. 2011). Different interpretations of 'right' are possible in police paraphrases:

> Butcher: … So if I ask you a question you got two choices. You can sit quiet or you can tell me your story. **Your right** to choose which one you want. (*Cumaiyi* 2003)

"Your right to choose" was transcribed in this case, however this use of *right* as an abstract noun may be difficult to distinguish orally from *right* as a predicative adjective in 'you're right to choose' (meaning 'it's okay for you to choose') except perhaps by prosody which is not transcribed here. If suspects adopt the second interpretation, it may remain undetected because it would be reasonably accurate, granting vernacular permission without calling on abstract ideas. This sense of *right* is seen in suspect language:

Extract (40): BM #1 (2014)

1. Hall: Do want any legal, Legal Aid contacted?
2. BM: Nope.
3. Hall: Ok.
4. BM: Yep, I'm **right**.

A deeper problem is that references to *rights*, and arguably other formulations of the caution, call on a body of knowledge about rights which may be unfamiliar to some Aboriginal suspects.

4.2.2 The discourse of rights

Hearers always call on a variety of context to interpret language (as discussed at 2.2). Hearing language usually calls to mind ideas which appear related, which can include things recently said in the conversation, other 'texts', and ideas from speakers' cultures. In the case of talk about *rights*, a lot has been said and written about them, and many Australians will be familiar with the idea of rights, to varying degrees, from sources such as news, education, and TV. Police probably draw on a degree of assumed knowledge

about rights when they explain the caution. Rock (2007:127) found that English/Welsh detainees looked outside the text of the caution(s), importing incorrect 'common sense' limitations or caveats onto rights, showing that other 'texts' or ideas can affect affect interpretations of the caution.

The analysis of ideas that hearers may use to interpret language can be part of an intertextual approach. 'Prior texts' can include canonical texts which are pervasive in one culture but not obvious to outsiders (Becker 1994). A body of talk which is less bounded than a text may be a *discourse*. Fairclough (1992) argues that text-oriented discourse analysis can consider Foucauldian discourses, investigating 'interdiscursive' (as well as intertextual) resources used in the production and interpretation of texts. For this purpose, *discourse* may mean "roughly, all that has been (or could be) said about some (widely defined) topic, in some particular culture-specific ways" (Linell 1998:147).

I argue that there is a discourse about rights (and 'human rights'), which is a diverse body of ideas, practices and debates, more or less familiar to non-Aboriginal Australians and unfamiliar for some Aboriginal suspects. I am not concerned here with the desirability or cross-cultural validity of rights, but the possibility that ideas from this discourse are implicated in caution texts and required to interpret them.

There is evidence that police call on a general body of knowledge to contextualise the specific right to silence. Mora's plural "It's your rights, ok?" (*KR* 2015) is notable given that a single right is under discussion. Mora may be referring to an assumed category of 'your rights'. McKeown talks about "your

right as a person" (*Jawrarla* 2006), which could be a reference to the discourse of 'human rights'. Plural rights can also be seen below.

Extract (41): Todd (1995)

1. P2: ==alright/
   policeman's job is to a::sk .. people that have been arrested,
   .. about trouble/
   isn't that right?
2. Todd: ==yeah
3. P2: ==ok/ .. but the people
   that .. are sometimes *in trouble/
   ... alright/ .. have **rights** too,
   .. and *those ***rights** *are that they don't have to/
   .. answer any questions that the policeman .. ask them/ ... ok?
   .. now, .. **you're in that situation now**/ ok?
   ... you've been arrested at..for some trouble at #place#,
   .. in relation to #offence#/ .. [*nod*] alright?
   .. our job is to ask you some questions about that trouble/ .. alright? dyu understand that so far?
4. Todd: ==yeah

P2 describes the rights of a class of people who are "in trouble", and says "those rights are" the right to silence. Even more explicitly, P2 asks Todd to move from general to specific by saying "you're in that situation now, ok?". This could be an invitation for Todd to relate the information under discussion to a general discourse. It could also be an appeal to see how the right to silence makes sense in a system where parties have different roles and protections. In that case, a different body of knowledge (about police objectives and the legal process, identified as domains of modal context at 4.1.2.2) would be required.

Critiques of the 'human rights discourse' have equated it with the attempted diffusion of the liberal political tradition (Mutua 1996). Holcombe (2015:432) argues that the human rights regime depends on an "individuated, mobile, outward-looking personhood". Indeed, "traditional hands-off or negative rights" are argued to "lie at the heart of the liberal tradition's commitment to individual autonomy and choice, and hence to limited and controllable government" (Steiner 1988:81). Mutua (1996:596) argues that central tenets of the liberal tradition include checks and balances on government power, an independent judiciary, and "the formal declaration of individual civil and political rights". The right to silence may be a "negative claim-right", a right to non-interference like the "right not to be assaulted" (Jones 1994:15). The right to silence is given form by specific prohibitions (of the adverse use of silence in court, and coercion by police), like the prohibition on assault. A general view of some rights is that they involve "accredited ways of acting" and it is normally improper to interfere with someone who is acting in the accredited way (Martin 1993:36). Rights can also define a relationship between a "duty-bearer (principally the State)" and a "rights-holder" (Holcombe 2015:429).

From these ideas, a suspect might infer that s/he is entitled to exercise a right without fear of punishment, and perhaps that this expectation is enforceable against the state. The standard caution may expect all suspects to make this inference. Godsey (2006:792) argues that the US court deciding *Miranda* (1966) expected suspects to infer that because their decision to remain

silent was a "right", silence could not be used as evidence against them. Stuesser (2002:153) argues that using the word *right* would improve the Canadian caution:

> Ours is a rights based society. We understand what a right means. We speak in terms of rights… It would be a small, but important step to inform the accused of the right to remain silent.

This may well be true of (non-Aboriginal) Canadian and Australian societies. It reveals a clear reliance not only on 'understanding' rights, but on rights as something we "speak in terms of", in other words a discourse.

Even when *rights* are not mentioned, police appear to call on liberal ideas to contextualise the caution:

Extract (42): Cumaiyi (2003)

> Butcher: … If you wanna' talk its gotta be your free choice, your own will.

Extract (43): Echo #2 (1996)

1. Baird: … Do you have to answer any of my questions if you don't want to? If you don't want to can I force you to answer any questions?
2. Echo: Yeah.
3. Baird: Sorry.
4. Echo: Yes.
5. Baird: How can I do that? You're your own man. You're your own man and you give answers for yourself, is that right?
6. Echo: Yeah.

Line 5 suggests Baird could not imagine how police could 'force' Echo. Perhaps it was obvious to Baird that police power over Echo was regulated and limited: although Echo was on remand in police custody and had little tangible freedom, he was still 'his own man' and could speak for himself. In the

language of rights, he was *autonomous*, the author of his own actions (Jones 1994). Personal autonomy may be valued highly by Aboriginal people (Morphy 2008), but acknowledged in different ways (Holcombe 2015).

It is argued that rights, especially negative rights, implicate the political structure of society (Steiner 1988:84), consistent with Foucault's (1969) argument that discourse *constitutes* social objects. Rights can be seen as required by, and contributing to, human moral agency (Jones 1994:99; Gewirth 1984). As I argue in relation to 'deontic' meaning, if rights invoke morality and social structure, their interpretation will necessarily be affected by society and world-view. Rights require a notion of *personhood*, because they reside in individuals (Holcombe 2015). Holcombe (2015) discusses the spiritual and relational nature of Anangu personhood, while (Morphy 2007:95) reports that compared with non-Aboriginal people, Yolngu people have "very different ideas" about "how the person is constituted as a thinking, feeling, acting and moral being, and about how the individual is nested in their social and physical universe and their culture".

None of the translations in this study use *right*. It is not part of the standard caution, but this also suggests that translators did not consider it a useful concept. Holcombe (2015) reports on translating aspects of the *Universal Declaration of Human Rights* into Pintupi-Luritja, finding that the 'morally good' meaning of *right* resonated with speakers rather than the 'entitlement' meaning. These are very different meanings, indeed in the liberal political tradition there is "no paradox in the suggestion that someone may

have a *legal* right to do an act that is morally wrong" (Waldron 1993:65). Formulations of the caution in terms of *wanting* and *choice* appear to be about decisions to be made by autonomous individuals and have nothing to do with doing the 'right thing'. Pintupi-Luritja translations of (human) *rights* reveal a focus on "listening, social interaction and embeddedness" in addition to thinking (Holcombe 2015:434), suggesting a contrast with the individuality of liberal rights, which has also been shown to be unfamiliar for some Canadian Aboriginal people (Paine 1999). Kinship is a central social system for many Aboriginal people, and may create relationships involving kinds of 'entitlement'. However kinship structures may conflict with notions of equality (Holcombe 2015). Morphy (2008) describes inconsistency between Yolngu and non-Aboriginal ideas about 'governance', arguing that fairness, equality and democracy are not salient to Yolngu governance and instead, 'accountability' is achieved through consensus. These values may sit uncomfortably for some people with the idea of entitlement rights exercised by autonomous individuals: the right to silence is not part of any relationship except that between the individual and the state.

At 2.4.1 I argued that a possible interpretation of the caution activity is as a negotiation of consensus about whether the suspect will talk. However an accurate understanding of liberal rights includes the fact that no consensus is required: a suspect may decide whether to exercise a right without consulting anyone. Further, the suspect's reasons for that decision are not important to the protection of the right. It could well be argued that it is morally right to confess

one's criminal behaviour, but the right to silence does not take a moral position and allows suspects to avoid doing this. The discretionary nature of the right to silence is perhaps implied by language like: "you can stay quiet or you can talk … whatever you want" (*Robinson* 2008).

Of course, many Aboriginal people have struggled for land rights and other rights, including by framing their demands in the language of liberalism, even to the point of using the language of individual rights and equality to project "a homogeneous modern and progressive nation" (Attwood 2003:174). This language may be politically effective, but this does not necessarily mean Aboriginal societies internalise these discourses, any more than the granting of land rights causes Aboriginal people to replace their deep connection to country with understanding in terms of liberal property rights (though see Rigsby & Hafner 2010; Harvey 2010).

Another influence on interpretation of rights may be experience and perceptions of the justice system (also discussed at 4.1.3). Aboriginal people do not always experience "simply a neutral institution enforcing an impartial legal system" (Cunneen 2001:44). Aboriginal people's perceptions may be affected by the complex and troubled history of Aboriginal–police relations (Cowlishaw 2003; Foley 1984), including significant mistreatment at the hands of police inconsistent with the liberal view of policing as governed by the rule of law (Eades 2008; Atkinson 2008; Cunneen 2001). Of course, Aboriginal people also have positive experiences with police and often call police for assistance.

It is also relatively recent that Aboriginal people formally acquired democratic rights following the 1967 referendum. Prior to that in parts of the NT, Aboriginal people lived on missions where the superintendent:

> had the last word … on any issues of law and order, he was prosecutor and judge … he could hand out punishment to the people… These actions would be backed up by the full weight of the Welfare patrol officers, police and the law courts of the [non-Aboriginal] justice system. (Aboriginal Resource and Development Services 1994:16–17)

It is unlikely that experiences of missions operating "with different levels of autocratic authority" (ibid) would encourage Aboriginal people to subsequently view state power as limited and rule-governed, especially if liberal political processes are not meaningfully discussed with them (ibid).

Spencer had previous experience of police interviews, and he used rights to assert his agency, saying "I will talk with my own rights" and "I can speak for my rights". In each case he appeared to mean he did not want the assistance of Legal Aid or an interpreter. Todd said this:

1. P2: what are what what things *can you do
   in this interview/
   what are your rights/
2. Todd: <4.4> I just talk up
   for my rights,

'Speaking with (or for) my rights' and suggests that Spencer and Todd thought rights gave them standing to speak as individuals (Spencer also said "I can speak with my own weight"). However it is unclear whether their interpretations of rights were consistent with the right to silence. The idea that rights are operationalised by speaking rather than silence seems problematic.

These suspects' *rights* talk may represent partial adoption of language (rather than ideas) from previous experience. It is also possible to interpret Spencer's confident performance in his interviews as a "vociferous, confrontational style" accommodating to SAE (Eades 1991:92), and assertive references to rights could be part of this accommodation.

In *Tudorstack v Chula* (2004:[43]), it was argued there should be an explicit reference to *right* in the caution, however Blokland SM concluded "[i]f police had to explain the concept of a 'right', that would, in my view, lead to further confusion." This is probably true; explaining *rights* would mean using abstract ideas to eventually get to specific ideas. But explaining the ideas in the 'discourse of rights' is a serious problem for the caution whether the word *right* is used or not.

The underlying content of the caution is legal guarantees against police coercion or judicial punishment of suspects who remain silent. I argued at 4.2.1.4 that the most concrete expression of the right to silence is the prediction that neither police nor judge will react negatively to suspect silence, and that it is difficult to say that suspects understand the caution if they do not understand this.

Several implicatures are required for suspects to infer something like the above prediction from the language of the caution: the suspect must identify relevant agents, predict their behaviour and identify the scope of that prediction. Some formulations of the caution identify police as relevant agents, though none identify the judge, so the suspect must understand how the deontic

permission to remain silent, though addressed to the suspect, relates to police and judge as agents. Suspects must then infer that the caution predicts the behaviour of those agents in a particular set of circumstances: those where the suspect remains silent, regardless of the reasons for that silence or of judgements which might ordinarily attach to silence. The premises required for those inferences are in the discourse of rights: belief in orderly limits on state power, enforceability of rights against the state, the impropriety of interfering with an exercise of accredited behaviour, entitlement-rights residing in individuals, and individuals exercising autonomous, potentially amoral discretion in deciding how to act.

For suspects to have confidence in the caution, it must not merely predict police and judge behaviour, but do so firmly. Liberman (1981:251) reports about rights in court that:

> Aboriginal people have some notion that there are some choices available to them in the court, but they are also aware that they could find themselves in trouble if they do not comply on other matters. Intimidated by the courtroom setting and its attendant police officers, they are hesitant about exercising legally guaranteed options.

I argued at 4.2.1.4 that the caution seeks to affect the nature of power in the interview room by altering the illocutionary force of each police speech act in the interview speech event, removing the normal expectation that people should answer questions when asked. In terms of levels of context (see 2.2), this involves the *content* of police language establishing the context for a *speech event*. Expectations for the speech event may be established with greater authority if police can also call on context from a higher level, that of

culture. Foucault (1969) argues that discourses create social objects; and it does not seem far-fetched to argue that rights, despite being constituted by words, are 'real', at least for police. They are part of the fabric of Anglo-Australian culture. This makes rights a powerful idea, perhaps establishing strong expectations that police will respect them in the interview – but only for suspects who have access to the context in this discourse. It appears that some Aboriginal suspects may not be familiar with the discourse of rights and/or that its ideas may conflict with values held by some Aboriginal societies. This is a problem deeply embedded in the caution.

4.3 Caution part 2: consequences of speaking

The standard text of the caution gives the consequences of speaking as 'anything you do say or do may be used in evidence'.[66] However in many interviews, police mention *recording* as part of an initial statement of the caution,[67] so in many cases the starting text is like the following:

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[66] The legislated texts are in the third person and differ in the verb relating to evidence: "anything the person does say or do may be *given* in evidence" (*Police Administration Act* (NT) s 140(a), emphasis added); "anything the person does say or do may be *used* in evidence" (*Evidence (National Uniform Legislation) Act* (NT) s 139(1)(c), emphasis added).

[67] It is not clear why police include *recording*, although it is useful as it is closely related to the interview's use as evidence (Kurzon 1996). Police are separately required to inform suspects of their entitlement to a copy of the recording (*Police Administration Act* (NT) s 142(2)(a)), which would probably entail explaining what the recording is. Before beginning the caution, police

> Mora: … anything you do say or do will be **recorded** alright and may be used as **evidence** later on (*KR* 2015)

Recording does not seem to be a problematic concept provided the suspect has some awareness of recording equipment, usually visible in the interview room and pointed out by police, along with tapes or discs which are unwrapped in front of the suspect. It has been suggested that *record* could be confused with 'criminal record' (Kurzon 1996:14), but this seems unlikely in the oral cautions in this study, noting that syllable stress should distinguish *record* as a verb and noun. Police in this study talk about *recording*, *recorder*, *record*, *machine*, *tapes* and *discs*, and suspects with no experience of recording may nonetheless be familiar with playing DVDs (or historically, tapes). However understanding of *recording* does not seem to be tested by police in any way likely to detect two-audience awareness (understanding that the suspect's words and gestures will be captured on a medium which can be replayed). Two-audience awareness is important to the caution (including the teaching–testing purpose, see 2.4) and the subsequent interview.

Evidence on the other hand is the most complicated word in the standard caution, the only word with an overtly law-specific meaning. Wierzbicka (2010:144) classifies *evidence* as a key Anglo concept, lacking equivalents in other European languages, which may be "puzzling or even incomprehensible to cultural outsiders". Unsurprisingly then, *evidence* seems difficult for police

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generally explain the recording process, and refer to the unwrapping of tapes or discs in the suspect's presence.

to explain. However its inclusion in the 25-word caution must have been intended to convey something to suspects, otherwise drafters could have substituted something like ‘played in court’, as police tend to.

4.3.1 Police language about *evidence*

> Walters: … you don’t have to say anything. Anything you do say can be recorded and may be used in **court** at a later date (*Age* #1 2010)

Replacing *evidence* with *court*, Walters does not say *evidence* at all in this conversation. Rock (2007:166) finds that *court* is (also) a word “packed with meaning in the caution”, and that English/Welsh police felt the need to identify its human referents: judge, magistrate, and/or jury. NT police seem to have similar intuitions:

Extract (44): Cumaiyi (2003)

1. Butcher: Okay. And Dominic if you do say anything what you say is gonna' be recorded on these tapes as I explained before. One of these tapes can be used as **evidence** in Court. **Who** might listen to that in court? Who would listen to the tape?
2. Interpreter: (language)
3. Cumaiyi: Magistrate
4. Butcher: And what can a magistrate decide Dominic? What decisions can he make?
5. Cumaiyi: Gaol
6. Interpreter: (language)
7. Cumaiyi: Bail
8. Interpreter: (language)
9. Cumaiyi: Community Service

10. Interpreter: (language) Fine
11. Cumayai: Fine
12. Butcher: So you say gaol, bail, community service or fine. Yeah? So you understand that what you say to me now on this tape can be played in front of that magistrate that can make those decisions. Do you understand that?
13. Cumaiyi: Yeah

In line 1, Butcher moves straight from "evidence in Court" to "who might listen". After Cumaiyi correctly identifies *magistrate*,[68] Butcher elicits (with possible assistance from the interpreter, see line 10) a list of sentencing options: gaol, community service, fine, and bail.[69] The surprising emphasis on

[68] The difference between *magistrate* and *judge* is probably marginal to a suspect's understanding of the court process. From 2016 in the NT, all judicial officers are called 'judges' (*Local Court Act* (NT) s 85), so the word *magistrate* is no longer needed, removing a lexical complexity, and perhaps aligning better with some Aboriginal languages which include words derived from *judge* to refer to non-Aboriginal judges, for example Yolngu *djätj* (Greatorex & Charles Darwin University 2014). Even where the word *magistrate* is in use, 'correctly' answering this question would require irrelevant precision. At the time of the interview, it may not be obvious whether an alleged offence is serious enough to require a trial by judge and jury. In any event, charges which go before a judge almost always pass through the lower court first and may involve evidence being heard by a magistrate during preliminary examination (committal) proceedings. Clearly, expecting or requiring suspects to know this would be unrealistic.

[69] *Bail* is not a sentence but a conditional release of the suspect while court proceedings are incomplete. It is true that the existence of an interview can affect decisions about bail as it may affect the 'strength of the case' against the suspect (*Bail Act* (NT) s 24(1)(a)(iii)). However Butcher's acceptance of *bail* in this list of sentences in line 12 could contribute to confusion

sentencing is seen in numerous police explanations of the court process in this study.

Extract (45): Dumoo (1996)

1. Lindsay: Who might listen to these tapes in court?
2. Dumoo: Judge.
3. Lindsay: Judge. Now when the Judge listens to these tapes and he - that Judge will hear what you're saying now. Now if he thinks that you're guilty what can he do to you?
4. Dumoo: Lock me up.
5. Lindsay: Yeah. What other sort of things can he do? Could he make you pay a fine?
6. Dumoo: Yeah.
7. Lindsay: Or make you do that work?
8. Dumoo: Yeah.
9. Lindsay: What's that work called?
10. Dumoo: (No reply).
11. Lindsay: The community work?
12. Dumoo: Community.

Lindsay's explanation of the court process at line 3 mentions that the judge will *hear* what Dumoo is saying, but does not dwell on this idea. The question "*if* he thinks that you're guilty" skips over the issue of *how* the judge could reach this conclusion, and goes on to thoroughly test sentencing options.

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given that some Aboriginal people may incorrectly view being 'bailed out' as concluding their court proceedings, like a sentence (Aboriginal Resource and Development Services 2007).

A possible explanation for naming judicial officers and sentencing options is the potential to elicit court-related language from suspects, building up some evidence that they know about the legal process, despite the fact that sentencing is procedurally distant from evidence. Some courts have accepted this explanation-by-naming. In *Gaykamanu* (2010:[39]), Olsson AJ was satisfied with an answer of "Maybe Judge":

> When asked by the interpreter, in language, whether he understood that, if he did tell his story, where his voice would go from the tape and the TV, and who might look at and listen to it, the accused replied, "Maybe Judge". I am satisfied that, in so responding, the accused was not, as his counsel suggests, making some equivocal response. He was clearly stating his understanding that the record of any thing he said might be used in court before a judge.

In *GP* (2015:[17]), Barr J found that telling the suspect that the recording might be heard "by the magistrate or jury" was an "obvious reference to criminal court proceedings".

Some suspects give discouraging answers to open questions about "what happens in court".

Extract (46): Moonlight

1. P: now court,..
   =can= you .. tell me?
2. M: =(yeah right)=
3. P: .. what court is?
   <3.4>
   what happens in court/
4. M: <1.2>(dunno) <1.7> judge? eh,
5. P: ==yeah judge/
   and what can a judge do?

6. M: <1.2>u::m [*ticking*]
   <7.0>um
7. P: ... can a judge,
   ... oh::/
   ... what what can a judge do/
   to someone that's done something wrong?
   what can a judge do for them?
8. M: ah yeah, lock up//

The general question at line 3 elicited an uncertain answer "judge" at line 4, which P diverted into a more specific question "what can a judge do?". To further prompt an answer, P then reframes the question at line 7 as relating to "someone that's done something wrong", presupposing the conclusion of the evidentiary process and making the question largely irrelevant to understanding of how the interview could be used, but successfully eliciting the answer "lock up".

KR, aged 14, was asked "what can happen in court":

1. Mora: Um… What's your, what's your understanding, um, what can happen in court?
2. KR: Um… just… probably gonna get locked up and that (*KR* 2015)

Many things 'can' happen in court, and this answer does not suggest any awareness of court processes. The most successful answer to "what happens in court?" in this study came from Spencer:

Extract (47): Spencer #2 (1998)

1. Kelly: Do you know what happens in court?
2. Spencer: Yeah I know. They, the tape has to be shown to the judge.
3. Kelly: Yep.

4. Spencer: And be recorded.
5. Kelly: And it could get you in trouble if you say something.
6. Spencer: Yeah.

In line 2, possibly referring to his previous experience of the caution, Spencer answers the general question consistently with police explanations about the judge hearing the interview. Paraphrases in this study consistently focus on *listening to* or *hearing* the recording. Translations also focus on *listening* and *deciding*, for example the *2015 Kriol translations*:

So	detmob	plismen	gada	deigi	yu	stori	la	det	kot.
So	those	police	will	take	2SG	story	to	that	court

Detmob	jaj	en	najalot	pipul	la	kot	gada
Those	judge	and	other	people	at	court	will

irri	yu	stori	en	wani	yu	toktok.
Hear	2SG	story	and	what	you	talk

'Police might take your story to court and the judge and other people in court can listen to your story and hear you talking.'

Dei	gada	irri	yu	stori.	
They	will	hear	2SG	story	

Det	jaj	gada	jinggabat	if	yu	bin	breigi	det	lo	o	najing.
That	judge	will	think	if	you	PST	break	that	law	or	nothing

'They will listen to your words to decide if you did break the law or if you didn't break the law.' (subtitles in original)

When police attempt to explain the evidentiary process this is often limited to *listening* (although McKeown below only mentions 'going to court' and 'proof').

Extracts (48)

> Mora: Yep so what happens is the magistrate can listen to what you say and, and everything else and they can make a decision on, about you, ok? (*KR* 2015)

Miller: … those disks then go to the courthouse, and the magistrate will listen to those disks, lawyers, and that's the evidence. Ok? (*Lawrence* #1 2015)

1. McKeown: but if you do, if you do answer my questions it's going to be recorded and it will be evidence. Do you know what evidence is?
2. Jawrarla: Mmmm.
3. McKeown: Evidence is like when something goes to Court, it's the proof, you can prove it, do you know what I mean?
4. Jawrarla: Yeah. (*Jawrarla* 2006)

Perhaps the most meaningful police explanation in this study is in Rankin's interview, following another unsuccessful open question about "what a court does":

Extract (49): Rankin #1 (1998)

1. Pfitzner: And they could be used against you in court. Do you know what a court is? Do you know what a court does?
2. Rankin: (No audible reply)
3. Pfitzner: What does a court do?
4. Rankin: Um - - -
5. Pfitzner: Sorry? Have you been – you understand what the job of the court is?
6. Rankin: No.
7. Pfitzner: Do you understand that if a person – they might get in trouble with the law, with the police and then that person might end up in court and that's that place where they go - - -
8. Rankin: Yeah.
9. Pfitzner: - - - and then the magistrate or the judge might hear what the police have to say and they might hear what the defence has to say, or the person, and then that magistrate or judge can make up his mind as to whether that person is guilty or innocent. Do you understand that?
10. Rankin: Yes.

11. Pfitzner: And then after that, then that magistrate or judge might, you know, sentence that person or let them go free or – depending on what's been put before the court. Do you understand that?

Pfitzner's explanation at lines 9 and 11 involves a judge hearing both sides, 'making up his mind', and determining an outcome based on "what's been put before the court". This goes some way to explaining how evidence works. Similarly, Miller said "the magistrate will hear the police story and he'll hear your story" (*Lawrence* #1 2015). This is true, but contrasting "the police story" with "your story" suggests that the interview may be evidence in the suspect's favour, whereas in fact, if played, the interview is part of the prosecution evidence and usually incriminates the suspect.[70]

In the cases of Cumaiyi (44), Dumoo (45) and Rankin (49) quoted above, courts did not discuss the question of whether the suspects understood how interviews could be used in evidence.[71]

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[70] In the minority of cases where, in the context of all the other evidence, an interview ends up being favourable for the suspect, the suspect has an arguable entitlement to have the interview played. This argument is based on the prosecutor's duty to bring relevant evidence before the court, and requires that the interview is not wholly exculpatory: *R v Rudd* (2009) 23 VR 444; *R v Helps* [2016] SASCFC 154.

[71] There is no known court decision about Moonlight's case (also quoted above).

Cumaiyi's interview was excluded from evidence on the basis that he attempted to exercise his right to silence. *Tudorstack v Chula* [2004] NTMC [20]-[26].

Kearney J agreed with Dumoo's lawyer that Dumoo's answer "Judge" (in line 2 of (45)) "did not establish that the appellant was aware of his right to remain silent when being questioned",

4.3.2 Evidence *against* you

Some descriptions of the use of interviews in evidence, including the standard US *Miranda* warning, say that the contents of the interview may be used *against* the suspect. An (apparently non-Aboriginal) NT suspect said this about his right to silence:

> I've watched a lot of TV shows and whatnot and I've seen people say the wrong things and it ends up turning on them later so I'd rather just wait. (*R v CS* 2012:[54])

In this study, police occasionally say *against*. In line 1 of (49), Pfitzner says "used against you in court". Kelly says "used as evidence in, against you in court", and in (47), "it could get you *in trouble* if you say something".

There is a risk that the language of 'getting in trouble' could confuse two stages of the process: the police decision to arrest someone, and the court's decision about that person's guilt (and potential sentence). Pfitzner uses this language at line 7 of (49) to refer to initial apprehension by police. In Nundhirribala's interview, police said this:

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but it is not clear why this was argued, given that that question related to the consequences of speaking, not the right to silence. Dumoo's interview was excluded because breaches of *Anunga* guidelines made it improperly obtained evidence: *Dumoo v Garner* [1998] NTSC 8

Justice Thomas found that at the end of Rankin's first interview (which is quoted in (49)), she did not understand the caution; however this assessment seems to have been about understanding the right to silence. There was a second interview with an interpreter. Her Honour concluded that police failed to comply with the *Anunga* rules, but this was not reckless and the interview was admitted into evidence. *R v Rankin* [1998] NTSC.

1. Grant: … Have some boys from Numbulwar been to Court at Groote Elyandt?
2. Nundhirribala: Yeah.
3. Grant: And when they go to Court do they get into trouble from the Judge sometimes?
4. Nundhirribala: Yeah.
5. Grant: And what sort of trouble do they get in from him? … (*Nundhirribala* 1993)

Justice Mildren considered this caution was acceptable, and concluded that:

> the accused is not so unsophisticated as to be unaware of either television or tapes and it is apparent from the record of interview that he was aware that the tapes would be listened to by a Magistrate or Judge and that Judges have the power to send people who are **in trouble with the law** to jail. (*Nundhirribala* 1994:[22], emphasis added)

There is evidence that some suspects may lack understanding of the legal process and the distinction between police and court decisions. It is important to avoid confusing these two steps with overlapping language. This kind of confusion could explain Todd's answer seen at 4.1.3.

Extract (33): Todd (1995)

1. P2: ==what do you think will happen if you answer the questions? <2.6>
   do you think you might **get in trouble**?
2. Todd: .. .I think so
3. P2: who from/
4. Todd: ==**from the police**,
5. P2: yeah/
   anyone else?
6. Todd: not really
7. P2: ==you don't think you might get in trouble from the judge later on? .. or a magistrate?
8. Todd: ==think so::/

Line 4 appears to suggest that Todd would get in (more) trouble from the police after answering the questions, which suggests lack of awareness of the evidentiary process, but is perhaps consistent with the caution's general focus on police as a domain of authority.

'Evidence *against* you' or similar language may suggest that interviews can only be used against suspects, however interviews occasionally provide evidence in the suspect's favour. In *GP* (2015:[17]) it was not necessary to explain that the interview could be "used against [GP] in evidence in the sense that a jury might use it to determine if he had done something wrong". In *Marrmowa*, it was also not necessary to explain "that the evidence could be used **against** him in Court" (1995:[13], emphasis in original). However in *R v Sharpe & Braedon* (1996 NTSC, unreported, cited in Douglas 1998:45), an interview was excluded from evidence because the suspect did not understand the interview was "potentially contrary to their interest". In interviews where suspects initially talk about being locked up, discussion of more lenient sentences may raise the possibility that the interview could change the outcome in their favour.

4.3.3 A discourse of evidence?

To avoid categorising the interview as *for* or *against* the suspect, we must return to the text of the caution and the meaning of *evidence* (which unlike *rights* is expressly included in the text). *Evidence* may invoke, for hearers familiar with Anglo-Australian culture, a number of related ideas which could

be considered a discourse (Wierzbicka 2010). While the 'discourse of rights' is about politico-legal rights consistent with the caution, *evidence* has non-legal meanings which may be more prominent for many Anglo-Australian speakers than its use in the legal process.

The legal use of the term *evidence* may be related to the English empiricist idea that thinking is not enough for knowing, and sensory perception is needed (Wierzbicka 2010:97). So *listening* is indeed part of its meaning, as emphasised by police. While Wierzbicka describes evidence as being about 'truth', courts use evidence to determine 'facts'. Wierzbicka goes on to argue that there is a "discourse of evidence" which relates to "supporting what one says", including claims, hypotheses and allegations, and "challenging what somebody else says" (2010:122). The use of evidence in court is thus adversarial, with two sides marshalling observations of the world to support and challenge claims. However, some Aboriginal people may be "unprepared for the adversarial basis of British jurisprudence" because in many cases "traditional Aboriginal deliberation operates by consensus" (Liberman 1981:247). Another necessary feature of an adversarial courtroom is revealed by the *Plain English Legal Dictionary*:

> A judge is impartial. She is in the middle between the two sides in court. The judge will think like this, "it does not matter to me who wins, I only decide according to the law." (Aboriginal Resource and Development Services et al. 2015), definition of *judge*.

The importance and non-obviousness of impartiality is also highlighted by ARDS's (2015) Yolngu translation of *judge* as *ṉapuŋga'wuy*, 'middle person',[72] contrasting with some police language such as "the boss man in the Court" (*Nundhirribala* 1993), which suggests authority but not impartiality.

Impartiality may ensure evidence is scrutinised objectively. Wierzbicka argues that "in English, evidence can be expected to be critically examined rather than immediately assented to" (2010:97), reflected in critical weighing of competing evidence by judge or jury. Impartiality is also protected by transparency about which evidence courts base decisions on:

> The judge or jury can only decide about a court case using the evidence they hear and see in court. They cannot go and get other information outside of court or talk to people outside of court to help them decide. There are many rules about what kinds of things the lawyers can bring into court and show the judge or jury as evidence. (Aboriginal Resource and Development Services et al. 2015), definition of *evidence*.

The requirement to bring evidence to court is affected by another fundamental principle, the presumption that suspects are innocent until proven guilty[73] by evidence in court beyond a reasonable doubt.[74] This includes the requirement to prove matters which might seem basic and obvious to suspects, such as the identity of accused and victim, and who was present at particular

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[72] The introduction to the same dictionary (ARDS 2015) also notes that the Yolŋu system of law includes (presumably metaphorical) "law chambers" (*ŋärra*) presided over by "people who are regarded as impartial".

[73] *Criminal Code* (NT) s 5.

[74] *Criminal Code* (NT) s 440.

places and times. It is also frequently necessary to prove matters such as intention, which suspects may not realise are relevant separately from actions. Interviews often reveal suspects' states of mind, and this can be difficult to prove in other ways.

The use of the interview as evidence also contrasts with other statements which are not admissible as evidence, for example conversations with police which are not recorded and where the suspect was not cautioned.[75] It is hard to see how any suspect would know this if not told, and Rogers et al (2010) found that 52% of (US) pretrial defendants thought 'off the record' comments could be used against them. A suspect might think s/he has already incriminated him/herself in another conversation with police, conclude the right to silence is of no value, and go on to repeat the same information in the recorded interview, actually incriminating him/herself.

It is possible to imagine other ways in which a judge could listen to the interview, if we do not assume knowledge about the legal process. Davis et al's (2011:94) Canadian participants (not actual suspects) waived their right to silence for reasons including:

> to show that they were cooperative or honest (46.2%), to explain their side of the story (23.1%), to convince the police to let them off easy (7.7%), and to fabricate a story that would get them out of the crime (7.7%).

[75] Evidence of a confession by a suspect to police is generally not admissible unless recorded, or unless it is later confirmed by the suspect during a recorded interview: *Police Administration Act* (NT) s 142(1).

It is debatable whether these reasons reflect understanding of the purposes for which courts listen to interviews. There is minimal evidence in this study that suspects understand court processes, and some of them appear to think court means getting locked up. Aboriginal people also may not know what happens behind closed doors outside court. One might imagine, for example, that the judge has previously heard about the crime from police, and would normally believe them. The interview might be an opportunity for the judge to assess the suspect's character, not to ascertain facts but to decide how harshly to punish him/her based on some set of values which may not be obvious to outsiders.

A meaningful explanation of *evidence* should contradict possible assumptions like these. It should explain that the judge starts with no knowledge about the crime and needs to see or hear each part of the story in court. If there is not enough evidence in acceptable forms, the judge will have doubts and conclude the suspect is not guilty. An interview can be used to prove (or disprove) factual elements of the crime. Mildren's (1997) paraphrase suggests that the interview could constitute evidence for or against the suspect:

> The magistrate will listen to your words and then maybe he will send you to gaol. Maybe the magistrate will listen to your words and he will be happy with your story, I don't know what he will think.

If police said "I don't know what he will think", this would also suggest independence between police and magistrate, and perhaps impartiality.

Many ideas bound up in *evidence* are neatly embodied in the personification of Justice with blindfold (impartiality, presumption of innocence), scales (weighing of opposing evidence) and sword (punishment

according to law). This image is derived from the roman goddess Justitia and probably has origins in ancient Egypt (Curtis & Resnik 1987). Once again, premises implicated in a full interpretation of the caution can be found in a body of knowledge which seems to have deep roots in European culture.

If *evidence* is not explained, diverging assumptions about the purpose of the interview could lead to inability to make meaningful decisions about silence, even if the suspect understands the right to silence and the (lack of) consequences of silence. However it seems clear that explaining *evidence* to a meaningful degree would be difficult and time consuming and may not be suited to the police interview room. Explaining that the interview can be 'used *against* you in court' could be a shortcut to reduce the need to explain *evidence*. It would tend to turn the caution into a warning, highlighting negative consequences and giving suspects the flavour of the information needed to decide about silence.

5 Conclusion

Police sometimes appear to assume that the caution "might sound a little bit confusing but it's basically fairly simple" (*Todd* 1995). They may start caution conversations hoping that the caution will be readily understood, and in many cases it probably is. The conversations in this study also show that police sometimes make a lot of effort to explain the caution, but may not use effective strategies for suspects in this study. It should be clear that the caution, and the way it is required by *Anunga* to be delivered, is anything but simple. This study suggests that caution processes may be unsuccessful for a range of Aboriginal suspects and for a range of (often overlapping) reasons.

The caution procedure has evolved from a series of decisions and assumptions by many people: legislators, judges, police, lawyers and others. The recognition of the right to silence, the requirement to deliver a caution, the *Anunga* requirement to test understanding, the requirement to record cautions and interviews, and the increasing use of interpreters and recordings are all steps in the evolution of a policy. Presumably, each step seemed be a reasonable way to achieve a reasonable objective. However parts of the caution may rest on insecure foundations.

Caution conversations (and translations) can be seen as textual evolutions with their origin in legislated texts (though those texts themselves have deeper roots). Some problems with the caution can be traced to these texts, for example the inclusion of "does not have to" in the standard text, and the fact

that the text mentions the consequences of speaking but leaves the (lack of) consequences of silence to be inferred.

Most communication problems are probably related to the amount of context available to suspects about what is happening during the caution, the caution's relationship with the following interview, and the potential role of the interview in court. Police could frame the caution more meaningfully and provide more context, and many useful ways of presenting the caution have already been revealed by paraphrases and translations of it.

Specific linguistic issues which cause problems for the caution include the ambiguity of conditional clauses and the complexity of modals. While it may be impractical to avoid conditional clauses, their role might be clarified by better context. Modals can sometimes be avoided and police sometimes replace them with other language. However *don't have to* should be avoided altogether (which has been recommended before).

Police should aim to explain the caution in a clear way the first time it is mentioned, rather than relying on increasingly complex sequences of reformulation whose discursive effectiveness is doubtful. I argue that the most concrete way to explain the right to silence is by predicting that if the suspect stays silent, neither police nor judge will react negatively.

Even if language is successfully processed, caution texts appear to require significant contextual knowledge for suspects to derive meaningful interpretations. *Rights* and *evidence* are two culture-specific areas of knowledge which are embedded in the caution. Attempting to clarify what the

caution ‘means’ reveals that it is not always clear how much information it is intended to communicated, and this may require clarification of policy.

Where suspects need access to bodies of knowledge which may be unfamiliar to them, attempting to explain this in the current caution format would extend conversations beyond their already large scope. It seems impractical to give individual suspects lessons in the interview room when they are stressed, police have a crime to investigate and there may be time pressure. These problems could be addressed by education of the community generally about rights and the legal system, and there are methodologies to do this with Aboriginal people in the NT (Grimes 2012; ARDS 1994). Education about subjects including the right to silence, *rights* generally, and *evidence* could improve suspect understanding, reduce police communication workload, improve fairness of the system and perhaps improve the reliability of interview evidence.

Many aspects of caution conversations could be investigated further. Separate psycholinguistic testing of comprehension processes could assist the development of better caution language. Further analysis from the present data set could include analysis of comprehension testing strategies, evaluation of the caution’s effects on individuals, and examination of possible suspect attempts at exercising the right to silence and how these are dealt with by police in the *Anunga* process.

While this study has primarily considered the effectiveness of police communication in English, a further question is the effectiveness of police

caution language when interpreted into other languages by a live interpreter. This study has also not sought to evaluate recorded translations of the caution which are currently in use, because that would require observation of how they are used in practice. The effectiveness of recordings in the interactional reality of the interview room is a question for further research, as there is significant potential for recorded cautions to improve understanding of the caution but research may also reveal ways that this process can be developed further.

This study explores some of the ways the caution goes wrong in cases which have already been identified (by lawyers and courts) as problematic. There are some patterns in how the caution can be misunderstood, and addressing identified problems may avoid some miscommunication in the future. Currently, there is a risk that the caution accentuates inequality by failing to give some Aboriginal people (especially those who are not proficient speakers of English and not familiar with Anglo-Australian legal ideas) equal awareness of their rights. This may cause them to incriminate themselves and perhaps just as importantly, to feel confused and disempowered in the legal process.

6 Appendices

6.1 Abbreviations and glossary

Anunga guidelines: guidelines for police conducting interviews with Aboriginal suspects, established by the NT Supreme Court in *R v Anunga, R v Wheeler* (1976) 11 ALR 412.

D2: second dialect

L1: first (native) language

L2: second language

NNS: non-native speaker

NS: native speaker (in the context of the caution, meaning native speaker of Standard Australian English)

NT: The Northern Territory of Australia, the jurisdiction which is the focus of this study.

s 140: refers to section 140 of the *Police Administration Act* (NT). The expression "section 140" is often used to refer to a conversation, containing the right to silence caution, which police usually deliver to suspects shortly after arrest and record on a handheld recorder.

SAE: Standard Australian English

Abbreviations used in Djambarrpuyngu glosses (following Wilkinson 1991):

ACC: Accusative
ASS: Associative
CAUS: Causative
COMPL: Completive
DAT: Dative
DIS: Distal (demonstrative)
ERG: Ergative
I, I, III, IV: verb conjugations
IMPV: Imperfective
INCH: Inchoative
INSTR: Instrumental
OBL: Oblique
PERL: Perlative
PRIV: Privative
PROM: Prominence
PROX: Proximal (demonstrative)
TEXD: Text deictic

6.2 Transcription conventions

From McLaughlin (1996:29), for *Todd*, *Anthony* and *Moonlight*, which are transcripts from that study.

Symbol	**Significance**
// / ? , – _	Final fall Slight final fall indicating temporary closure Final rise Slight rise as listing intonation (eg. more is expected) Truncation (eg. what ti- what time is it/) Level ending
.. … <2> =	Pauses of less than .5 second Pauses of greater than .5 second (unless precisely timed) Precise units of time (= 2 second pause) To indicate overlap and latching of speaker's utterances: spacing and single = before and after the appropriate portions of the text to indicate overlap; turn-initial double = to indicate latching of the utterance to the preceding one. Ex. R: so you understand =the requirements?= B: =yeah, I understand them/= R: so you understand =the requirements?= B:==yeah, I understand them/
:: ~ * {[ ]} [ ] [*gesture*]	Lengthened segments (eg. wha::t) Fluctuating intonation over one word Extra prominence Non-lexical phenomena, both vocal and non-vocal, that overlay the lexical stretch (eg.,{[lo] text//} Non-lexical phenomena, both vocal and nonvocal, that interrupt the lexical stretch (eg. text [laugh] text//) Gesture
( ) di(d) (did) (xxx)	Unintelligible speech A good guess at an unclear segment A good guess at an unclear word Unclear word for which a good guess can be made as to how many syllables were uttered, with each x equal to one syllable
# #	Use cross-hatches when extratextual information needs to be included within the text (eg. R: did you ask M #surname# to come? Also used in this data where sames, places etc have been deleted but are still transcribed so as not to interrupt the flow
Intervals are measured in interactional seconds.	

6.3 Caution source documents

Suspect name	**Source**	**Interview date, location**	**Suspect age, L1**	**Charge(s)**	**Court decision about caution**
Age, Steven	*The Queen v Age* [2011] NTSC 104	#1 (s 140)[76]: 8 December 2010	Adult, English (also Alyawarra?)	Aggravated assault	Interview rejected
		#2: 9 December 2010		Murder (the same incident)	
Anthony	McLaughlin (1996)	1995, Katherine Region	22, Kriol	unknown	Not decided in court: charges dropped by prosecutor following a report by linguist Denise Angelo.

[76] 's 140' means that this caution was part of a 'section 140' conversation rather than an interview. This is explained at 1.4.1.

Suspect name	**Source**	**Interview date, location**	**Suspect age, L1**	**Charge(s)**	**Court decision about caution**
BM	*R v BM* [2015] NTSC 73	#1 (s 140): 2014 #2: 2014	20 or 21, Tiwi	Sexual intercourse with child under 16	Interview rejected
Cotchilli	*R v Cotchilli* [2007] NTSC 52	31 December 2005, Alice Springs	24, Kukatja?	Murder	Interview rejected
Cumaiyi, Dominic	*Tudorstack v Chula* [2004] NTMC 013	23 August 2003, Wadeye	Adult, Murrinh-Patha?	Dangerous act, firearms offences?	Interview rejected because of attempted exercise of the right to silence
Dumoo, Basil	*Dumoo v Garner* [1998] NTSC 8	25 October 1996, Port Keats	Adult, Murrinh-Patha?	Bring liquor into restricted area	Interview rejected (on appeal)
Echo, Howard	*R v Howard Echo* [1996] NTSC 177	#1: 31 May 1996, Borroloola	20, Garawa		Interview rejected

Suspect name	**Source**	**Interview date, location**	**Suspect age, L1**	**Charge(s)**	**Court decision about caution**
		#2: 31 May 1996, Katherine		Attempt sexual intercourse without consent	Interview rejected
Gaykamanu, Phillip Dharul	*R v Gaykamanu* [2010] NTSC 12	17 August 2006, Maningrida	29, Gupapuyngu?	Arson	Interview accepted
GP	*R v GP* [2015] NTSC 53	20 October 2014, location suppressed	20, language suppressed	Sexual intercourse with underage female child	Interview accepted
Inkamala, Robert	*R v Robert Rufus Inkamala* [1996] NTSC 18	#1 (s 140): 21 January 1995	Adult, Luritja	Murder	Interview rejected
		#2: 21 January 1995			

Suspect name	**Source**	**Interview date, location**	**Suspect age, L1**	**Charge(s)**	**Court decision about caution**
Jako, Emily	*R v Emily Jako, Theresa Marshall and Mavis Robinson* [1999] NTSC 46	6 November 1997, Alice Springs	Adult	Robbery, unlawful use of motor vehicle, murder	Interview rejected because Jako attempted to exercise her right to silence
Jawrarla, Gerard	*Police v Gerard Jawrarla* [2006] NTMC 043	Date unknown, Maningrida	Adult	Possess and supply cannabis	Interview rejected
KR	*Police v KR* [2015] NTMC 020	23 March 2015	14, unknown[77]	unknown	Interview rejected
Lawrence, Shaun	*R v Lawrence* [2016] NTSC 65	#1: 15 July 2015, Katherine	30, from Bulman or Beswick		Problems with caution not enough to

[77] This case was heard in the Youth Justice Court at Katherine, and the location of the court appears to be the only public information about the origin of the case.

Suspect name	**Source**	**Interview date, location**	**Suspect age, L1**	**Charge(s)**	**Court decision about caution**
		#2: 21 August 2015, Katherine		Assault, sexual intercourse without consent	justify exclusion. Interviews rejected for other reasons.
Mangaraka, Sarah	*R v Sarah Mary Mangaraka* [1995] NSTC 29	#1: 15 February 1993, Alice Springs	29, Western Arrente	Murder	Interview rejected
		#2: 16 February 1993, Alice Springs			Interview rejected
Marrmowa, Jimmy	*R v Jimmy Marrmowa* [1996] NTSC 89	19 August 1994	22, unknown	unknown	Interview rejected
Moonlight	McLaughlin (1996)	1995, Katherine Region	25, names traditional L1 but likely Kriol	unknown	Not clear that any decision made about caution or interview.

Suspect name	**Source**	**Interview date, location**	**Suspect age, L1**	**Charge(s)**	**Court decision about caution**
Nundhirribala, Roderick	*R v Nundhirribala* [1994] NTSC 28	8 November 1993 Katherine	About 18, Nunggubuyu and/or Kriol	Murder	Interview accepted (parts excluded for reasons other than the caution)
Rankin, Bronwyn	*R v Rankin* [1998] NTSC	#1: 22 September 1998, Katherine	Adult, Kriol	Manslaughter	Interview accepted
		#2: 22 September 1998, Katherine			
Robinson, Jason	*R v Jason Robinson* [2010] NTSC 09	15 November 2008	Adult, Ngaanyatjarra	Murder	Interview accepted (parts excluded for reasons other than the caution)
RR	*R v RR* (2009) 25 NTLR 92	27 July 2008	Adult, Anindilyakwa?	Murder	Interview accepted

Suspect name	**Source**	**Interview date, location**	**Suspect age, L1**	**Charge(s)**	**Court decision about caution**
Spencer, Bryce	*R v Spencer* [2000] NTSC 44	#1: 3 September 1998, Alice Springs	Adult, Warlpiri[78]	Murder	Interview accepted
		#2: 4 September 1998, Alice Springs			
		#3: 4 September 1998, Alice Springs			
Thomas, Angus	*R v Thomas* [2006] NTSC 87	30 March 2006, Darwin	Adult, unknown	Attempt sexual intercourse, deprive liberty	Interview accepted
Todd	McLaughlin (1996)	1995, Katherine Region	27, names traditional L1 but likely Kriol	unknown	Not clear that any decision made about caution or interview.

[78] Spencer's Warlpiri background is referred to in an appeal decision not related to the caution: *Bryce Jabaltjari Spencer v The Queen* [2005] NTCCA 3.

6.4 Translation and paraphrase sources

Translation	**Source**	**Available from**
1997 Kriol	Djiwurruwurru-jaru Aboriginal Corp. *Preamble to the Administration of the Police Caution*	Unpublished
1998 Djambarrpuyngu	Cooke, Michael. *Djambarrpuyngu Version of Preamble to the Police Caution*	Unpublished
2015 Djambarrpuyngu not in custody	Aboriginal Interpreter Service (NT) Transcript by Michael Cooke used in this thesis	Recordings: https://dhcd.nt.gov.au/community-development/aboriginal-language-police-cautions-aboriginal-interpreter-service

2015 Kriol not in custody	Aboriginal Interpreter Service (NT) Transcript by Denise Angelo used in this thesis	English subtitles: https://dhcd.nt.gov.au/__data/assets/pdf_file/0015/413232/ENG001b-Standardised-Audio-Police-Caution-SAPC-not-in-custody.pdf Accessed 26.4.17
2015 Djambarrpuyngu in custody	Aboriginal Interpreter Service (NT) Transcript by Michael Cooke used in this thesis	Recordings: https://dhcd.nt.gov.au/community-development/aboriginal-language-police-cautions-aboriginal-interpreter-service English subtitles: https://dhcd.nt.gov.au/__data/assets/pdf_file/0014/413231/ENG001a-Standardised-Audio-Police-Caution-SAPC-in-custody.pdf Accessed 26.4.17
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