

Additions, Omissions, and Transformations in Institutional ‘Retellings’ of Domestic Violence

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Abstract. *In this paper we examine how UK police officers investigating domestic violence (DV) make a formal written case to Crown Prosecutors. Using rarely accessed ‘management guidance’ reports (MG3 forms) we analyse how police officers’ written contributions appeal to relevance and how they can ‘nudge’ prosecutors towards particular methods of case disposal, specifically, the ‘Simple Caution’. We propose that linguistic strategies can reduce the likelihood of convictions, and we raise serious concerns about the impact of police officers’ institutional ‘retellings’ in the pursuit of justice.*

Keywords: *Charging decisions, Domestic Violence, Relevance, Simple Caution.*

Resumo. *Neste artigo analisamos como os agentes policiais no Reino Unido em casos de investigação de violência doméstica (VD) contribuem formalmente por escrito para o trabalho dos procuradores públicos. Utilizando relatórios de “orientação de gestão” aos quais raramente alguém acede (formulários MG3), analisamos de que modo os contributos por escrito dos agentes policiais fazem um apelo à relevância e de que modo podem ‘orientar’ os procuradores para determinados métodos de disposição do caso, especificamente a “caução simples”. Propomos que as estratégias linguísticas permitem reduzir a probabilidade de condenação, e identificamos sérias preocupações sobre o impacto dos “recontos” institucionais dos agentes policiais na administração de justiça.*

Palavras-chave: *Decisões acusatórias, Violência Doméstica, Relevância, Caução Simples.*

Introduction

Whilst many aspects of the United Kingdom’s Criminal Justice System (CJS) are accessible to the public, much of the prosecution process takes place away from public view. Clearly the nature of police work and the ingenuity of the criminal fraternity mean that restricting public access to investigations is sensible if prosecutions are not to be compromised. Once a prosecution and any other process that might arise from it are complete, however, the arguments for continuing to restrict access become less compelling. Research into policework and adversarial justice continues to show (e.g. Drew

1990; Jönsson and Linell 1991; Drew and Heritage 1992; Sacks 1995; Rock 2001; Komter 2002, 2006; Haworth 2020; MacLeod and Haworth 2016; Heffer 2010; Lynn and Lea 2012) there are considerable benefits to be had when process and practice are subjected to external analysis. If police and prosecutors are to retain the confidence of the public they serve, it is important that what they do, and how, is open to scrutiny.

To date, an increasing body of work has made some of these processes more transparent. For example, research into investigative interviewing (Malsch *et al.* 2018; Milne and Poyser 2017; Poyser and Griffiths 2013; Fisher *et al.* 1987; Soukara *et al.* 2009) has led to the development of new and advanced interview techniques and praxis (Griffiths *et al.* 2011; Clarke and Milne 2001; Milne and Bull 1999; Fisher *et al.* 1987; McGurk *et al.* 1993). Additionally, forensic linguists have analysed the discursive goings-on in police interactions with suspects. These range from initial calls to emergency services (Traynor, forthcoming) to the police interview (van Charldorp 2014, 2018; Komter 2012) and the evolution and construction of suspects' statements (Rock 2001; Linell 1998; Jönsson and Linell 1991; Komter 2006; Haworth 2017). Other studies have examined the institutionally inflected tellings and retellings of witnesses' stories in their (police-authored) statements (Coulthard 1994, 2002; Hillsborough Independent Panel 2012; Canning 2018, 2020) and exposed patterns of institutional manipulation in police evidence-gathering. Researchers have also examined discursive practices within the courtroom (Solan 1993; Cotterill 2002; Solan and Tiersma 2004; Shuy 2006; Haworth 2020; Heffer 2010; Ingrids 2014). Collectively, this research shows that how police officers report at issue events on official judicial documents can influence recipients' evaluations of such reports, and to a lesser extent, case outcomes. Having acknowledged this body of work, there remains a lack of transparency in what it is that police officers 'do'. This paper aims to address this lacuna by casting a discursive, rhetorical, and linguistic eye over one of the most important but rarely examined prosecution processes: namely how police officers make their case to Crown Prosecutors for charging advice.

In understanding how officers make their case we pay particular attention to the narrative trajectory of key prosecution texts, specifically the 'Manual of Guidance' report (known as the 'MG3 Report') to 'Crown Prosecutor for Charging Decision' (Home Office 2020: 9). We argue that through a process whereby at issue events are repeated and reformulated (Linell 1998), a series of 'additions, omissions, and transformations' (Bartlett 1932) occur that can significantly alter the detail and reception of the events in question. A tangible consequence of this, we will suggest, is that it can orient police officers and prosecutors to a preferred lenient judicial outcome or method of disposal.

Throughout this paper we focus on cases involving Domestic Violence (DV) from the England and Wales jurisdiction of the UK. It remains a sobering fact that for all the measures implemented by police and the criminal justice system over the last twenty years, the number of DV crimes reaching UK courts is dwindling. In 2010, when our data was collected, the number of DV incidents logged with the Devon and Cornwall police was 6295 (FOI request, June 2020). By 2019 this had increased to 15,260 recorded DV incidents. Figure 1 below shows the yearly increase from 2010.

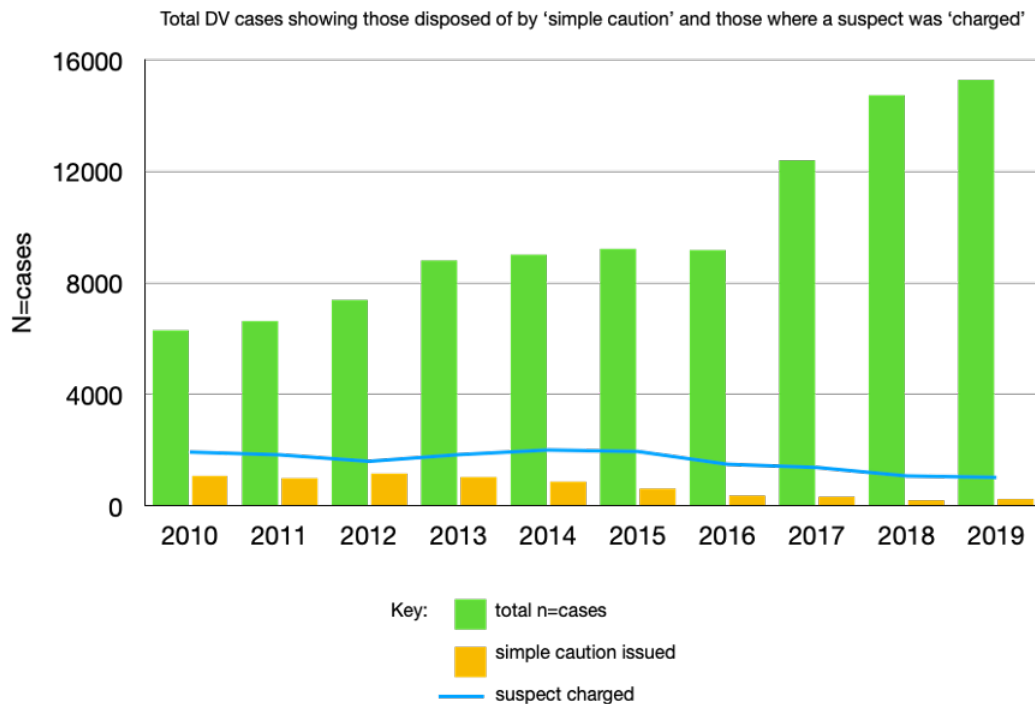


Figure 1. DV cases between 2010 and 2019 with 'charged' and 'cautioned' outcomes.

The graph shows the number of cases is rising but the charging rate is falling. In 2010, only 31% of cases (1,921 cases) out of a total of 6,295 cases resulted in a suspect being charged and 17% (1,063 cases) were disposed of using a 'Simple Caution'. The UK Home Office (Home Office 2008) defines a 'Simple Caution' as a formal warning given by police to offenders and aims to 'deal quickly and simply with less serious offences where the offender has admitted the offence', and to 'divert offenders where appropriate from appearing in the criminal courts' (Home Office 2008: 1).¹

In 2019, of the 15,260 cases of DV dealt with by Devon and Cornwall police in England, only 7% (1,014 cases) resulted in a suspect being charged with an offence. In the same year, 2% (246 cases) were disposed of using a Simple Caution. In 2014, a change was made to how outcomes of DV cases were recorded, and new categories were introduced, including: 'Named Suspect Identified: Vic[tim] Supports Action Evidential Difficulties', which includes 'cases where the suspect has been identified, the victim supports action, the suspect has been circulated as wanted but cannot be traced and the crime is finalised pending further action' (Home Office 2019: 10), and 'Named Suspect Identified: Eviden[tial] Difficulties Vic[tim] Not Supporting Action', where the 'victim does not support (or has withdrawn support from) police action' (Home Office 2019: 10; FOI request, June 2020). These changes, presumably introduced for clarity, reflect the particular difficulties DV crimes pose for police. In 2019 these categories accounted for the outcomes of 19% (2,876 cases) and 56% (8,548 cases), respectively (a total of 75% or 11,424 cases). As more cases are disposed of under these outcome categories than any other, it now means that the simple caution is only one of several out-of-court preferred options for disposal. We propose that the specific issues identified in this paper offer some explanation for the decline in charging decisions and an increase in out-of-court

disposal of cases. Our findings demonstrate the need for greater external scrutiny of policing and prosecution processes in DV cases.

The data: Police prosecution files

The material analysed for this paper was obtained by the first author in 2010 for the purposes of examining both the spoken and written police discourse of police officers in Devon and Cornwall, England. At the time of the data collection, the first author was a serving police officer working as a specialist Domestic Violence Investigator. His 'insider status' provided rare access to what police and prosecutors regard as confidential and sensitive material (Lynn and Lea 2012; Lea and Lynn 2012).

Eighteen crimes of DV were recorded in two adjacent areas within the same police force in 2010 in one calendar month. All eighteen cases were disposed of by way of a Simple Caution. Of the eighteen cases, 4 case files could not be located, and one other had no MG3, leaving 13 cases for analysis. The stage of the judicial case building process we focus on is the point at which the case is referred to the Crime Prosecution Service (CPS) for a charging decision. Figure 2 shows the full trajectory of DV cases through the judicial system.

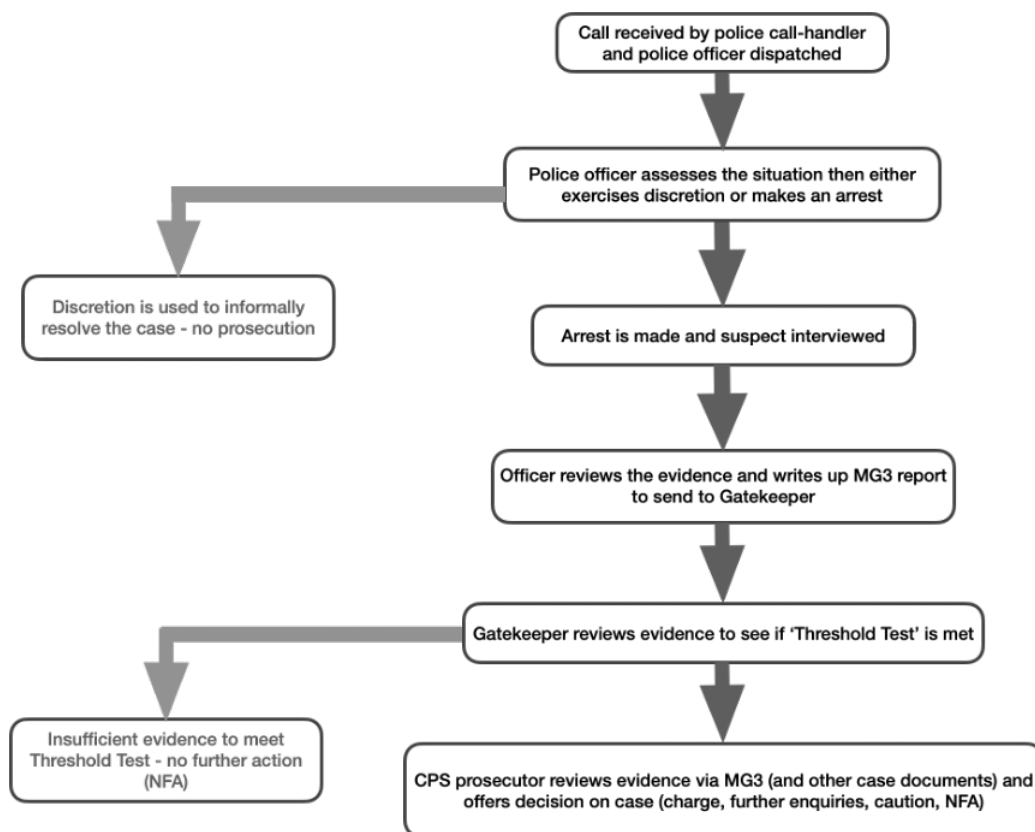


Figure 2. The DV case trajectory.

Personnel involved throughout this process include the police officer assigned to the case, otherwise known as the Officer in the Case (OIC), the Gatekeeper, and the Crown Prosecution Service. Gatekeepers are usually Sergeants or higher ranked officers (both active and retired) and their role is to cast a qualitative eye over the file compiled by the

OIC and make recommendations regarding charging or other types of disposal before the OIC approaches the Crown Prosecution Service (CPS). In essence, this is a peer review process.

Police working culture

Before moving on to the methodology, it is important to provide some detail about the working culture and 'lived ideologies' (Billig *et al.* 1988) of police and prosecutors as these offer insights into what Voloshinov (1987) calls 'the extra verbal situation', essentially, the pragmatic discourse situation in which a given utterance occurs. An extensive corpus of high-quality research on police officers and policing has consistently pointed to expediency and pragmatism as ideologies that typify police occupational culture (Skolnick 1966; Graef 1989; Manning 2008). These ideologies are seen as central to getting the job of policing done because successful police careers are, for the most part, built on results which include arrests, detections, or successful prosecutions (Reiner 2000; Stephens and Becker 1994; Chambers and Millar 1983). This research also makes clear that within police culture the ethos of 'crime fighting' is considered the 'raison d'être of policing' (Waddington 1999: 23). For those who eye the police service as a potential career, there is no doubt the lure of danger, excitement, and the exercise of power that necessarily goes with 'thief-taking' is what draws many into the police fold (Holdaway 1983). The irony here is that the same research also demonstrates how the reality of day-to-day policing is actually rather different (Banton 1964; Rubenstein 1973; Manning 1977; Chatterton 1983). Indeed, Chan *et al.*'s (2003) study found that police work was 'more routine and less diverse than expected' (p. 208) and that officers spent most of their time doing paperwork and 'covering their arses' rather than 'catching criminals' (p. 209). When police officers are able to focus their efforts on 'crime fighting. . . most of the time, discretion is exercised in favour of non-enforcement' (Waddington 1999: 5).

What these and other studies highlight well is that policing is an occupation fraught with contradictions and the notion of 'discretion' is itself a 'politically contested term' (Wood 2020: 134). For a public service fashioned along military lines, and where notions of discipline and authority are woven into an overly complex hierarchical rank structure that is 'blame orientated' and 'punishment centred' (Waddington 1999), it may surprise many to know that officers who work on the front line routinely operate in ways that differ from how senior officers expect them to operate (Reuss-Ianni and Ianni 1983). The presumption on the front line is that once officers gravitate to the senior ranks they become 'management cops' rather than 'street cops' (Reuss-Ianni and Ianni 1983: 251). The point we are making here is that regardless of motivation, the operational reality is that police rank-and-file are sufficiently autonomous that they can and do subvert the policy doctrines and operational edicts of senior officers (Punch 1985; Gelsthorpe and Padfield 2003; Smith *et al.* 2005). What this means in real terms is that the lowest tier of the police organisational hierarchy effectively has the most influence over policing policy (Punch 1985).

A second point that follows directly from the first is that success in subverting the will of senior officers depends on being sufficiently skilled to do it in ways that are not obviously contentious or questionable – no easy task given that all officers begin their careers as Constables. Additionally, when 'working the street' officers routinely interact with people who may be 'angry, dishonest, aggrieved or otherwise disgruntled' (Lynn and Lea 2012: 365). The work, then, is not just highly interpersonal, but is also frequently

messy, in that there may be no clear-cut way to deal with the issue at hand in a way that satisfies all concerned (Skolnick 1966; Westley 1970; Holdaway 1983; McNulty 1994). Kemp *et al.* (1992) capture this dilemma well in noting that 'officers are often unable to anticipate whether a certain course of action will be regarded as commendable or subject to condemnation' (p. 121). As a result, officers soon learn to be mindful of what they do and how they do it. And it is for this reason that the 'cover your arse' mentality features in just about everything police officers do (Chan *et al.* 2003; van Maanen 1973; Punch 1985). But while it is one thing to 'know that' the lived experience of policing shapes the occupational practice of officers, it is quite another to 'know how' (Ryle 2000) these practices actually operate in plain sight. One of the advantages of applying a linguistic analysis to police work, is that the 'how' can be made visible.

Context of the MG3 reports

There is no set format for constructing an MG3. However, headers on the form invite the OIC to summarize the case for the reviewers, which necessarily entails selection and omission for 'gist'. In effect, then, the MG3 is oriented towards making a case, explicitly or implicitly, for a particular outcome, and it is safe to assume that inclusions are constrained along these lines. Once OIC's believe they have collated a relatively complete picture of the at issue event, the case is then prepared for the Gatekeeper (and Prosecutor). At this point, the event has gone through a few retellings (e.g. witness statements, police interviews), and will be retold again on the MG3 form. This process of 'retelling' is problematic. Frederic Bartlett's innovative work on *Remembering* (1932) demonstrated that in telling and retelling a story, speakers engage in 'repeated reproduction' (p. 63), an interpretive and subjective process that results in additions, omissions, and transformations. The upshot of this, he found, was that it tended to result in 'stereotyped and conventional reproductions which adequately serve all normal needs, though they are very unfaithful to their originals' (Bartlett 1932: 55). Bartlett's work has particular relevance in the high-stakes environment of policing. The administrative work police do has repeated reproduction at its core, no more so than in the trajectory noted above (Figure 2). Our analysis of the MG3 forms allows us to track this process and to make it visible; in other words, the contributions from the various personnel in the chain (Figure 2) permit an analysis of the additions, transformations, and omissions as well as a consideration of their material effects on case outcomes.

Methodological approaches to 'doing' policing

Drawing on Bakhtin (1986), Lea and Lynn (2012) posit three 'speech genres' as characterising (in part) what it is that police officers 'do' when they do policing: the 'genre of the "real" victim' (2012: 3097) whereby police present male suspects as the having been wronged in some way; the 'genre of impartiality' by which officers' reports present 'a version of events that both manages their own stake and accountability and attributes blame and responsibility' (p. 3098); and the 'genre of credibility', whereby officers' 'credit' or 'discredit' individuals (p. 3100) particularly through linguistic strategies such as 'category entitlements' (Sacks 1995; Edwards 1991).

In what follows, we develop this notion of the 'speech genre' into an archetypal narrative construct in the policing context. Specifically, we focus on the archetypal construction of the 'real victim' which we argue relies heavily on 'doing credibility' and more subtly, on 'doing impartiality' (Lea and Lynn 2012). Our methodological approach

combines critical discourse analysis (Billig *et al.* 1988; Fairclough 2001) with relevance theory (Sperber and Wilson 1986; Wilson and Sperber 1993, 2002, 2004; Clark 2013) in considering the ideological implications of what is stated or explicated on the one hand, and what is unstated or implicated on the other. In order to account for the pragmatic context of what Fairclough calls 'unequal encounters' (2001: 36) in terms of power, we also consider Goffman's notion of 'footing'. We will present linguistic strategies used by police officers in constructing a 'real victim' narrative and argue that such strategies consistently function to align the ideological position of the investigative institution with the male suspect. In order to understand how these subtle strategies influence decision-makers, we present patterns of pragmatic inferencing that officers rely upon (and that Gatekeepers and CPS 'take up') in order to successfully communicate the suspect as the 'real victim'. Our intention is to show that how police present the various participants and their actions in the at issue event conveys a deeply ingrained culture within the police about whether domestic violence is criminal and whether or not they consider the suspect and/or victim culpable. We argue that what officers select for inclusion and how they choose to report their selections exposes their (institutional) ideological positioning on domestic violence cases. The next section discusses the MG3 corpus in detail and aims to make the positioning of the institutional actors more visible.

Footing

All the OIC's contributions to the MG3s in the analytical sample were written in a dry, third person, passive voice: 'the police were called', 'It is alleged...', 'it was explained that...'. The use of this 'reported style' of writing creates the impression that the author of the text (the OIC) is merely the medium or animator through which events are set out. Writing in this way fosters the notion that what is reported is simply that which 'unproblematically and inescapably follows' (Gilbert and Mulkey 1984: 56). Such style is indicative of 'police-speak' (Fox 1993) and a particular narrative style that police officers routinely use when writing MG3s (see Lea and Lynn 2012). This is achieved in the preceding examples through 'footing' (Goffman 1981) 'it was explained' in which the reporting verb affords the OIC distance from the proposition offered. The 'pursuit' of impartiality or neutrality (Clayman 1992: 169) is an active accomplishment of various occupations. Police officers learn early in their careers that they must appear impartial even though, in practical terms, they are always agents of the prosecution. In reporting descriptions, claims, and specific incidents and events, speakers and writers (whether they know it or not) attend to their discursive 'footing'. They do so by making it clear that what is being reported either was or was not seen or heard by the authors of the text. In so doing, police officers display an implicit awareness that they are accountable for what they say.

Additionally, footing can be employed to weigh or upgrade the facticity of a 'reported' event or happening. This can be achieved not just by what is said, but by whom. For a variety of reasons, certain groups or individuals are imbued with situated ethos and can speak with greater authority and credibility than others. It is a 'category entitlement' (Sacks 1995) of police officers that they are understood to be honest and trustworthy. They are also recognised as professional witnesses trained in observation and investigation. Therefore, the authority of the person whose talk or information is being 'reported' (either as a direct quote or as gist) is important because it can make a positive difference to its persuasive force. An extract from our dataset shows this nicely:

'PC D, the arresting officer, **noted** a red mark to the side of C's throat' (MG3 1, our emphasis).

Here, PC D's tacit authority and expertise as a police officer validates the claims made by C that some injury was sustained by C (the complainant in this case). PC D's authority on this occasion is bolstered by the OIC's addition of the label 'arresting officer,' which further implies he had a reasonable suspicion as to how C's injury was sustained and by whom, which also justifies why he made an arrest.

Alternatively, footing can also be used to undermine the authority of an account. An author or speaker can introduce uncertainty about an event by the way they report another's speech:

'[Victim] contacted the police in relation to an **allegation** of Harassment against her ex-partner ...' (MG3 2, our emphasis)

'In interview K claims that he returned home to find A and B smoking weed ...'
(MG3 3, our emphasis)

To 'claim' or 'allege', especially when it comes from a police officer (in this case the OIC), can, as Clayman concluded in his research, 'actively shape the course of the debate without entering it as a participant' (1992: 177).

The (broadly) tripartite arrangement of MG3s also functions rhetorically. The MG3 below is one of the briefest, consisting of four sentences, numbered for clarity:

- MG3 4:** (1) [Suspect] was involved in a verbal altercation with his partner [Victim] regarding her going out and him holding the baby.
(2) During this argument [Suspect] slapped [Victim] once across her left cheek causing reddening.
(3) During interview [Suspect] made a full and frank admission to the offence, stating he had 'lost it', he also expressed regret.
(4) [Suspect's first name] has no previous convictions and has not been arrested before.

There are effectively two sections to this short narrative. The first section, sentences 1–2, synthesizes the witness statement into gist – a succinct easily readable 'police version' of events from an observer's (in this case, the suspect's) viewpoint. The second section (sentence 3–4) summarizes the suspect's account and concludes with an assertion of the suspect's lack of offending history. This is, perhaps, not surprising as in the police world 'full and frank' admissions are actively sought (and are supposed to be mandatory if a Simple Caution is to be issued). Lastly, MG3 accounts generally conclude with a short sentence or paragraph outlining the suspect's offending history, or lack of it. Brief as this example is, it is typical of the way OIC's summarize the at issue event.

From a rhetorical perspective, two things stand out from MG3 (4) above. First, in paring down the aggrieved person's witness statement to gist, the whole event is glossed and de-contextualized. Second, the MG3 goes to the Gatekeeper as a presentation of 'facts' that 'speak for themselves' (Perelman and Olbrechts-Tyteca 2000: 17). This is problematic as Gatekeepers and CPS prosecutors do not tend to raise questions about what has been omitted, added, or transformed, and although they are privy to the witness statements and interview data that comprise the full case files, few appear to go beyond the MG3 when making charging decisions. The MG3, therefore, remains the most authoritative document at the decision-making stage of the prosecutorial and policing process.

The following sections examine the relevance of what is stated on the MG3 record and how this may impact its interpretation.

Relevance Theory

In their seminal work on relevance, Sperber and Wilson (1986) argue that 'human cognition is geared to the maximisation of relevance', which is to say that when we are engaged in conversation (or other discourse forms) with an interlocutor we expect that what they say is to be understood as maximally relevant. In other words, we are driven by coherence or a need to make sense of whatever we encounter (Wilson and Sperber 2004: 608). Following Graef (1989), Wilson and Sperber (2004: 607) agree that 'utterances raise expectations of relevance'. This means that when we receive an input or 'stimulus' (Wilson and Sperber use the example of a guest positioning an empty glass on the host's table to signal that they would like a drink) we connect it to 'background information' to 'yield conclusions that matter' to us (p. 608). Ideally, and for efficiency, we aim to gain something informative or relevant from our interlocutor without investing too much processing effort ourselves. As Clark notes, 'our inferential systems are set up so as to maximise the cognitive effects we can derive' (2013: 107). Wilson and Sperber call these 'positive cognitive effects' which is to say they make a 'worthwhile difference to the individual's representation of the world' (2004: 608). To take the example of wanting that drink, the empty glass stimulus connects to the host's background information which may include at least the following: a schema for enjoying a drink with friends, what they know about hosting a social gathering and what that entails (i.e. ensuring that everyone who would like a drink has one without them having to ask for a refill), knowing that if a guest directly or overtly has to ask for a refill that that may constitute a 'face-threatening act' (Brown *et al.* 1987) for both parties and also knowing that both parties wish to avoid threats to 'face' in polite society, and so on. The host then interprets the stimulus (the positioning of the empty glass) to conclude that the guest would really like that drink topped up and promptly goes and does it. In so doing, the host recognises the intention of the guest (to communicate something with the stimulus) but the guest also recognises that the host will recognise their intention in order for the stimulus to have the desired communicative effect.²

Like the stimulus of the empty glass, what officers write on police reports functions as an 'ostensive stimulus' and as such bears relevance to the job in hand. The information contained therein must either be relevant or be made relevant by those to whom they address if the OICs' intended meanings are to be understood³. Following Sperber and Wilson (1986), we argue this process invokes (and relies upon) a range of assumptions, commonplaces, and deductions in order to reach conclusions that influence charging decisions. Deductions are often implicit in MG3 reports. This is especially true regarding blame. The OIC can choose what to add or omit and how to describe the events and participants, but in spite of being invited to do so they rarely explicate how charging decisions should go (for the OICs may be unwilling or unable to make their intentions explicit – we return to this later). Instead, they are implicitly packaged.

The MG3 data

The MG3 reports reproduced below recast the male perpetrator in the role of 'real victim' to varying degrees. All identifying information has been redacted, and the participants

are referred to as 'Suspect', 'Victim', and 'Witness' respectively in place of their actual names. Sentences are numbered throughout for ease of reference.

The 'real victim' archetypal narrative is achieved in a number of ways in our corpus, and each can be employed as a single strategy or multiple strategies and can combine or overlap. The strategies for doing the 'real' victim are mitigation, diversion, and victim-blaming and are outlined below:

1. mitigating the suspect's role in the at issue event by:
 - (a) downgrading or 'explaining away' the negative behaviours of the perpetrator
 - (b) upgrading the positive behaviours of the perpetrator
2. diverting narrative attention to elicit pathos for the suspect by:
 - (a) foregrounding the emotional toll of the accusation on the suspect
3. blaming or undermining the actual victim by:
 - (a) recasting the actual victim in a negative light
 - (b) presenting the actual victim as culpable (e.g. causing the suspect's behaviour)
 - (c) undermining the credibility of the actual victim

As stated, there is overlap between the strategies and it is often the case that by recasting the suspect as the 'real' victim that the *actual* victim is undermined as a result. Conversely, when c) is invoked, the suspect is sometimes simultaneously cast as the 'real' victim. In our corpus of 14 MG3 case reports, 9 reports cast the suspect as 'real victim' by eliciting pathos and 7 of these simultaneously blame or undermine the actual victim and mitigate the suspect's criminality. In addition, 3 cases focused the narrative attention only on mitigating the suspect's criminality, while 2 focused exclusively on blaming the actual victim. The following diagram shows the distribution and overlap of strategies:

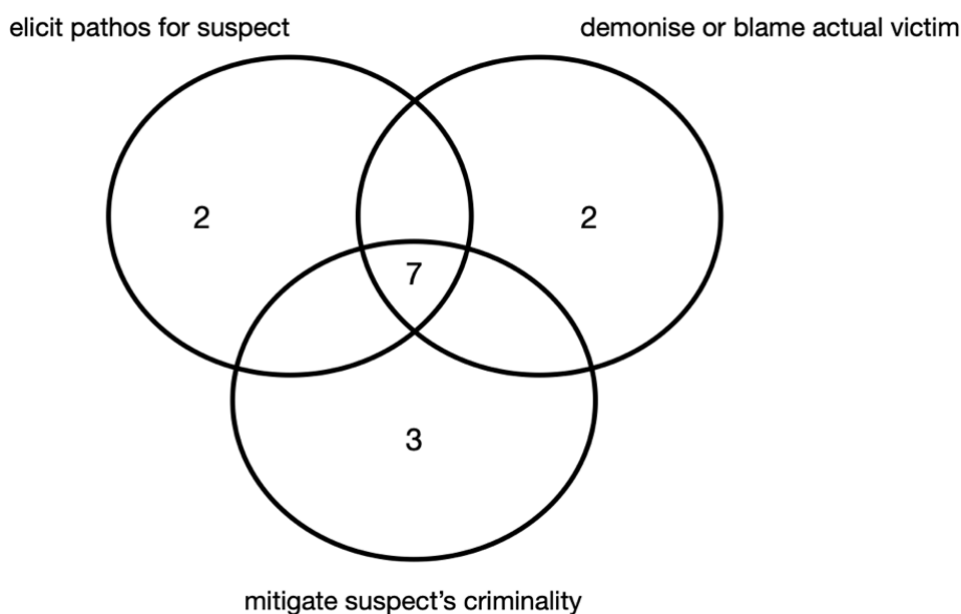


Figure 3. Distribution of cases that employ 'real victim' narrative strategies.

The following section analyses how these strategies are manifestly presented and made relevant in MG3s.

Victim-blaming, or undermining the actual victim

In their work on relevance, Sperber and Wilson write that '[e]very utterance conveys a *presumption of its own optimal relevance*' (1986: 266–78, our italics). This means that while officers utterances or reports are not maximally relevant, their inclusions are optimally relevant in the context and so some decoding will necessarily take place. This can be seen in the following MG3 5 report in which the actual victim is undermined, and the suspect is presented as the 'real victim'. The case concerns a female ('aggrieved') who has called the police to report a domestic assault.

MG3 5: OIC reformulation

1. Police were called to [redacted address] after a call from A/P ['aggrieved person'] Ms [Victim] to say she was being assaulted.
2. Upon arrival, [Suspect] was seen to be standing over Ms [Victim] in the caravan.
3. Mr [Suspect] was arrested assault ABH as Ms [Victim] had a small cut to her finger.
4. During interview [Suspect] denies assaulting Ms [Victim] he states that they both suffer from mental health problems and are both alcoholics.
5. They had both been drinking that evening.
6. He also states that Ms [Victim] is not taking her medicine and becoming increasingly paranoid and aggressive.
7. He believes the relationship is over and is prepared to move back to [redacted] to dissolve the relationship.

When police arrive they witness the suspect 'standing over her'. Her only reported injury in line 2 is something she invariably 'has' and not presented as something *done* to her. It is prefaced by the report of the suspect's arrest which is causally linked to the cut finger through the connective 'as' (line 3). The juxtaposition of the clauses either side of the 'as' imply a disproportionate relationship in that a 'small' cut to the finger seems a minor reason to 'arrest' the suspect. This generates pathos for the suspect. Line 6, 'He [suspect] also states that Ms [Victim] is **not taking her medicine and becoming increasingly paranoid and aggressive**' (our emphasis), has no explicit evidential relevance to the case yet an expectation of relevance obtains to make its inclusion cohere in the context. The connective 'and' steers the receiver to interpret the 'becoming...aggressive' as causally connected to the 'not taking...medication' in order to yield an interpretation that is 'consistent with the principle of relevance' (Wilson and Sperber 1993: 7). In other words, the OIC's inclusion of seemingly unrelated information in lines 4–6 raise 'expectations of relevance' that are 'precise enough, and predictable enough, to guide the hearer towards the speaker's meaning' (Wilson and Sperber 2004: 607). The CPS receiver, then, can recognise the OIC's intention to communicate something of relevance (known in relevance theory as the 'communicative intention'). As Clark puts it, 'once an addressee has recognised that a particular act is an ostensive one, then the presumption of optimal relevance guides the addressee in interpreting that act' (2013: 113). That interpretation draws on relevant background information and the addressee can readily conclude the following (the parenthetical statements explicate the attendant

implicatures): that the victim made an unsubstantiated claim to assault (she may have been confused/drunk/erratic/paranoid) under the influence of alcohol (so her 'will' is adversely affected) during a period where she is becoming increasingly unstable (and so cannot be a credible witness) through a refusal to take medication (she is irresponsible).⁴ The inclusion of the victim's 'aggressive' behaviour can then be read as a justification or explanation for the criminal behaviour of the 'real victim' (the suspect) by way of provocation (scapegoating). In the context of the arrest and pending charging decision this is potentially the most 'precise' and accessible interpretation with the greatest positive effects for the CPS, for the minimum effort, 'in a way the speaker [the OIC] could have seen' (i.e. 'predictable') (Wilson and Sperber 1993: 7). What is happening here is that the OIC has effectively blamed the victim and scapegoated her as embodying the loquacious female stereotype. Presenting her in this way invokes a 'stock story' narrative of the 'scold', a Medieval stereotype in which women were punished for 'verbal violence' (Ingram 1994; Taylor 2004; Jones 2006: 101) that included challenging established patriarchal authorities. Essentially, the term and the crime which it signified punished women simply for speaking up. The 'scold' charge (both legal and social) carried with it 'undertones of violence and uncontrolled rage' (Ingram 1994: 51). Scapegoating the victim, however, is contentious and so the proposition cannot be explicated. Therefore, it is mediated through the suspect ('he states') which allows the OIC to include the contentious information in his report without being responsible for it and by extension responsible for undermining the victim.

Shifting blame to the actual victim occurred in 9 cases in our corpus. One such case, MG3 7, is reproduced below and contains not only the MG3 report, but a signed witness account MG3 7(a) and Gatekeeper's decision MG3 7(b). This allows us to examine the transformations, additions, and omissions throughout the full discursive trajectory of the case. In this case, the charge against the suspect is 'common assault' and the victim is the suspect's wife. The first text is the victim's account written up by the OIC and signed by the victim. The victim did not want to make a full formal statement. Her account was recorded by the OIC as follows:

Witness account for MG3 7(a): Mitigating the suspect's role and eliciting pathos for the suspect

1. She said that she had gone into the male's [her husband's] bedroom to see what he was doing and he became aggressive and threw the computer equipment at her.
2. This included a keyboard which had struck the female on the top of her leg.

Although this is the victim's account it has been formulated by the OIC in the third person and so not a faithful transcription of the victim's words, but a 'transformation' of sorts (Bartlett 1932). The first notable point is the grammatical distance between the suspect's action ('threw' line 1) and the 'crime-constituting' event ('struck' line 2). The 'keyboard' in line 2 is the sole agent – it, not the suspect, strikes the victim so the suspect's agency is obscured (see Canning, under review). Moreover, the connective 'and' functions to relate 'she had gone into the...bedroom to see what he was doing' with the suspect becoming 'aggressive' and throwing the 'computer equipment'. The victim is perceived as behaving intentionally and this is 'encode[d]...more explicitly' through the circumstantial component 'to see what he was doing' (Edwards 2008: 179).

Having already formulated the witness's account, the OIC reformulates it for gist in MG3 7:

MG3 7

1. She stated her husband (the DP) [detained person] had thrown a computer keyboard at her which had struck her on the thigh causing injury.
2. He states she came up and he was perhaps a little agitated as he was tired and swung the computer around catching her on the leg.

Contrast the intentionality of the victim in MG3 7(a) with the lack of intentionality of the suspect in MG3 7. Here, again, the suspect-as-agent is obscured as the 'keyboard' does the damage (MG3 7 line 1). The 'computer equipment' in the witness's account is omitted, reduced instead to a single 'keyboard' in the OIC reformulation. The crime itself is now mitigated. Moreover, an 'excuse' that appeals to 'biological drive' (Scott and Lyman 1968) is offered for the suspect's aggression in line 2 'he was perhaps...'. The sentence-initial positioning of this information frames the assault that follows through a more pathetic lens. It is, as Scott and Lyman in their taxonomy of 'accounts' call 'a sad tale' (Scott and Lyman 1968: 52) designed to neutralise the suspect's incriminating behaviour. Additionally, the comparatively inoffensive 'agitated' is hedged with the modal marker 'perhaps' and its intensity is scaled back with 'a little'. The rationale for his 'agitat[ion]' is provided 'as he was tired', making the causal connection explicit. This is uncontentious (people get agitated when tired) and so the inference is unproblematic. What is problematic is the assault that occurs next, which, in the OIC reformulation has been mitigated significantly: 'threw' (high-intentionality) has been substituted by 'swung' (low-intentionality), 'struck' (high-force and high-intentionality) has been reduced to 'catching' (low-force and low-intentionality) and the present continuous tense of the verb 'catching' implies an ongoing movement suggesting that the victim's leg was not the intended target, but rather, her leg interrupted the trajectory of the keyboard (indeed, he merely swung it 'around', not 'at'). All of this is framed through the grammatically foregrounded explanations which combine 'excuses' and 'justifications', which typically 'concede the presence of the basic elements but deny liability on independent grounds' (Austin 1961: 9). This is achieved in this case by appealing to biological drive (tiredness), 'scapegoating' (the victim interrupted his attempt to sleep 'to see what he was doing'), and an appeal to 'sad tales' or pathos. Together these can be read as providing 'reasonableness' (see also Edwards 2008: 183) for the suspect's behaviour, thus further mitigating the *at issue* event. The acceptance of this reasonableness depends on the receiver of the OIC's text making the causal connection between tiredness and agitation, but crucially, its success in achieving leniency through early disposal depends on the OIC knowing that the receiver will recognise the OIC's intention to communicate relevant information in supplying it.

For this particular DV case, we have access to the Gatekeeper's full comments and decision:

MG3 7(b): Gatekeeper's comments

1. In interview D/P admits that he was tired and agitated and was trying to sleep.
2. An argument develops between himself and his wife resulting in him picking up the computer and swinging it towards his wife.

3. He is suitable for diversion by way of a caution.
4. He has no previous cautions or convictions.

Interestingly, the gatekeeper defers to the suspect's interview and not the victim's account in summing up the gist of the case (line 1). This frames the narrative pathetically and garners sympathy for the suspect. The use of the verb 'admit' (1) implies cooperation and thus raises the ethos of the suspect through implicit positive appraisal. Having said that, what he is 'admit[ting]' to is not contentious. In line 2, the gatekeeper notes that 'an argument develops' which 'results' in the assault. Nowhere in the victim's account nor in the OIC's reformulation is there any mention of an 'argument' or 'arguing'. This is 'addition' (Bartlett 1932), a rather insidious 'gap-filling' exercise by the gatekeeper to provide an explicit reason for the suspect's assault. By presenting the scenario of an 'argument' the gatekeeper attributes culpability to both the suspect and victim for precipitating the assault. The gatekeeper then attributes this mutually culpable argument as directly 'resulting' in the suspect's actions. The actual victim has been recast as 'scold' and provocateur. The description of the suspect's actions is itself problematic, particularly regarding verb choice: he 'pick[s]' up the computer (non-contentious) and 'swing[s]' it 'towards his wife' (line 2). The computer (not the 'keyboard') makes no contact with the victim and the choice of 'swing' may be echoic (the OIC uses it) but it nonetheless reduces the intentionality of the act.

Lines 3-4 are where relevance comes into play. Line 3 functions as a conclusion derived from 1-2. Given that an admission is required for a simple caution to be administered, the use of 'admit' in line 1 can be interpreted as satisfying this legal criteria ('suitable', line 3) or a kind of 'point to prove' (Calligan 2000). However, as stated above, what the suspect is 'admitting' to is merely being 'tired and agitated', not the criminal offence of 'assault'. Nonetheless, line 4 provides the 'explanation' for the conclusion and justification for the caution. The explanation in line 4 alludes to what Pomerantz (1986) calls an 'extreme case formulation' where the persuasive force of a claim rests on making a case for all (e.g. 'he was away all of Sunday') or nothing (e.g. 'he never goes out on Sundays') in order to 'legitimise' claims (passim), actions, or decisions. If a person does not regularly do something morally or legally damning, then including or alluding to this information can negatively influence and thus dissuade the receiver from leniency when deciding on a particular charging decision (which is why cross-examination in UK courts forbids raising past transgressions as this can negatively influence the jury). In this case, the Gatekeeper's 'no previous...' assertion directs the decision towards leniency. The CPS will make this contribution in the MG3 relevant drawing from their cognitive environment to deduce that the suspect's behaviour in this case is a one-off, or 'odd' (in Pomerantz's terms), and as such, 'may or ought to be dismissed' (Pomerantz 1986: 223). Which it was.

As can be seen in Figure 3, seven of the cases we studied constructed a 'real victim' narrative archetype by employing all three primary strategies: a) mitigating the suspect's role, b) eliciting pathos for the suspect, and c) blaming the actual victim. One such case (MG3 8) is outlined below in which it is the CPS input that employs the above strategies. The prosecutor's evaluation of the evidence is equally bleak. The case is an intra-familial assault by a stepfather (Suspect) on his stepdaughter (Victim), witnessed by his other daughter (D). The suspect denies assault in his police interview but admits to 'grabbing a hold of her'. Both women are adults and had gone to the stepfather's house

at his request so the victim could remove her property from his address. D went with her sister because both were concerned that 'something might happen'. The prompt for the victim having to remove her possessions from the family home is an alleged prior assault by her on the suspect's mother (her grandmother): that alleged assault was being dealt with separately by other officers. The evidence for suspect's assault on his stepdaughter was perceived by the OIC and the Gatekeeper to be 'good' and the case against him 'strong'. The Gatekeeper concurred. The prosecutor's reformulation of the event into gist is skeptical from the start and is framed proleptically to forestall objections:

MG3 8: CPS input

1. Alleged assault on [Victim] who has been summonsed [sic] to her stepfather's home to collect her belongings, he having heard she has assaulted his mother'.

The opening words 'Alleged assault' immediately crank the inference-making machine into action by questioning the veracity of the stepfather's assault on his stepdaughter. There is no such modality in the prosecutor's closing observation 'she [victim] has assaulted his mother' (our emphasis). This latter 'assault' is alleged and unproven, yet is presented here as a 'categorical commitment' (Fairclough 2001: 107) to the epistemic truth of the proposition. However, it hints at an 'explanation' that mitigates the suspect's *at issue* behaviour. The use of 'summonsed' to describe why the victim and her sister have gone to the stepfather's house invokes parental authority and by extension a not uncommon family scenario or 'unhappy incident' (Pomerantz 1978): naughty child (or step-child in this instance) is chastised for striking grandmother, child dislikes being chastised and retaliates. Unlike most other MG3 accounts, this domestic assault is not treated as a discrete, episodic event but presented instead as a series of alleged events that are connected or made relevant by the CPS. The victim, like many other women in domestic violence cases, has her status as the 'real victim' questioned. By retelling the *at issue* event in this way, the accusations against the suspect are more easily undermined.

The prosecutors opening gist is followed up by a stark assessment of the 'Evidential Criteria':

MG3 8: CPS input continued

2. Not met.
3. This is an acrimonious split between [Victim's] mother and Mr. [Suspect].
Victim herself is facing investigation for using violence on Mr. [Suspect's] mother resulting in quite serious injuries.
4. D does not see the beginning of the incident.
5. In light of his previous lack of previous, her alleged violent behaviour, there is no prospect of conviction.

Line 3 purports to offer grounds as to why the case fails the 'evidential test' and invokes a 'stock narrative' of 'marriage breakdown' and 'parental loyalty' as grounds for explaining away the suspect's actions. In line 3 the *at issue* event is collapsed via nominalisation (Fairclough 2001) as an 'acrimonious split' (recall that this process also characterises the 'argument' in the Gatekeeper's input to MG3 7) and introduces a further participant (the victim's mother) who is effectively extraneous to the assault case. The only mention of the victim is in line 4 where she is introduced as 'violen[t]' having caused 'quite serious'

injuries to the suspect's mother. The evaluative adverb and adjective 'quite serious' amplifies the victim's negative behaviours by bringing in an unrelated and unproven case against the victim. Line 5 dismisses the evidential value of the witness. Line 6 functions as a conclusion and the relevance of the previous sentences ties cohesively to this conclusion. Therefore, the CPS input fulfils all three strategies for recasting the suspect as the 'real victim': the prosecutor mitigates the suspect's culpability for the assault by dismissing the witness and providing 'grounds' for the suspect's behaviour; the victim is blamed by her foregrounded alleged and unproven (anterior) assault on the suspect's mother. This *ad hominem* argument is fallacious, but nonetheless simultaneously undermines the victim's complaint. Finally, the prosecutor elicits pathos for the suspect by invoking the familial 'assault' against the suspect's mother. None of this amounts to 'evidential criteria'; in fact, the only evidential issue referred to is that 'D does not see the beginning of the incident'.⁵

Conclusion

Our analysis has shown that an awareness of Voloshinov's 'extraverbal situation' (1987), essentially the discursive context in which the discourse or text is created, is essential in understanding how and why meanings are made in discursive interactions between witnesses, suspects, police, and prosecutors. Linguistic (both semantic and pragmatic) choices are rarely random and police officers, perhaps more so than other conversationalists, are aware of how accountable they are for what they do or do not say. While we do not assert 'intent' on the part of the OIC in our analysis (language is not a 'telementational' process (Harris 1981) or a method of 'psychological divining' (Ryle 2000)), we do argue for a degree of conscious awareness on the part of the police that what is 'deemed ostensibly mere "description" of actions and events can be constructed to generate specific implications. . . concerning blame' (Edwards and Potter 1992: 51). These implications can be understood by recourse to relevance.

In summarizing the input of the OIC into the MG3 process, it is clear that reformulating and distilling events, witness statements, and suspects' accounts to gist results in a considerable amount of evidential detail being glossed, excluded, or reworked. The palpable drama and fear present in many of the witness statements is lost in the OIC's version of events. Particularly in cases involving assault or damage the frenetic and almost synchronous evolution of the action and behaviour in question (which is often well-captured in witness statements) is, in the MG3, reduced to a series of short, discrete, and clinically measured episodes. The overall effect is to minimize and sanitize the at issue event. Our analysis has explicated institutional ideologies about who is to blame in cases of domestic violence. It is our contention – and our deep concern – that what has been presented in these MG3 reports ultimately steers decision-makers to a particular outcome – one that is manifestly lenient towards abusive males, principally by shifting the blame away from the suspect and/or undermining the female victim. We are equally concerned that such strategies may also characterise the discursive handling of crimes of rape and sexual violence (see Haworth 2017; MacLeod 2020).

In weighing the seriousness of a criminal offence decision-makers and advocates always allude to the 'reasonableness' of an act in the specific circumstances, an important concept in the adversarial legal system. For instance, when considering violent acts, an unprovoked assault or battery becomes less 'reasonable' than one that has been provoked in some way. Our analysis has shown that reasonableness is consistently offered

with low levels of explicitness (more inferential than ostensive) in OIC, gatekeeper, and CPS contributions, and that these often implicit appeals to reasonableness become the argument upon which a more lenient decision is primed (see also Sudnow 1965). We have also shown that officers use both footing and appeals to relevance to mitigate their accountability for contentious propositions (i.e. that female victims are culpable (e.g. MG3 2, 3, and 4), that male suspects are not 'particularly' culpable (e.g. MG3 2) and that ultimately, 'not everything that is linguistically communicated is linguistically encoded' (Wilson and Sperber 1993: 6).

Finally, the judicial process itself makes the progression to court challenging in cases where the 'complainant' (in DV cases) does not support the prosecution (see Cretney *et al.* 1994). Unfortunately, alternatives to Charge or Simple Caution in domestic abuse cases are limited. Penalty notices (PNDs) are not appropriate and Conditional Cautions, which do offer a potentially fruitful alternative, were at the time these MG3s were written, not an option in domestic violence cases. Presently, the Conditional Caution still remains a restricted alternative for DV crimes. It is hardly surprising then, given the particular challenges domestic abuse crimes pose for police and prosecutors, that the Simple Caution and other out-of-court disposals retain their allure as key methods of 'resolution'. Indeed, concluding our analysis we cannot escape the feeling that rather than being an alternative to prosecution many police officers and Gatekeepers appear to regard them as the default-option.

Notes

¹A Ministry of Justice review of 'simple cautions' was conducted in 2013 and replaced its predecessor (Home Office 2008). At the time of the 2013 review, the simple cautions required that 'the offender must admit guilt' (Ministry of Justice 2013: 10). At the time of the data collection, the Home Office guidelines required the OIC to ask 'Has the suspect made a clear and reliable admission of the offence either verbally or in writing?' (Home Office 2008: 1) in order to satisfy the criteria for administering a simple caution. The current guidelines (issued in 2015) define a simple caution as 'a formal warning that may be given by the police to persons aged 18 or over who admit to committing an offence ("offenders")'. The Simple Caution scheme is designed to provide a means of dealing with low-level, mainly first-time, offending without a prosecution (2015: 4). Admission, therefore, has consistently been a precondition for simple cautions.

²Of course, there may well be another intention in positioning the empty glass in front of the host – perhaps the guest is signalling that they are leaving. In this case 'other things being equal' (Wilson and Sperber 2004: 609), deducing the correct understanding of the stimulus requires a little more processing time to bypass the most likely. This latter scenario requires the host to carry on with the comprehension process beyond the point by which 'expectations of relevance are satisfied' (613) in order to interpret the stimulus as maximally relevant.

³We use 'intention' here and throughout to refer to the 'key idea' in relevance theory that 'the communicator has an interpretation in mind which justifies the expenditure of effort involved in arriving at it, i.e. which provides enough cognitive rewards for it to be worth expending the mental effort involved in reaching it' (Clark 2013: 7).

⁴Note, however, that the suspect who has also been reportedly drinking (line 5) has his account accepted uncritically.

⁵A second statement taken from D in an effort to rebut this apparent evidential weakness revealed that she was 'sorting out articles in a drawer in the mantelpiece. Out of the corner of my eye I saw [Suspect] move quickly towards [Victim] and grab hold of one of her arms ...'. Interestingly, The No Further Action (NFA) recommendation made by the prosecutor in this case was challenged by the OIC and the Gatekeeper and was escalated via a Detective Inspector to be reassessed by the CPS. The Detective Inspector's thorough reading of the case file showed not only the contextual and evidential value of a comprehensive witness statement, they also confirm as a proof procedure that all the statements and

paperwork in the file had not actually been read. The Detective Inspector points out to the CPS that the suspect does have previous convictions, albeit from some time ago, one of which was for assault.

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