

# “No comment” responses to questions in police investigative interviews

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Draft: March 9<sup>th</sup> 2014

For S. Ehrlich, D. Eades & J. Ainsworth (Eds.), *Coercion and consent in the legal system*.  
Oxford University Press.

Words: 8510 plus references

## Introduction

What are suspects' rights in an investigative interview with police officers, and how do suspects exercise them? This chapter investigates the way a particular right within the British system, that suspects "do not have to say anything," is explained to them by officers, and then realized in suspects' "no comment" responses to questions. This right is explained as part of the 'caution', which is a key element of a standard opening of police interviews that follow the requirements of the Police And Criminal Evidence Act for England and Wales (PACE, 1984; see Stokoe, 2013), as amended by the Criminal Justice and Public Order Act 1994, Part III, Sections 34-37 (CJPO, 1994). The 'caution' stipulates a right to remain silent under questioning, along with a caveat on the possibility of negative inferences being drawn from the exercise of that right; the 'caution' is broadly similar to the 'Miranda warning' given by police officers in the USA, prior to questioning a person in custody. The extent to which the 'caution' establishes or, in its post-1994 version, undermines a right to silence, has been a matter of some controversy since its inception (e.g., O'Reilly, 1994). This chapter focuses on instances in which suspects under police questioning in England exercise their right not to answer questions, by use of the standard response formula "no comment." We examine the design, uses and consequences of that response, in and for its specific environments in recorded police questioning. Some suspects are advised by co-present lawyers to "not answer" in response to particular sorts of police questions (Edwards & Stokoe, 2011). However, lawyers do not always persist with this advice once given, and suspects do not always adhere to it.

The chapter is located in a wider context of conversation analytic (CA) work on social interaction in legal settings (e.g., courtrooms, police stations, emergency services, prisons, legal documents, lawyers' offices). Indeed, in his ground-breaking collection of papers on ethnomethodology, Garfinkel (1967: 105) examined jurors' decision-making practices in the allocation of blame and in "recommending remedies" (see also Manzo, 1996 on jury interaction, and see Bittner, 1967; Cicourel, 1968; Sacks, 1972; Sudnow, 1965; Wieder, 1974, for other classic ethnomethodological studies of legal institutions). Another key conversation analytic study was Atkinson and Drew's (1979) investigation of the organization of cross-examination in courtrooms, focusing on the design of lawyers' questions, particularly those that were designed to allocate blame, and of witnesses' responses to such questions (see also Beach, 1985; Bogen & Lynch, 1989; Burns, 2001; Galatolo, 2007; Komter, 1998; Lynch, 2007; Maynard, 1984; Pollner, 1974; and Pomerantz, 1987, on courtroom interaction of various kinds). Other sites of investigation include the everyday workings of law firms (e.g., Travers, 1997); the production of legal texts and records (e.g., Komter, 2006; Meehan, 1986; Summerfield & McHoul, 2005; Van Charldorp, 2013), and encounters between citizens and the police (e.g., Meehan, 1989; Sharrock & Watson, 1989; Whalen & Zimmerman, 1990). Interaction in places such as courtrooms can constitute some of the most highly consequential moments in people's lives.

Rigorous analysis of 'live' (i.e., recorded) police interviews comprises a minority of work on interaction across legal settings. In contrast to numerous studies of suspects' and police officers' post-hoc reflections about their interviewing technique, style and experience (e.g., Dando, Wilcock & Milne, 2008; De Fruyt, Bockstaele, Taris & Van Hiel, 2006; Holmberg & Christianson, 2002; Kassim, Leo, Meissner et al, 2007), there are far fewer studies of actual interactions between officers and arrested suspects. Within the smaller body of work that analyzes real life police interviews of suspects, grounded in linguistics and discourse analysis as well as CA, much attention has been paid to officers' questioning strategies, issues of power and coercion, and the elicitation and design of suspects' accounts (e.g., Benneworth, 2006; Edwards, 2006, 2008; Haworth, 2006; Heydon, 2005; Johnson,

2008; Komter, 2003; Linell & Jönsson, 1991; Shuy, 1998; Stokoe, 2009; 2010; Stokoe & Edwards, 2007; 2008; Watson, 1983; Wowk, 1984). Some have analysed the physical and embodied aspects of police interviewing, such as how the interview room itself becomes a resource for interaction (LeBaron & Streeck, 1997) or how gaze direction between participants can play an important part in the emotionality of an interview (e.g., Kidwell, 2006).

This chapter focuses on a specific feature of investigative interviews in which suspects exercise their right of silence – that is, to not answer questions put to them by police officers. Although “no comment” responses (which are overwhelmingly used in preference to mere silence) are sometimes commented on in other work on police interviews, they are referred to casually rather than selected as the analytic focus of research. This chapter examines the way suspects’ rights to not answer questions are explained to them, and then how such (non-)responses are occasioned, and how they work interactionally, in the live unfolding of investigative interviews.

### **Data and method**

We draw on a corpus of 125 British police interviews with suspects, recorded by officers as part of standard police procedure and subsequently digitized, anonymized and transcribed by the authors. The data<sup>1</sup> were collected as part of a funded study of community disputes. We identified all cases in which “no comment” turns were present, as well as other turns that delivered a similar function of not supplying the required answers to questions. We identified the location of these turns within the overall landscape of police-suspect interviews, and the sorts of responses that interviewing officers gave to “no comment” turns. Therefore, we focused closely on the sequential placement, action orientation, design and uptake of these turns. In the data extracts that follow, the title (e.g., ‘PN-4’) specifies the source of the extract within a larger corpus (e.g., police interview number 4). Abbreviations for participants include ‘P’ (or P1, P2, etc.) for the interviewing police officer(s); ‘S’ for the suspect being interviewed; ‘L’ for the lawyer, who is a solicitor or other legal representative advising S (in all cases, these were appointed by the police; none of the suspects in our sample already had their own solicitors on hand), and ‘A’ for an ‘appropriate adult’, where present, who was usually accompanying a child. Names that could identify persons and places, including police officers, have been anonymized. Data transcripts use punctuation and other symbols to mark prosody rather than grammar, according to the conventions for CA (Jefferson, 2004).

### **Analysis**

The analysis is organized into two broad sections, each presenting findings about the sequential and action-oriented environments for ‘no comment’ responses. The first section focuses on spontaneous (in terms of the local interactional sequence) suspect-initiated ‘no comment’ responses. The second section examines lawyer-initiated ‘no comment’ responses, including cases in which suspects do or do not align with the lawyer’s advice.

#### **1. Suspect-initiated “no comment” responses**

In this first analytical section, the extracts show how suspects invoke their right to “not say anything.” We see how suspects do this when solicitors are and are not present, as well as

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<sup>1</sup> ESRC grant number RES-148-25-0010 “Identities in neighbour discourse: Community, conflict and exclusion” held by Elizabeth Stokoe and Derek Edwards.

variations in whether or not suspects maintain “no comment” responses throughout their interviews or in parts.

In the first extract, the suspect is an eighteen-year-old male who has been arrested for assault. No lawyer is present and, following the opening part of the interview (establishing the interview’s time and date, identification of those present, and delivery of the standard ‘caution’; see Stokoe, 2013), S responds with “no comment” to every question asked by P. We join the interview after P has explained the caution to S, which he does verbatim (it is generally available written on a card): “You do not have to say anything but it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence, okay?”).

(1) PN-14

1 P: D’you understand what the caution means,  
2 S: Yeh.  
3 (0.2)  
4 P: Wha- (0.2) what do you think the caution means.  
5 (0.5)  
6 S: U- (0.4) dunno. Heh heh [heh  
7 P: [Right I’ll- I’ll explain  
8 then.= before we go any further n’ you start actually  
9 telling me anything it’s important that you fully  
10 understand that. .hh Caution is there that you do not  
11 have to say anything. .h So you don’ have to answer  
12 questions, you don’t have to speak on this interview.=  
13 S: =Yeh  
14 P: .h But if you don’t it may harm your defence. Okay, so  
15 if you go to cou:rt, .h yeh? u:h and they say why did  
16 this person not answer these questions on interview,  
17 .h the court may draw their own conclusions from that.=  
18 The court might think well (0.2) has this person got  
19 something to hide, .h why didn’ he explain on the day  
20 of the arrest or on the interview to say that .hh so  
21 anything you do say may be given in evidence, may be  
22 used in court, .h but if you don’t say anything which  
23 is your ri:ght then (.) the court mi:- might ask why  
24 you hadn’t done that. O[kay?  
25 S: [Yeh.  
26 P: .h So y- you are okay with what the caution [means  
27 S: [Yeh.  
28 P: and you’re (okay) to continue. .h[h  
29 S: [Yeh  
30 P: Still don’t want a solicitor?  
31 S: No.  
32 P: Okay mate. .hhh Tell me about last night then Tom.  
33 (2.0)  
34 S: No comment  
35 (0.4)  
36 P: [No comment.]  
37 S: [( )] No.  
38 P: Ri:ght that’s a gre:at start okay.

In the opening of the interview, prior to the start of extract (1), S has given his name and date of birth, in response to P’s request for him to do so. In none of the persistent “no comment” interviews did suspects use the response in that preliminary environment. S also answered a question about why he did not want a solicitor to be present. In the extract, he also responds to questions about his understanding of the caution (lines 25, 27). Note that P’s explanation

of the caution offers an elaboration (lines 18-19) of why it may be *in S's interests* to answer questions. So, although P informs S that it is his "right" to not "say anything", this is inserted into a statement about the negative inferences it makes available.

At line 34, in response to P's request for S to "Tell me about last night then Tom" (line 32, the use of "then" implies that this is an expectable way to proceed, to move from preliminaries into direct investigative questioning. S answers "no comment". P responds by repeating "no comment" (line 34), emphasizing the "no", which S confirms (line 37), which in turn P acknowledges with "Ri:ght" (line 38), and adds a probably ironic assessment: "that's a great start". The description of S's first and only (thus far) "no comment" as a "start" anticipates that it is, indeed, heard by P as how S may continue. Indeed S goes on to reply 'no comment' to all further questions through to the end of the interview, shown here:

(2) PN-14 (contd.)

- 1 P: Is there anything further in relation to what we've  
2 (0.2) ftalked at length about today:,£ .h that you  
3 wanna tell me.  
4 S: No comment.  
5 P: Oka:y, (2.4) wi:th eight minutes twenty five on the  
6 clock, (0.2) I'll cease that interview there.

Having responded "no comment" throughout the interview, S says it again in his final turn (extract 2, line 4), rather than 'no', maintaining the stance. Note P's further ironic formulation of the interview content as "What we've ftalked at length about today:,£" where the pound signs show the start and end of a 'smiley' voice quality (Jefferson, 2004). There is a sense, conveyed by these ironic remarks from P, that S's "no comment" responses are, in this setting, a recognized and understandable stance toward being questioned, while also being somewhat perverse in the sense that a question normatively expects an answer (Schegloff, 2007). S has every right to adopt this stance, as P's 'caution' made plain. However, P also has the right to continue putting questions to S, well beyond the point at which "no comment" is the likely response, thus getting it on record, for every individual question that S chose not to answer it.

An *ironic* uptake by the police interviewer, to a suspect's "no comment" responses to questions, occurs in some other interviews in our collection. Extract (3) follows P's delivery of the caution, and P's account of what S is accused of, and the reason for his arrest.

(3) PN-15

- 1 P: Okay so (0.6) >over to you< wha- what happened on that  
2 night,  
3 (0.7)  
4 S: No comment.  
5 P: Right. (.) °Excellent.°  
6 (0.5)  
7 P: >Okay< I'm gonna read from the statement u:m ((...))

In this case, P's acknowledgement "Right" (line 5) is enhanced by the possibly ironic "excellent" (see Antaki, Houtcoop-Steenstra & Rapley, 2000, on the uses of 'high grade assessments; and Edwards, 2000, on the ironic uses of extreme case formulations), before proceeding with his set of interview questions. Again, S's first "no comment" response to P's first substantial (investigatory) question informs P that the interview will be constrained by S's recognizable strategy and it is common that, when done in this position, at the beginning of the interview's main investigative phase of questioning, suspects generally

maintain such a strategy throughout, although officers continue to ask further questions. Again, P's expression "excellent" may be an ironic orientation to the interactionally peculiar, almost absurd, practice of continuing with a series of questions to which it is understood that no substantial answer will be forthcoming. In fact, it is the design and function of the formulaic response "no comment" to occupy that interactional slot, providing a succinct response in its correct location, while avoiding answering any and all specific questions.

Extract (4) provides another example of an ironic receipt of a "no comment" response. We join the interview after S has already issued several "no comment" responses to questions about the alleged offences, which are threats to murder, and also criminal damage regarding the property of neighbours with whom there appears to have been a long-running feud. The extract opens as P asks S for his account of the history of events leading up to the alleged offences.

(4) PN-45

- 1 P: .hhh u:h this is your opportunity no:w John, whi:le  
 2 we're on tape, while you're represented, .h to (0.2)  
 3 uh maybe give any explanation no:w .h as to: .h  
 4 what has happen:ed involving the Penrose family: .hh  
 5 uh that may have led (0.2) to (0.2) what is alleged  
 6 to have happened last night.  
 7 S: No comment.  
 8 (0.5)  
 9 P: Okay £that was a £mouthful to get over for a [no=  
 10 S: [Yeh  
 11 P: =comment reply £ £wasn't it.£  
 12 (0.2)  
 13 P: There you go. .hhh U:h the allegation is that ((...))

In lines 1-6, P not only asks S a question, but builds a case for answering it, given that S has displayed a "no comment" stance to previous questions. P has remarked, prior to the extract, that S has said things to P off record on other occasions in the past, about a continuing feud between S and his neighbours. In what appears to be an effort to obviate a further, immediate "no comment" from S, P builds the importance of this "opportunity", on record and with a lawyer present, to provide that historic account of "what has happen:ed involving the Penrose family:£" that may explain S's side of what he is now accused of doing. S nevertheless responds immediately with "no comment" (line 7). P's formulation "a mouthful to get over" (he is referring to his extended question and its build-up in lines 1-6), and also the expression "there you go" (line 13) combine with a marked shift in tone of voice at line 9 from deliberate and emphatic toward jocular, to treat S's response ironically. Again, we have an oriented-to sense of the absurd, in the continuing elaboration of questions and explanations by P, in the face of a stubborn series of "no comment" responses from S.

In extract (5), a teenage suspect is present with his father (A) but no solicitor. The suspect has been arrested for harassment of his neighbours. Again, we join the interview as P explains the caution to S.

(5) PN-31

- 1 P: Okay an' that is you do not have to say anything but  
 2 .hh it may harm your defence:, if you do not mention  
 3 when questioned, .h something which you later rely on  
 4 in court. .h Anything you do say may be given in  
 5 evidence. Okay, you happy with that?

6 (0.3)  
7 S: Ye[h.  
8 A: ['kay=  
9 P: =Right. .hhh Um (1.0) I've had cause to go and speak  
10 to a chap by the name of Davi:d (0.3) Jenkinson.  
11 (0.7)  
12 P: And he lives at forty fi:ve (0.2) Stonycroft Road.  
13 (0.5)  
14 P: Which i:s virtually opposite your house.= Is that  
15 all right  
16 (0.5)  
17 S: (°spose so°)  
18 P: An' you live at 2 Honeywell Terrace  
19 (0.6)  
20 S: Yeh  
21 (0.6  
22 P: Y'have to speak (0.5) so the microphone c'n hear you.  
23 (0.7)  
24 S: No comment.  
25 (0.3)  
26 P: Are y'GOIN' NA- oh is he going no comment. °Okay.°  
27 Right.

Having given his name and address, S's response to P's first substantive (crime-relevant) question is an almost inaudible "spose so" (line 17), and then a "yeh" to once again (having already done so as part of the interview's preliminaries) confirm his own home address (line 20). However, following P's exhortation to speak clearly for the sake of the tape recording, S then replies, "no comment" (line 24). In fact, P's questioning does more than merely affirm the preliminary business of where S lives. P is now entering the main investigatory part of the interview, formulating S's house as "virtually opposite" that of the complainant, establishing that S knows that to be the case, that he knows who lives there. So P is starting to build connections between S and his accuser. Once S makes his first "no comment" response, P pointedly remarks on it (line 26). Note how P stops to repair and re-start his "Are y'GOIN'" (addressed to S) by inserting an "Oh" (a change of state token: Heritage, 1984) and re-addressing it to S's father. The repaired remark at line 26 nicely displays the action that P is doing, in marking S's "no comment" as significant beyond its specific moment. There is the formulation "is he *going* no comment", which packages the "no comment" response as scripted (Edwards, 1994), which is to say, likely to be repeated throughout the interview. P is showing, right from S's first "no comment" response, that "no comment" is recognizable not merely as a particular answer to a particular question, but as a *stance*, displayed by a *formulaic* expression, which enables P to project how S may proceed from then on. Recall also extract (1), with "that's a great *start*". In ways similar to other interviews in which parents are co-present, P's re-direction of his question to S's father implies that this may be a strategy that the boy and his father may have planned in advance. S does indeed maintain his "no comment" responses until the end of the interview.

In Extract (6) the suspect has been arrested for criminal damage to his neighbour's fence. S has a solicitor, "Mr Evans," present.

#### (6) PN-32

1 P: Anything you do say may be given in evidence. .h  
2 Are y'happy- (0.2) you understand what the caution  
3 mea:ns,  
4 (2.1)  
5 L: It's what I've just explai:ned t'you,

6 P: Yeh.  
7 (0.2)  
8 P: Yu- y'ok|ay with that yeh,  
9 (0.2)  
10 P: A'right no problem at all. .hhh Right. .h I've given  
11 (0.2) mister Evans a form what we call (0.2) form  
12 eff one two one which explains your rights to the  
13 tapes (.) on conclusion o'the interview. \*A'right\*  
14 that's somethin' c'n discuss but the form's there  
15 now. .h Okay y'r happy to proceed with the interview  
16 (0.2)  
17 S: Ye:h  
18 P: °Okay no problem at all.°  
19 (0.6)  
20 P: .pt.hhh Right.  
21 (0.6)  
22 P: Approximately:: (0.5) ten to four this afternoon,  
23 (0.5) u::h my colleague an' I: (.) attended (.)  
24 your address back garden of your address and spoke  
25 to you there.  
26 (0.2)  
27 P: Can you: (0.3) tell me exactly what happened,  
28 (0.3)  
29 P: during the time that we were there.  
30 (0.3)  
31 S: No comment.  
32 (0.2)  
33 P: °Okay. No problem at all.°  
34 (2.2)  
35 P: I believe that you live at thirty four Staveley  
36 Road (0.3) on thē: (name) estate in ((city)). .hh  
37 Can you:: (.) tell me how long you've lived there.  
38 (0.7)  
39 S: No: comment.  
40 (0.3)  
41 P: °Okay.°

In extract (6) his lawyer has apparently already explained the caution to S (line 5), so there has been some communication on that between L and S prior to the interview. As P moves into the interview's main investigatory phase, with an open-ended invitation for S to provide his version of the events at issue (lines 27-29), S responds with a simple, unelaborated "no comment" (line 31). Note P's "okay" acknowledgement of this and the additional "no problem at all" (line 39). In proposing it as "no problem at all", P orients to the normative expectation, whether in a police interview or elsewhere, that a question deserves an answer. The "at all" upgrades it to an extreme case formulation (Pomerantz, 1986), emphasizing the remark. It also implies that P is not going to *pursue* answers to specific questions; that "no comment" is an acceptable and consequential response.

In summary, then, across the first six extracts, we have seen "no comment" operate as a recognized, formulaic stance taken by suspects toward police questioning, that police officers acknowledge as such, generally on its first occurrence (it does not require many repetitions to be recognized as a stance rather than a one-off response), and that they may, but not always, treat ironically. In extract (6) we saw indirect evidence of S's lawyer orienting S to the possibility of issuing "no comment" responses to questions. Extract (7) shows another lawyer directly recommending the device, with which (a different) S appears to be not thoroughly familiar, despite this being his second formal interview. Indeed, as we show later in this article, this particular suspect is inconsistent, even recalcitrant, in his use of the device. Here,



S is a teenage boy accompanied by his mother (acting as ‘appropriate adult’) and a solicitor, and there are two police officers present.

(7) PN-110b

1 P1: Again I'll ask you do you understand the caution?  
2 S: Yeh.  
3 P1: Okay great. .hh Right then. Um (0.5) u-u- just to-  
4 (0.4) summarize from what we were on about from the  
5 last interview- .h[hh  
6 S: [Can I say one thing.  
7 (0.8)  
8 S: On my solicitor's advice here  
9 P1: Yeh,  
10 L: Uh huh  
11 S: I don't wanna answer no more questions.  
12 L: [Right.]  
13 P1: [Right.] Tha- tha- that's your prerogative. However,  
14 (.) um unfortunately I still have to ask you the  
15 questions.  
16 S: So what do I say.  
17 L: No [comment.]  
18 P1: [y- ] y'can say whatever you wish.

As in previous examples, in the interview's preliminary phase S has given his name, age and address, and has answered questions about his understanding of the caution. However, as P begins to move into investigative questioning (lines 3-5), S inserts a sequence preface (line 6) to an announcement (line 11) that, on his solicitor's advice, he “don't wanna answer no more questions.” A possible consequence of this announcement would be that of forestalling the continuation of the interview. However, as P asserts (lines 13-15), that is not going to happen. It is at this point that S asks how he is supposed to go about invoking his right (“your prerogative”, line 13) to say nothing. It is interesting that S does not assume that he can simply remain silent; his inquiry to L, “So what do I say?” (line 16) implies that he needs *something* to respond with. L provides at line 17 the standardized wording, the “no comment” *device for doing* not-answering. In overlap, P asserts that S can nevertheless “say whatever you wish” (line 18). When P asserts that he does nevertheless “still have to ask” questions, the “have to” alludes to that part of the caution, that it will be a matter of record if S refuses to answer any question that may be put to him again later in court. So we see here, played out in sequential detail, a motivation for the creation and use of the “no comment” response itself, as a way of officially, and recognizably, and not merely actually, not answering.

In extract (8), although S responds to P's investigative questions with “no comment”, he does in the first instance offer a statement of his own, “for the benefit of the court” (lines 9-12). At the start of the extract, P has just completed the caution. The extract is given here in enough length to show how P produces, and how S deals with, a series of substantive (investigative) questions following S's “no comment” responses.

(8) PN-5

1 P: [...] D'you understand that.  
2 (0.2)  
3 S: Yeh.  
4 (0.2)  
5 P: O:kay mister Johnson. .hh Um when you were arrested,  
6 (0.2) you actually said that you didn't do it. Have  
7 you got anything else (0.3) you'd like to add to

8           that?=  
9    S:    =Ye:h. for the um benefit of the court (0.2) u:h  
10       mister Reynolds is a (0.2) heroin and crack addict,  
11       with an alcohol problem, (0.2) and was trying to get  
12       money off of me, (0.3) and that's all I have to say.  
13           (1.2)  
14    P:    Okay thank you mister Johnson,  
15           (2.6)  
16    P:    °Ri:ght. Okay.°  
17           (2.6)  
18    P:    Ri::ght.= If I can just um ask you then mis- um  
19       mister Johnson, (0.3) um (0.5) when- when the  
20       officers arri:ved we actually (0.2) u:m (0.3) fou:nd  
21       the stereo that was damaged (0.2) outside (0.3) on  
22       the pavement from uh (0.3) twenty nine Oxford Road.  
23       .hhh Can you just tell me (0.2) in your own words  
24       how that came to be there- down on the pavement.  
25           (0.6)  
26    P:    If [you (would)  
27    S:       [No comment.  
28           (1.3)  
29    P:    °Okay,°  
30           (6.5)  
31    P:    You know who the stereo belonged to?  
32           (1.7)  
33    S:    No comment (     ).  
34           (12.0)  
35    P:    °O::kay,°  
36           (2.5)  
37    P:    Did you eh, (0.7) £did you throw the stereo out of  
38       the window.£  
39    S:    No comment.  
40           (15.0)  
41    P:    °O:kay.° =.h u:m  
42           (5.7)  
43    P:    When- when it came to the um- (0.3) when you were  
44       arrested, (0.6) u:m (0.5) the officer came in and  
45       arrested you mister Johnson, (0.3) u:m did you: (1.2)  
46       did you do anything when the arrest took place?  
47           (1.5)  
48    S:    No[:  
49    P:       [Remember anything happening,  
50    S:    comment.  
51           (0.7)  
52    P:    (°\*No comment\*°)  
53           (7.0)

Having made his initial statement concerning his alleged victim's character and motives (lines 9-12), a topic neither invited nor pursued by P, S concludes the turn with the words "that's all I have to say." He then proceeds to respond "no comment" to questions that P puts to him. The "No:" at line 48 is not a stand-alone "no", which would be a substantive answer to the question that precedes it, but part of the turn completed in line 50, as "no comment", which is then quietly echoed by P at line 52. Following each of S's "no comment" responses (lines 27, 33, 39 and 48-50) there is a substantial gap of silence, punctuated by P's quiet, almost inaudible acknowledgement "okay" or, at line 52, a quiet, confirmatory echoing of the response. When P eventually begins another question, it is not the same question again, neither precisely repeated nor paraphrased, but another aspect of the event: whether S knew who owned the damaged stereo (line 31), whether he threw it out of the window (lines 37-38)

where there is an audibly ‘smiley’ voice quality in the delivery of the question (P is presumably orienting to the unlikelihood of S confessing this action), and whether S recalls anything else happening or having done something at the time of the arrest (lines 46, 49). We later discover that this latter incident concerns a separate accusation (see extract 9) involving the police officer who arrested him. This is a pervasive pattern in our data: that P generally acknowledges S’s “no comment” responses with an “okay”, and moves on to a *different aspect* of the event in question, rather than pursuing an answer to the same specific point.

Later in the same interview, S is asked about the second charge of resisting arrest, and we join the interview as P further alleges that S scratched the arresting officer, “PC Kent”. Here, S deviates somewhat from the routine production of “no comment” responses.

(9) PN-5 (cont.)

- 1 P: He’s also saying that when you: when you did pull  
2 awa:y, (0.5) u::m (1.6) the actual handcuffs u:m  
3 (1.9) (kind of) scratched (the hand of) my colleague  
4 PC Kent.  
5 (0.4)
- 6 P: U:m (1.3) how- how did that scratch: come about with  
7 PC Kent’s hand d’you know that?  
8 (1.5)
- 9 S: Um: (0.3) no: (0.6) comment, (.) either, (0.3) but no.  
10 (1.2)
- 11 P: °O:kay.°  
12 (0.4)
- 13 P: U:m well he’s got here that- (0.5) you’ve actually:  
14 you’ve scratched him as you’ve pulled awa:y, .h um so  
15 did y- did you intend to scratch PC Kent when you uh
- 16 S: No comment.
- 17 P: pulled away from him?  
18 (3.0)
- 19 P: °Okay.°  
20 (0.5)
- 21 P: ↑Have you anything to uh (0.4) tell us about the whole-  
22 whole ni:ght and the arrest in question,  
23 (3.2)
- 24 S: Fact that you’ve u:m (1.5) took a:: (0.3) heroin  
25 addict’s (0.3) statement (0.8) um no sorry I haven’t.  
26 No I haven’t got anything else to say.  
27 (1.2)
- 28 P: You h<sub>av</sub>en’t got anything [to say] about the whole=  
29 S: [No:. ]  
30 P: =matter at all  
31 (0.9)
- 32 P: D’you deny: u:m (1.0) the actual stereo bein- (0.5) did  
33 you damage the stereo at all.
- 34 S: No comment.

Again, in extract (9), S repeatedly produces a “no comment” response to evidential questioning, and P produces a delayed and quietly delivered “okay” acknowledgement (lines 10-11, and 18-19) before proceeding to another, though related, question. There is a variation at line 10, where S adds “either, but no” to his initial “no comment”, which P initially treats (line 11) in the same manner as a straightforward “no comment”. However, S’s same-turn repair of the answer to “but no” converts the turn into a denial rather than a simple “no comment”, and this elicits from P a pursuit of what he is denying (lines 13-14) and, refuting that denial, whether he did it on purpose (line 15; see Edwards, 2008 on the pursuit of

intentionality for actions and their consequences, in police questioning). A clearer deviation starts at line 24, where in place of his usual “no comment” response, S again invokes his opening statement about the status of his accuser as a heroin addict. Rather than a straightforward exception to saying “no comment”, however, this is also not an answer to the question but, rather, an account for not commenting. Its status as an account is specifically marked by the “so” at line 25. S’s formulation at line 26, “No I haven’t got anything else to say” adds the notion of nothing *else*, which P then formulates in extreme terms at lines 28-30, “*anything... about the whole matter at all.*” P then goes on (beyond the end of the extract) to elicit from S a series of “no comment” responses, for the record, to a succession of question-formulations concerning the alleged event. The earlier insertion of an opening statement by S, following the caution (see extract 8), is a recurrent, though not universal, feature of interviews that then proceed with “no comment” responses to questions.

As extract (9) starts to show, a sense of the functional import of “no comment” responses can be gained from examples where the suspect does not always make use of them. Rather than being randomly distributed, however, these variations in response may display S’s own analysis of the different status of specific questions, as sometimes being legally consequential or evidential, or else merely preliminary or contextual. We return to interview PN-15, which we visited briefly in extract (3). The suspect has been arrested on suspicion of the criminal offence, one recent Friday night, of “causing actual bodily harm” to his accuser, another man, who has provided a witness statement. Having received a couple of “no comment” responses from S, P is using the accuser’s witness statement as a basis for pursuing an account from S of his actions and locations on the night in question.

#### (10) PN-15

1 P: ↑What d’y’normally do on Friday night when y’re (0.9)  
2 when y’re out ‘n about.  
3 (2.2)  
4 S: With my girlfriend mainly.  
5 P: Right. W- were you with your girlfriend on this night.  
6 (0.4)  
7 S: U:::::h no comment.  
8 (1.9)  
9 ((P continues to read from the witness statement,  
10 which contains the location Cranston Bridge Road))  
11 P: D’you know where Cranston Bridge Road is?  
12 (1.3)  
13 S: Yep.  
14 (0.2)  
15 P: Yeh. Okay is that- (.) close to where you live?  
16 (0.2)  
17 S: Yep.  
18 P: Right.  
19 (0.5)  
20 P: Is it possible that you was around the area (0.4) of  
21 Cranston Bridge Road at about half past ten on that  
22 night?  
23 S: No comment.  
24 (2.4)  
25 P: °Okay.°  
26 (1.0)  
27 ((P reads more from the witness statement))

In extract (10), the questions to which S answers “no comment” are at lines 5 and 20. Both questions directly concern S’s actions and location on the specific night in question, with regard to when and where the alleged assault took place. In contrast, the questions to which he provides substantive answers are those at lines 1, 11 and 15. These are general or background questions, not specific to the alleged incident. In this interview, then, S displays, through selective uses of “no comment” or else of informative answers, an understanding of the particular applicability of “no comment” answers to questions directly pertinent to the alleged offence. As we have seen elsewhere, P’s response to “no comment” is to move on, following a delay (lines 8-10, and 24-27). This contrasts with P’s pursuit of the topic following S’s informative answers (lines 4-5, 13-15, 18-20). Clearly, “no comment” has a special status for both S and P, in the interactional contingencies it responds to, and of the consequences that it generates.

## 2. Lawyer-initiated “no comment” responses

We have seen that the status of “no comment” is generally recognized by participants in police questioning as *the* recognized, formulaic device for not answering specific questions in accordance with the right to silence stipulated in the caution. This normative recognition applies even in the breach, as we saw particularly with regard to extract (7). We move now to examples where “no comment” responses are directly instigated by the lawyer present, and to further examples of how the device is oriented-to in the breach; that is, when suspects are inconsistent or even recalcitrant in its use. Lawyers sometimes spontaneously advise clients not to answer a question, this advice being occasioned by some feature of P’s questioning or of S’s answering. In such cases, lawyers display suspects’ ‘rights-in-action’; that is, they invoke suspects’ rights to ‘not say anything’ that police officers have stated at the outset as part of the formal caution.

We return to the case seen in extract (7), involving interview PN-110b. That was the second of two interviews with the same suspect. Extract (11) is from the first of those interviews, PN-110a. This is one of a number of cases where the suspect does not consistently follow their lawyer’s advice to restrict answers to “no comment”, sometimes to the exasperation of the lawyer, the appropriate adult (in this case, a parent), and even the police officer who is asking questions. Again we are able to see, this time in the breach, how “no comment” is not simply an uncooperative response, but part of a recognized, orderly way to engage in a police interview. In Extract (11) the suspect “John” fails to produce “no comment” responses despite his lawyer’s attempts to stop him talking. In each case, what we see is that S does not maintain that stance. John is a juvenile suspect, whose parent is also present as an ‘appropriate adult.’

### (11) PN-110a

1 L: Actually John I-\*u- my advice to you no:w is that  
2 you’ve explained your (side of the) story= ‘f you don’t  
3 want t’say any more about it don’t. Let’s wait and see  
4 what the- the CCTV- it won’t stop them asking the  
5 questions possibly, .hh but I’m saying that (.) >youknow<  
6 you’ve- (0.4) you’ve explained your side of the story=  
7 S: =Mm  
8 L: and let’s see what the CCTV throws up.  
9 (2.5)  
10 P: Okay.  
11 (1.3)  
12 P: ↑Well (0.5) goin’ on from there then, (.) what you’re

13 sayin'is that u- this security guy's approached you:  
14 he's grabbed hold of you. .h and y- you've u- uh (0.4)  
15 made two comments to him. .h One is you're lucky you  
16 don't bomb 'im ou:t (0.2) and your other is to [get the=  
17 S: [Yeh  
18 P: =fuck off her.  
19 S: Ye:h.  
20 P: U- so in that (0.2) [ duration of-]  
21 S: [We was- we was] havin' little  
22 ar:guments like (0.3) you prick an' tha:t,  
23 P: Right.  
24 S: And he was like laughing at me 'n that.  
25 P: Right so you've just expanded slightly more on what  
26 you've just sai[d  
27 L: [If you don't js take my advice and not  
28 say any more about it.  
29 (0.6)  
30 P: Is there anything el:se that you: said to that security  
31 guard?  
32 S: No comment.  
33 (0.2)  
34 S: Not really.  
35 P: °Okay.°  
36 (0.7)  
37 P: Well s-security guard says other- other[wise.  
38 S: [Heh  
39 P: As you would probably appreciate he would.  
40 ((P now reads from the guard's statement concerning  
what S allegedly said to him))

L's initial advice (lines 1-8) is that S has said enough about the incident in question, and does not have to say any more. Following a minimal receipt of that advice by S (lines 7 and 9), P continues the questioning at line 12. Rather than making no reply, nor indeed using the standard "no comment" formula, S then proceeds (lines 17, 19, 21, 24) to answer P's questions, even adding further details of his own (lines 21-22), which indeed P remarks on (lines 25-26). At this point, L remarks (lines 27-28) that her advice not to answer is not being followed by S. Then, in response to a further question from P, S finally issues a "no comment" response (line 32) but adds the modifying turn increment "not really". Following his acknowledgement "okay", P follows up S's "not really" with a return to the same precise topic; that is, what S allegedly said to the security guard. Recall the same consequence in extract (9), where the same suspect's shift from "no comment" to "but no" elicited further pursuit by P of the same precise topic, based on the witness's statement that contradicts S's denial. Having something more substantial than "no comment" to work with, even something as minimal as S's "but no" or "not really", P is entitled to stay on topic and not move on.

In Extract (12), from the same interview, L again attempts to get S not to answer.

#### (12) PN-110a

1 P: Okay. What d'y'do durin- (0.4) y'kno:w (.) while sh-  
2 you're with- (0.7)  
3 L: If you don't want to answer any questions [about Sally]=  
4 S: [°I know I ]=  
5 L: =[you do not have to ]  
6 S: =[know I know I know I] know°  
7 (0.5)  
8 S: Heh °heh°  
9 (0.4)

10 S: °Pass.°  
 11 (0.2)  
 12 P: But yeh what- what d'y'do with- um S- Sally I mean  
 13 during the da:y pass time away or  
 14 (2.5)  
 15 S: Don't ask.  
 16 (o.2)  
 17 P: Sor[ry?  
 18 S: [Nothing really,  
 19 L: No comment will do fine thank [you,  
 20 S: [No comment.  
 21 (0.8)  
 22 P: O:kay.  
 23 (1.3)  
 24 P: Ri:ght. Okay.  
 25 ((P shifts topic to items found at S's home))

At line 3 L cuts into P's question concerning what S gets up to with his girlfriend Sally, advising S that he need not answer this line of questioning if he does not want to. The formulation of L's advice not to answer is somewhat hedged and conditional (lines 3-5, "if you don't want to... you do not have to"), rather than simply advising or instructing S not to answer. S laughs briefly at this repetition of L's advice (which has already been given several times), and says "pass". This word "pass" is a conventional term used on British television quiz shows, telling the questioner to proceed to the next question. But it is not "no comment". Accordingly, P re-starts the question begun but broken off at lines 1-2 ("What d'y'do... while you're with...") and completes it in lines 12-13. The "but" at the start of line 12 is P's acknowledgement that he is asking a question in spite of what has just been said by L and S. Again, S responds to P's questions (lines 15 and 18) until L intervenes with the more direct instruction, "No comment will do fine, thank you" (line 19). This intervention stipulates the formula "no comment", which S immediately repeats, precisely and in overlap (line 20), and which P now acknowledges as closing the sequence (lines 22-25).

Following some further abortive attempts to get S to stop answering P's questions and to stop providing additional, uncalled-for versions of events, L focuses directly on S's repeated failure to consistently follow her advice. Extract (13), from S's second interview PN-110b, follows an unrecorded "off-tape" break called for by L, for a private conversation with S.

### (13) PN-110b

1 P2: Were y'on y'r own or with: Sally.  
 2 (0.4)  
 3 S: With Sally.  
 4 (1.4)  
 5 S: °No comment°  
 6 P2: °Ri:ght.°=  
 7 L: =John it's either no comment or you're going to  
 8 answer questions.  
 9 S: I've go- I've go- I keep forgettin' to say it.  
 10 L: You do:n't you just think you're doing the [right thing.  
 11 P1: [C'm on John  
 12 y- y- y- gone t- (.) you've admitted going to this  
 13 guy's hou:se [right?  
 14 S: [No com[ment.  
 15 P1: [Just stop messin' abou:t.  
 16 S: No comment.  
 17 (0.3)

18 P1: Right.  
 19 ((P1, sounding exasperated from line 12, now persists  
 with questioning S on the same topic))

In answer to P2's question at line 1, S provides a substantial answer (line 3) and then, after a delay, a quietly delivered "no comment" (line 5), which P2 acknowledges (line 6). It is at this point that L, with an exasperated tone, pointedly addresses John by name at the start of his turn (line 7) and exhorts him to select a consistent stance in the interview, to either answer questions or, as advised by L, to say "no comment". Addressing someone by name at the start of a turn has been noted to mark discontinuity and disaffiliation with the action or stance of the prior turn (Stivers, 2008; Butler, Danby & Emmison, 2011). Note again that this is the specifically formulated advice for what to say: "it's either *no comment* or..." (line 7), rather than, say, "either don't comment or...". The use of "it's", and of "going to" (line 7) mark this as 'scripted' advice about how to proceed generally, rather than just on this one occasion. S accounts for his inconsistency in following that advice, as memory failure (line 9), to which L's response is to revise the account in S's favour, as admirably motivated, to do "the right thing" (line 10). At line 11, P1 cuts into that formulation by L and attempts to re-start S's narrative of events, to which S now provides the formulaic response suggested by L, "No comment" (lines 11-13). Note how, like L did previously, P1 exhorts John by name "C'm on John..." at the start of his turn, to take a different stance. S's inconsistency appears also to have exasperated P1, whose objection formulates it as "messin' abou:t" (line 15), which S should "Just stop". However, S has now learned his lines, and repeats "No comment" (line 16). P1 acknowledges that (line 18) but, instead of moving to another question topic, S's pervasive inconsistency apparently gives P1 licence to continue along the same line (following the end of extract 13). Inconsistent as he is, then, in following his lawyer's advice not to answer, it is that inconsistency, occasioning the appeals that L makes, and S's accountability (line 9) for not consistently saying it, and also P1's intervention (lines 11-15), that further display the special interactional value in this setting, of the normative, formulaic response "no comment."

## Discussion

In police questioning, the response "no comment" provides suspects with a means of exercising their right, as stipulated in law and in the preliminary 'caution' (cf. the 'Miranda warning' required of police officers in the USA), to not answer police questions. It is a response with specific design features, being brief and succinct, indeed minimal, referencing merely the absence of comment with no additional, potentially troublesome notions that might provide for further inferences or uptakes, such as "No comment *at the moment*" or "*I don't wish to comment on that*" or "*I have nothing to say about that*". A simple "no comment" adds nothing about the speaker's intentions, state of knowledge, preferences or desires to speak or not speak, all of which might risk pursuit within the interview or later in court. Suspects using this device are not merely saying nothing, nor even refusing to say anything, but simply, economically and efficiently asserting their right to say nothing and, in doing so in this precise manner, obviating as much as possible whatever inferences might be drawn from doing so, as are warned against in the caution.

"No comment" also has the virtue of being standard and formulaic. This makes it immediately *recognizable as the action of* not commenting, which is different from merely saying nothing. It provides an appropriate and minimal response token in the position where an answer is due, thus promoting the interview's progressivity (cf. Stivers & Robinson, 2006), in a manner that an indefinitely extended silence would not. In other words, "no comment" is not merely a non-answer, but an action in its own right, a *device for doing* not-answering, in



observable accordance with the law. Further, its formulaic design permits it (though of course, this is not cause-and-effect) to regularly forestall the police officer's pursuit of an answer to each *specific* question. This is in contrast to what tends to occur if S says anything other than "no comment", including even a paraphrase of it, as we saw in extract (12). Therefore, far from being an uncooperative stance, a consistent "no comment" response is treated by all participants as a recognized, legitimate and effective way of conducting a police interview, in a way that orients to legal requirements. We saw particularly in extract (10) that selective use of "no comment" can display a suspect's analysis of which questions are especially pertinent to the crime for which he or she has been arrested, and which questions are less troublesome to answer. However, as extracts (11), (12) and (13) showed, a suspect's inconsistency in the use of the device may cause difficulties, disruption and some exasperation for all participants.

One of the issues within and beyond police interviewing, concerning the caution and the right to silence, is the extent to which the revised version of the caution, that now includes the caveat about inferences that may be drawn from a suspect's refusal to answer questions, amounts to a weakening or even removal of the suspect's right to silence. There are instances in the extracts examined here, where a police officer provides, and may repeat during the interview, a colloquially enhanced version of the caution's caveat, as in extract (1): "The court might think well (0.2) has this person got something to hide". The issue is: what use is a right to silence, if silence is potentially to be treated as evidence of guilt? It can be argued that a right to silence must be a right to have silence *respected* as not some kind of quiet confession. After all, in the absence of torture or a law *against* silence, nobody needs a law to enable them to say nothing, although they may need a law to give them the confidence to say nothing, with impunity. Nevertheless, it is not a straightforward matter to assign to police questioners some kind of coercive basis for persuading a suspect to forego their right to say nothing. Given the 1994 change in the law, the revised caution, and the practice in courtrooms of drawing negative inferences from a suspect's silence when previously interviewed, a police officer's advice to answer questions may sometimes be in the suspect's best interests. In that case, it is the change in the law itself that permits negative inferences to be drawn, that risks being considered coercive.

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