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GRAMMATICAL AND FUNCTIONAL ASPECTS
OF
COURTROOM QUESTIONING

por

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**Oferecida aos meus pais,
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ABSTRACT

**GRAMMATICAL AND FUNCTIONAL ASPECTS OF COURTROOM
QUESTIONING**

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1998

Supervisor: Profa. Dra. Viviane Maria Heberle

This study concentrates on the analysis of the evidence of a defendant in a criminal trial in the British legal system, in terms of the pattern of question-answer employed by defense and prosecution counsels to convince the jury of their side of the story. Direct examination is conducted by the defense counsel and cross-examination is conducted by the prosecution. Based on linguistic studies, I classify the forms functioning as questions in both direct and cross-examination. Next, I analyse how these questions are used by each counsel, and I discuss some of the strategies used by the counsels and the role questions play in such strategies. Results show that direct examination is conducted in a supportive mode, in that counsel and defendant build together their version of the story in a coherent sequence. Because the burden of proof lies with the prosecution, in the cross-examination investigated in this study, the prosecution counsel uses questions so as to progressively build an accusation against the defendant. The study suggests that the forms of questions selected by counsels are important in the management of information in courtroom questioning. However, apart from carefully choosing the kind of question to ask, so as to elicit the response expected, counsels also use those questions in a strategic way for the benefit of the jury.

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RESUMO

GRAMMATICAL AND FUNCTIONAL ASPECTS OF COURTROOM QUESTIONING

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Este estudo baseia-se na análise do depoimento de um réu sob julgamento criminal em um tribunal britânico. A análise diz respeito ao padrão de pergunta-resposta utilizado pela defesa e acusação para convencer o júri de sua versão da estória. Neste caso, o interrogatório é conduzido pela defesa e a inquirição pela acusação. Com base em estudos lingüísticos, classificam-se as formas com função de pergunta, tanto no interrogatório, quanto na inquirição. Em seguida, analisa-se o modo como estas perguntas foram usadas pelos dois advogados e discutem-se algumas das estratégias empregadas pelos advogados, bem como o papel desempenhado pelas perguntas em tais estratégias. Os resultados demonstram que o interrogatório é desenvolvido de maneira cooperativa, já que advogado e réu contróem, conjuntamente, sua versão da estória em uma seqüência coerente. Visto que cabe à acusação provar a culpa, na inquirição analisada neste estudo, o promotor utiliza-se de perguntas para formular, progressivamente, uma acusação contra o réu. Os resultados sugerem que as estruturas das perguntas selecionadas pelos advogados são importantes no controle de informação durante o interrogatório nos julgamentos. No entanto, além de escolher cuidadosamente o tipo de pergunta, de modo a elicitare a resposta esperada, os advogados utilizam essas perguntas estrategicamente para influenciar o júri.

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CHAPTER 1

Introduction

“When I use a word,” Humpty Dumpty said in a rather scornful tone, “it means just what I choose it to mean - neither more nor less.”
(Through the Looking Glass, Lewis Carroll)

“The utterance proves to be a very complex and multiplanar phenomenon if considered not in isolation and with respect to its author (the speaker only), but as a link in the chain of speech communication and with respect to other, related utterances...” (Bakhtin)
(Dickerson, 1997:527)

The study of the language of law has only recently been recognised, resulting from a growing interest in the field. This may be in part due to the fact that there has been an increasing demand on the expertise of linguists by courts lately, and the discipline of Forensic Linguistics has now been established (Coulthard, 1992, 1994, 1996).¹ It has, consequently, attracted the interest of a great number of social science scholars, legal professionals and linguists.

Even though the discourse of the legal system is permeated with linguistically and socially unusual features, we ought to consider that it is still natural language that is used there and, therefore, it must be accounted for by linguistic theories. According to Levi (1990), any study carried out in the field of the legal system may come up with features that are proven to be a function of the specialised context. However, it can also be that the studies done lead us to universals of linguistic behaviour characterizing language patterns found in all social contexts. Danet (1980, 1985), for example, states that the study of legal discourse is concerned with the nature, functions and consequences of the language used in the negotiation of social order.

¹ An International Journal of Forensic Linguistics has been regularly published since 1994 under the supervision of Malcolm Coulthard and Peter French (eds.).

Various aspects of courtroom discourse and procedure have shown this discourse type to be like a highly constrained play, where the jury is the audience. In contrast to other discourse situations where the giver of information generally holds power, in this setting a witness does not (Lakoff, 1985:90). However, in defense of the legal system, Hutton (1987, in Luchjenbroers 1997: 478) claims that social action is inextricably linked to its context, and it is easy to produce absurdity by comparing courtroom procedures with a different context.

Because the interest in this field has been delayed for so long, little is known so far about how the uses of language can definitely affect the outcome of legal processes. What is known, however, is that the legal system has specific rules that govern language behaviour in the judicial system. These rules were created to serve the system objectives; consequently, the outcome of the processes may vary considerably to accommodate these objectives. According to O'Barr (1981), the primary objective of any research in this field would be for social researchers to work directly with legal professionals to better understand the legal system and perhaps remedy its defects.]

The legal system, in Levi's (1990) words, is a highly elaborated network of interrelationships between language use and social, economic, political and moral forces. For this reason, it offers a special context for linguists to carry out pragmatic, functional and contextually oriented research. Since it is a fruitful context for research on psychological and social variables of the dynamics of language use, it is not surprising that most studies done to the present date by linguists in language and the law come from the areas of psycholinguistics and sociolinguistics.

1.1 Theoretical background

Research published to date varies from public discourse of the courtroom to the private discourse of lawyer-client consultations. This is due to the fact that there are many levels of proceedings such as criminal courts, traffic courts, family courts, small-claims court, to cite a few, and each one offers a specific set of social, legal and linguistic variables, leading to specific genres and styles.

Some of the psycholinguistic research are the ones carried out by Loftus (1979) on the influence of language on eyewitness testimony and Charrow & Charrow (1979) on the comprehension of jury instructions, among others. However, most of the work on language use in courts has been from a sociolinguistic orientation. We can cite Lind & O'Barr (1979) on the social psychology of courtroom testimony; O'Barr (1982) on the speech styles of witnesses; Parkinson (1979) on speech styles of barristers; McGaughey & Stiles (1983) on verbal response modes under direct and cross-examination; Danet & Kermish (1978) and Penman (1987) on coerciveness of question forms; Woodbury (1984) and Danet (1984) on the powerful/powerless modes of speech; Berk-Seligson (1988), Gumperz (1982) and Pousada (1979) on problems faced by language minorities in judicial processes; (Atkinson and Drew, 1979), (Drew 1985) and (O'Barr, 1982) on sociological factors of behaviour and bias of both legal professional and witnesses; (Eades, 1994), (Gibbons, 1994) and (Coulthard, 1992, 1994, 1996) on forensic linguistics; (Prince, 1984) and (Maynard, 1985) on linguistic and interactional properties of legal discourse evident in both courtroom interactions and plea bargaining.

In this paper I will limit my discussion of the literature to that which is relevant to the processes of questioning and answering in courtroom interaction.

The notion that questions are a way of getting information is one that is pervasive in linguistics and needs more explanation. Questioning, particularly in argumentative situations like cross-examination, has more to do with recycling information from the previous utterances than with either of the traditional notions of getting new information. It is the concern for information which is legally relevant to the claims before the courts that motivates the questioner. Rokosz (1988) says that witnesses may not tell all that is relevant, and conversation relevance differs from legal relevance. What is irrelevant in conversation can still be introduced while in the courtroom it would be inadmissible.

The advocate is engaged in recycling information previously introduced, or presumed to be known, along with new information, in order to establish certain facts. Such facts do, however, have to be interpreted as limited to the propositional content of the utterances. Speaking as if the facts of the case were established, indicating the strength of the witness's beliefs about certain events, and making comments about the witness's ability to give evidence are all accomplished through a variety of linguistic means and are part of the reformulation which takes place. The argumentative aspect of questioning is developed as the conflictual nature of legal proceedings brings with it a history of interaction which differs from other conversationally-based analyses where speakers share the same speech goals (Rokosz, 1988). Argumentation is not easily described in terms of question-answer units; rather than work from the notion of question-answer pairs, larger "chunks" of text are used as these offer an opportunity to discuss a number of representative pragmatic devices occurring in courtroom questioning. The variation in syntactic form or the selection of certain lexical items pragmatically conveys judgements which have a legal significance.

The combativeness of the questions arises primarily from their sequential context rather than from their syntactic form (Drew, 1985). However, in some cases, it is

through designing her/his questions as assertions that the advocate pursues her/his version in opposition to the witness's.

In contrast with ordinary discourse where questions are appropriately asked if a speaker does not possess the information requested and believes that the addressee is in possession of such information (Lyons, 1977), in courtroom discourse counsels typically ask questions to which they already know the answers, to persons who know that they know the answers (Lakoff, 1985: 173, in Luchjenbroers 1997). In fact, Lakoff argues that lawyers are unlikely to ask a question to which the answer will come as a surprise. The force of their anticipation of the nature and content of answers is such that they are capable of framing their questions in order to encourage a witness to give a specific response - for example, by using *some* where one might expect *any*, in order to encourage a positive answer. Loftus (1975, 1979) discusses how the manipulation of semantic presuppositions of questions can significantly alter the truth value of the answers to those questions, affect the content of following questions, and affect the verdict.

Comprehensive work done in the 1980s on the questioning mode of lawyers has identified lawyer contributions as including interrogatives (wh-, alternative and yes/no-questions), imperatives and declaratives (Danet, 1980). As in ordinary discourse settings, questions in court are fundamentally defined as a summons to reply: the speaker compels, requires or demands that the addressee respond (Goody, 1978), and they function as elicitation for information, requests, suggestions and ironical assertions. In addition, questions may be used as weapons to test or challenge claims made by witnesses, or as vehicles for accusation. With questions speakers can either exercise control or offer deference (Lakoff, 1985; Harris, 1984, in Luchjenbroers 1997).

Questions can be defined in terms of the fact value of the answers they invite (Shuy, 1993). High fact value is realized by open-ended questions. Low fact value is realized by yes/no questions. However, in my data not all wh-questions were open-ended. That is to say, they sometimes limited the answer expected within a pre-established set of options, restricting the options to one or two possible answers only (cf. 4.2.1.1).

Question types can also be ranged from least control to most control, being open-ended questions the least control and restrictive yes/no questions the maximal control. According to Woodbury (1984: 205), it is with the low fact value-most control questions that counsels provide the facts of a testimony and witnesses merely confirm or deny the counsel's account. Hence, these types of questions enable counsels to assert their own versions of reality, which adds to their control of witnesses, and also illustrate the extent to which lawyers know and demand a presumably expected answer (Danet, 1980: 520).

Contrary to what formally happens in courtroom questioning, witnesses should be asked open-ended questions, which would allow them to present the facts as opposed to merely confirming them (McGaughey and Stiles, 1983). The use of closed questions that restrict the possible answers to just a *yes* or a *no* enhances the lawyer's control of both the witness and the information presented.

Even though research has consistently shown that declaratives are more prevalent during the less-than-friendly phase of cross-examination, Adelsward et al (1988:267, in Luchjenbroers, 1997) describe declarative questions as appearing less coercive and more conversation like than interrogative yes/no questions.

From the literature it is clear that during both examination and cross-examination procedures, lawyers can manipulate and create impressions of witnesses that have positive or negative effects on jury assessments of these witnesses' credibility. A

witness's portrayal of the facts is largely at the mercy of the questioning counsel's choice of utterance forms. The literature has considered the different types of question forms and what kind of information the choice of question form can convey to members of the jury, both as a feature of legalese and as a function of legal phase type (Luchjenbroers, 1997).

However 'specialized, artificial and unnatural' the language behaviour in the courts is felt to be (Johnson, 1976: 319), the questioning of witnesses and defendants in direct and specially in cross-examination constitutes language in use and is indeed a speech situation which allows a pragmatic analysis.

1.2 Purpose of the study

Much of the research on courtroom questioning to present date has focused on the structural aspects of interrogatives, based on their syntactic/semantic aspects. Such research may be helpful; however, it may be incomplete, since it does not consider some of the institutionalised elements which guide the genre. Researchers failed to address how questioning in court is different from any other speech event where questions are used. Not all utterances a counsel makes can be classed as questions, where questions are understood as asking for information. Rather than define a question as simply asking for information, or try to assess the way in which answers define what is a pragmatically significant question, it is necessary to observe the function of questioning in the courtroom. Witness examination revolves around a counsel choosing specific syntactic forms and lexis as part of a strategy to arrange information so that it supports a number of issues before the court. Questioning can only in a limited way be seen as the sincere request for information.

The main objective of this study is the investigation of the pragmatic aspects of questioning occurred in direct and cross-examination. Form and function of questions will be analysed in the light of pragmatics. The major variable drawn in the analysis of the data is the legal phase type which includes two values: examination and cross-examination. This variable was included, as these processes are performed by different counsels and also in recognition of the fundamentally opposing nature of these procedures - i.e., direct examination to establish the 'facts', and cross-examination to discredit them.

The procedure in court is the following: every witness is interviewed by her/his own supportive counsel (examination-in-chief or direct examination). It is followed by cross-examination, which means that the witness is interviewed by the adversarial counsel. When the supportive counsel thinks it is necessary to undo any damage presented by cross-examination or to present further explanation on matters raised during cross-examination, s/he will call her/his own witness again and this is called re-examination. In any trial, each counsel opens her/his case by a summary, the presentation of the case - opening address, and closes her/his case, after all her/his witnesses have been examined, by a closing address. It is usually the prosecution counsel who presents the case and calls her/his witnesses first.

Having in mind the rules that regulate and constrain courtroom discourse, I will look into how information is managed (for the sake of the jury) through the question-answer structure in direct and cross-examination, so that the narrative of the two sides of the story can be constructed. In order to investigate how information is managed through questions by prosecution and defense counsels in their task of accusing and defending, respectively, the person charged with the crime (the defendant), I will 1) classify the

forms which do questioning in the data; 2) analyse how they are used in the two different modes; and 3) discuss some of the strategies used and the role questions play in them.

1.3 Organisation of the dissertation

This study is divided into five chapters. In this chapter, I presented a brief introduction to legal discourse analysis, discussed some of the studies carried out on courtroom questioning, and stated the purpose of this study.

In the second chapter I will present court procedures and describe direct examination and cross-examination. I will also present some of the questioning rules concerning each of the modes above to better contextualise my data.

In the third chapter I will present the data and methodology. I will discuss the selectional criteria for utterances doing questioning and the organisation of the data in terms of the forms doing questioning.

In chapter four I will analyse and discuss the results. I will present the forms of questioning occurred in the data, discuss their uses in the discourse and make an outline of some of the strategies used by counsels in direct and cross-examination.

In chapter five I will present the final considerations of this study and offer suggestions for further research.

CHAPTER 2

Court procedures

'In both Britain and the US, when a person is accused of a crime it must be shown that they are guilty "beyond reasonable doubt". A person is always innocent in the eyes of the law until they have been proved to be guilty. If the person is found guilty by a court they can sometimes ask for permission to appeal to a higher court in the hope that it will change this decision.'

(Longman Dictionary of English Language and Culture, 1993)

In this chapter I will present courtroom procedures. I will make an outline of what basically happens since a person is arrested in order to better contextualise my data and consequent analysis. Because my study is based on the evidence of a defendant in a criminal case, I will focus my attention on the discussion of criminal courts only. After this brief introduction to courtroom procedures, I will present and discuss the aims of direct and cross-examination.

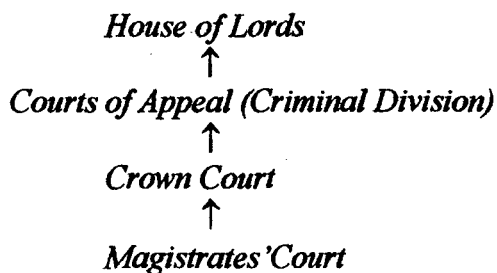
2.1 The British Criminal System

The diagrams below present the British Appeal System, as well as an outline of what happens since a person is arrested.

The Appeal System

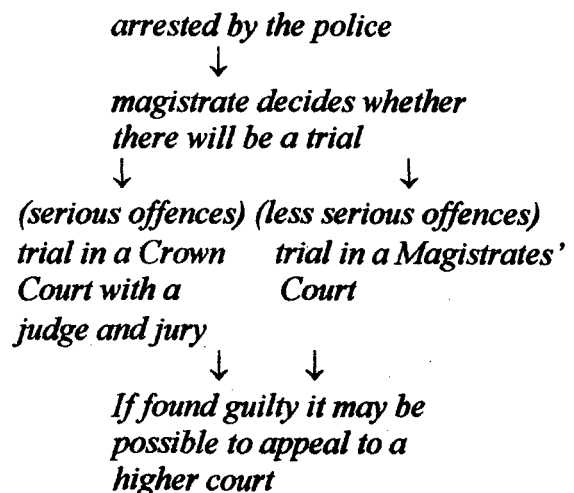
The diagram shows the courts in order of importance, with arrows representing the appeals system:

Criminal Courts in England & Wales:



Criminal Law in England/Wales

The diagram shows the possible events following an arrest:



Following a person's arrest by the police, the case is first enquired into by magistrates' courts to see if there is sufficient evidence for the case to go further. Less serious criminal cases are summarily tried by magistrate's courts. More serious criminal cases go to the Crown Court for a trial with a judge and jury (12 members of the public). The jury have to decide if the accused (= defendant) is innocent or guilty. If the verdict (= decision) of the jury is that the accused is guilty, then the judge decides the sentence (= punishment). Appeals from decisions of magistrates' courts on less serious cases, if only a question of law is disputed, go either to the Divisional Court of the Queen's Bench Division or, where the appeal is on questions of fact and/or law, to the Crown Court. Appeals from decisions in more serious cases (heard by the Crown Court) go to the Court of Appeal (criminal division). From the Divisional Court and the Court of Appeal, further appeal goes to the House of Lords (Griffith, 1977; Wright, 1967; Berlins & Dyer, 1994; Longman Dictionary of English Language and Culture, 1993).

2.1.1 Giving evidence in court

In the trial witnesses and defendants are called to give evidence, that is, they are questioned by the prosecution and by the defense. First, they are examined (direct examination), then they are cross-examined (cross-examination).

Giving evidence in court is constrained by various factors that make questioning in courtroom a highly institutionalized event, and not just a straightforward asking-answering-questions situation. What basically happens is that during courtroom proceedings, evidence is first presented to the court during the 'examination-in-chief' (also direct examination), which is challenged during the subsequent 'cross-examination'. Should misunderstandings arise under cross-examination, the examining counsel may then choose to 'redirect' the witness (= re-examination). The processes of

examination and re-examination are performed by the same counsel and must adhere to same rules of questioning. After the prosecution has presented its case, then the defense may call its own witnesses to present an alternative interpretation of the facts. Tiersma (1993: 119, in Luchjenbroers 1997) explains that each side calls witnesses to present its case and questions them during direct examination to establish its position, while the opposing counsel during cross-examination then sets out to discredit that position or the witness's credibility. It is not up to the defense to replace the prosecution's story with another version; instead they only need to create doubt in its truth, i.e., the burden of proof rests with the prosecution (Lakoff, 1985: 99, in Luchjenbroers 1997). This procedure is regulated by legal rules which determine what to ask and how to put questions to the witnesses. Several lawyer-trainee manuals bring comprehensive instructions on how to proceed the questioning of witnesses in court.

Unlike everyday situations, court proceedings are highly ritualized and one has to learn not only the rules about questioning cited above, but also the ones which regulate personal attitude in court. The rules include the Rules of Evidence and Procedure, as well as the code of conduct which governs the manner in which counsels present evidence. This automatically excludes witness, defendants and jury from participating actively in the event.

2.1.2 The British Adversarial System vs the Inquisitorial System

The British court system follows the Adversarial System that is also used in the United States of America and Australia, in contrast with the inquisitorial one used in the rest of the European continent. By mentioning the two systems, my main objective is to point out some of the basic differences between them. I do not want, however, to discuss how

both systems operate; rather I will focus my discussion on the British system, in order to better characterize my data.

In both the adversarial and inquisitorial systems, the opposing counsels are charged with fighting for their clients; the difference in the systems stems from the role of the judge. In an inquisitorial system, the judge may inquire into the presentation of the case and its underlying facts. This gives the judge the ability to control the case. The counsels in an inquisitorial system present the facts of a case in the light most favorable to their clients, but they are not permitted to withhold facts that are material to a case.

Maley (1994: 33) quotes Devlin, an English judge, in comparing the common-law adversarial system with the European 'inquisitorial' system:

The essential difference between the two systems - there are many incidental ones - is apparent from their names: the one is a trial of strength and the other is an inquiry. The question of the first is: are the shoulders of the party on whom is laid the burden of proof, the plaintiff or the prosecution as the case may be, strong enough to carry it and discharge it? In the second the question is: what is the truth of the matter. In the first the judge and jury are arbiters: they do not pose questions and seek answers; they weigh such material as is put before them, but they have no responsibility for seeing that it is complete. In the second the judge is in charge of the enquiry from the start; he will of course permit the parties to make out their cases and may rely on them do so, but it is for him to say what he wants to know.

(Devlin 1979: 54)

Maley (1994) argues that if the common law trial is a trial of strength, comparing it to a battle, it is then a battle fought with words. According to Devlin (1979: 54, in Maley 1994), 'the oral trial is the centrepiece of the adversary system'. This is one of the differences between the two systems. This difference is crucial to understand what happens in the adversarial trials. While in the adversarial systems a man is on trial, in the inquisitorial ones it is a dossier (Bell, 1993).

Whereas in the inquisitorial system it is the judge who asks questions, in the adversarial one the facts are elicited by counsel questioning the defendant, plaintiff and/or the witnesses. Defendants, plaintiffs and witnesses are not allowed to volunteer information and are constrained to answer questions only. In this questioning the counsel

and witnesses speak directly to each other. However, they do not speak exclusively to each other. As Drew (1985) says 'the jury is the non-interactive participant, the indirect but crucially important target of the exchange of meanings'.

The adversarial system concentrates very much on the trial itself. It means that the verdict will depend very much on the evidence given by witnesses, on the skill and persuasive abilities of lawyers and on how the witnesses perform in the witness box. For that reason the truth of facts may be deviated. In criminal cases, the dueling parties are generally the Crown (for the prosecution) and the accused. According to Stone (1988:04):

the adversarial system of court procedure consists of a conflict between the prosecution and the defense, unlike a state-directed enquiry into facts. The parties decide what evidence to collect, present, agree or dispute. The court's role is limited to judgment. The advocate's partiality contributes to impartial justice. The Bar and Bench cooperate to this end.

In the adversarial system, the opposing counsels have primary responsibility for controlling the development and presentation of the lawsuit. The judge acts as a referee, seeing that the rules of civil procedure are followed. The counsels may not lie but have no duty to volunteer facts that do not support their client's case. It is expected that each counsel, through discovery and courtroom confrontation, will reveal the facts concealed by the opposing side. In many cases, truth becomes secondary to the theatre presented by an effective, well-financed advocate.

The British system of justice depends very much on finding truth through the courtroom testimony of witnesses. As said previously, the testimony is highly constrained by the rules of evidence and by the counsel's efforts to present only the material that is supportive to their cases and detrimental to that of their opposition. Witnesses are asked to present either facts or opinions. Most witnesses are fact witnesses; they have personal knowledge of either the incident or the persons involved. Anyone may testify as to facts;

only an expert may present opinions. Fact witnesses are usually laypersons who have little experience in the courtroom. The constraints found in the courtroom setting can be frustrating to witnesses who often come away from a trial or deposition with the feeling that neither side wanted to hear the truth. Trials are partly personality contests, and the jury's sympathy for one or other side of the story is an important determinant of their verdict.

One of the rules of evidence in the adversarial system is that the presentation of any evidence should be done verbally; otherwise it is not admissible. The only evidence that is admissible is that which can be orally attested in court. For only when a witness can be called to testify about some piece of evidence can the opposing side have the opportunity to test the veracity and relevance of the evidence (Drew, 1992: 472). Furthermore, these rules regulate the oral proceedings, in that they 'stipulate what must be said, what may be said and of course by whom and in what order' (Maley and Fahey, 1991: 3, in Maley 1994).

Parallel to the idea that a trial can be compared to a battle or a game where there should be a winner, there is also the idea that in a trial a story is constructed. According to Maley (1994: 34), in a criminal trial a jury interprets the evidence presented to it from the opposing sides and constructs a story. It is important to mention here that it is the prosecution who has to prove that the defendant is guilty (the 'burden of proof' lies with the prosecution). The defense counsel should not construct an alternative version to the prosecution's story; they may only throw doubt on it, because a decision should be reached 'without reasonable doubt'.

2.1.3 Direct examination, cross-examination and questioning rules

Despite the fact that legal discourse is highly specialised and distinctive, courtroom discourse is a kind of legal discourse which resembles everyday speech, in the sense that it is spoken and interactive (Maley 1994: 13). The adversarial system ensures that different stages which structures the proceedings are followed.

In criminal trials advocates either prosecute or defend a person charged with a crime. They have to convince the jury (nonspeaking participant) that their side of the story is the correct one. Evidentiary rules divide trials in two sections, that of the prosecution (which is presented first) and that of the defense (which follows). Each witness is first examined by the counsel calling her/him - direct examination, and then by the opposing counsel - cross-examination. Cross examination is an adversary sequence and cross-examiners are prohibited from eliciting testimony concerning topics not raised during direct examination, or the ones which do not flow naturally from topics that were raised. In summary, when the prosecutor presents her/his case s/he questions friendly witnesses in direct examination and the defense counsel questions potentially hostile witnesses in the context of cross-examination. During the second stage of the trial the prosecutor becomes the cross-examiner and the defense attorney engages in direct examination.

The goals of direct and cross-examination are distinct. The former affords each side an opportunity to present its version of the facts of the case, whereas the aim of the latter is to attack an opponent's version of the facts.

In legal handbooks for inexperienced trial lawyers (Evans, 1995; Du Cann, 1993; Munkman, 1991; Stone, 1995; Wellman, 1979) some advice and suggestions concerning

questioning procedure are put as golden rules to be followed in order for the counsel to be successful. Some of them are:

1. Know your objectives with every witness.
2. You should never ask a question to which you do not know the answer.
3. Do not introduce any opinion that you may hold as to the value of the evidence.
4. Do not expect help from the witness.
5. Try to conduct your examination in such a way as to make them sound as conversational as you can.
6. Formulate questions as questions (if you need to make a short statement before asking the question, keep it short).
7. Ask your questions in a spirit of inquiry.
8. Stick to one line question as much as you can.
9. Avoid the multiple question.
10. Be brief and precise.

Some of these pieces of advice are vital to understand the questioning event in court. The most important one is perhaps that a good counsel never asks a question to which s/he does not know the answer. It illustrates the point that a question in court is not used 'to seek information on a specific point' (Quirk et al, 1985). This concept and specific use of question in court is the core of my study and will be discussed in my analysis of the data. The other rules mentioned above, as well as the ones mentioned under direct and cross-examination will also be addressed as I proceed to the analysis of the data.

Adding to those general rules just mentioned, there are three Mandatory Rules, which are part of Rules of Evidence (Evans, 1995: 53). They are:

1. Lay the foundation for any comments you intend to make (You are not allowed to comment on matters which have not been touched upon during the evidence).
2. Never, when acting as an advocate, give or appear to give evidence yourself. (You are permitted to preface some of your questions with an explanation so as to shorten them or so as to clarify their meaning).
3. The advocate's opinion is not evidence and it is certainly not relevant.

These rules differ from the ones mentioned before in that they are not just suggestions given to lawyers starting their trial career. They are part of the Rules of

Evidence, which regulate when and how participants may speak and what they may talk about, that is, 'they stipulate what must be said, what may be said, by whom and in what order' (Maley and Fahey, in Maley 1994: 33). These rules are the basis for my study and they will be discussed and referred to alongside the analysis of the data.

2.1.3.1 Direct Examination

As stated in the introduction, the aims of questioning in direct examination differ greatly from ones in cross-examination. Mauet (1978: 85) says that

'Direct examination should elicit from the witness, in a clear and logical progression, the observations and activities of the witness so that each of the jurors understands, accepts and remembers his testimony. Direct examination lets the witness be the centre of attention. The lawyer should conduct the examination so that he does not distract and detract from the witness.'

In direct examination the counsel works cooperatively with the witness to bring uncontroversial information into the discourse. Some suggestions are that in direct examination counsels do the following (Evans, 1995; Stone, 1995; Munkman, 1991; Wellman, 1979; Du Cann, 1993):

1. Let the witness give conclusive answers.
2. Do not use leading questions.
3. Organize testimony in order to present events progressively and ask specific questions.
4. Avoid interrupting a witness.
5. The factual content of your witness's evidence must not come from you.

These suggestions reflect what should happen in direct examination. Suggestion number three (3), specially, illustrates the fundamental pattern of questioning in direct examination and is discussed in the analysis of the data. Even though suggestion number five (5) is also part of the Rules of Evidence and should be followed as such, that is, as a rule, in the data analysed this is not always the case. It will be argued that, sometimes through questions appropriately formulated, the defense counsel words the evidence and

has the defendant only agree or not with that. Moreover, it will be seen that, many times, the evidence verbalised by the defendant is just a result of a previously rehearsed performance. It means the defendant is not telling his own story, but that the evidence verbalised is part of the defense's version of the story - the defense's case.

2.1.3.2 Cross-examination

Cross-examination, contrary to direct examination, is a conflictive speech event and trial manuals (Evans, 1995; Stone, 1995; Du Cann, 1993; Wellman, 1979; Munkman, 1991) suggest the following strategies for conducting cross-examination:

1. Impeach the convictions, interests or credibility of evidence or witness by confronting her/him with previous statements.
2. Test accuracy of observation or recollection using demonstrations.
3. Restrict the witness in providing explanations.
4. State the facts, have the witness agree to them.
5. Use leading questions.
6. Project a take-charge, confident attitude while keeping control of witness.

Basically in cross-examination questions seek to show contradictions, inconsistencies and introduce probabilities that make the audience reconsider the weight given to the witness's testimony. In fact, counsels use a vast number of ways of giving different information, seeking to elicit mostly monosyllabic responses from the witness.

Munkman (1991) says that it is widely known that the objective of cross-examination is to destroy, to weaken, to elicit fresh evidence or to undermine evidence presented. However, the difficult question is how to do it. He then states that there are four techniques which can be used when questioning a witness/defendant, namely, the technique of confrontation, probing, insinuation and undermining.

Confrontation consists of confronting the witness with a great mass of damaging facts which s/he cannot deny and which are inconsistent with her/his evidence. It is a

destructive technique, but when it fails to destroy it may still succeed in weakening the testimony.

Probing consists of inquiring thoroughly into the details of the story to discover flaws. It may be used either to weaken or destroy the opposing evidence, or open up a lead to something new.

Insinuation in Munkman's (Ibid.) view is the most important of the three in everyday practice. It is the building-up of a different version of the evidence-in-chief, by bringing out new facts and possibilities, so that, while helping to establish a positive case in one's own favour, at the same time it weakens the evidence-in-chief. Insinuation may take the form of leading the witness on little by little. There are two main forms of the technique, gentle insinuation and firm insinuation. In both forms there is usually a gradual approach towards the important admissions. In one form (gentle insinuation) the witness is led, while in the other (firm insinuation) s/he is driven by the facts. Firm insinuation nearly always needs the support of strong material, whereas gentle insinuation can be conducted with or without material. When using firm insinuation, facts must be available to support the questions: the cross-examiner must be ready to use confrontation to destroy the witness's denials.

The object of the technique of undermining is not to break down the evidence by inquiring into the facts, but to take away the foundations of the evidence by showing that either the witness does not know what s/he is talking about or if s/he does know the truth, s/he cannot be trusted to tell it. The techniques may be closely associated together or there may be a swift transition from one form to another.

Rokosz (1988) states that what makes cross-examination a special case of institutionalised language-use is not the use of technical words or legal jargon. This speech situation differs, even from conversational arguments, in the way facts are

constantly recycled within the discourse to support the questioner's claim. A cross-examiner demands explicitness, completeness, and accuracy of information from the witness, but whatever the witness says is recycled along with other information as the discourse progresses. Recycling information occurs with the help of certain pragmatic devices: sentence adverbs (certainly, in fact, undoubtedly), reformulation and repetition phrases e.g. What you're saying then is..., In other words..., You told us earlier that..., You admitted that..., If/ Then ... constructions, and various other constructions (substitution, asking for definitions) which indicate a relationship between the speaker and the information currently introduced.

It is worth noting that the Gricean cooperative principle can not be applied equally to courtroom questioning: what is true for examination-in-chief is not for cross-examination. During examination-in-chief the counsel generally (I say 'generally' because, since the onus is on the prosecution to prove guilt, sometimes the prosecution counsel may have to call hostile witnesses) questions her/his own witness, which means both counsel and witness are working on the same objective. Questions are put so that the evidence fits into a previously prepared story. The same does not happen in cross-examination. The objective of the cross-examiner is to destroy or weaken the opponent's evidence or story.

In this chapter I presented and discussed the court procedures and the rules of questioning concerning both direct and cross-examination in order to better contextualise my data. I proceed now to the next chapter where I will introduce the data and the methodology used in this study.

CHAPTER 3

Methodological Procedures

“Almost every criminal trial is essentially a conflict between two stories about a human event, not a legal debate. The story should seem vivid and real and should not resemble a business or police report. For an advocate, her/his witnesses are the principal medium by which s/he tells her/his story”.

(Stone, 1995:120)

3.1 Data

In this chapter I will introduce the data of my study and present the criteria used for 1) identifying the linguistic forms in the data which do questioning; and 2) classifying the functional questions in the data on the basis of their morphosyntactic form as interrogative, declarative, imperative or elliptical (nonclausal).

The corpus of this study consists of an official court transcript of the interview with a defendant in direct and cross-examination in a criminal trial in the Crown Court in England. A copy of the official transcript used in this study was generously supplied by Sue Blackwell from University of Birmingham.²³

Apart from the thorough investigation of the transcript, the interpretation of the data also takes into account observations made of different trials in the Crown Court and the Magistrates' Court in Birmingham, England. During the time I was attending the trials I had the opportunity to have an informal talk with one judge, and because I was accompanying a probation officer (Wyn Thomas), I also had the opportunity to talk to

² I would like to thank David Jessel from Just Television, in London, for providing me with copies of official transcripts of other criminal cases.

³ When collecting the data I asked if I had to omit the names of people involved in the case, that is, the names in the transcripts and I was told that, since the case is already of public domain, omitting names would not be necessary.

other probation officers (Carolyn Brown and Diana Goss), both in the Crown Court and the Magistrates' Court; and to some defendants, who were under probation.

In this study I analyse the evidence of a defendant taken on Thursday 1st December and Friday 2nd December, 1988. The case was held in the Queen Elizabeth II Law Courts, Crown Court in Birmingham, in 1988. It was the Crown versus two defendants. However, I analysed the evidence of just one of the defendants. The copy I have is from the transcript of the shorthand notes of Marten Walsh Cherer Ltd. and consists of 51 pages. From page 1 to 24 the defendant is examined by the defense counsel and from page 25 to 51 he is cross-examined by the prosecution counsel. The total of 611 questions was analysed: 258 in direct examination; and 354 in cross-examination.⁴

In this case the defendant is accused of participating in a series of robberies, the last one being an armed attempted robbery in which a shop keeper was shot. He is accused of co-participation together with another defendant in all the robberies. It seems that every time a robbery took place he was not at work. The prosecution also allege that he rents cars to use them in the robberies under false plates and that he possesses jewellery identical to the ones lost in the robberies. The defendant claims that interviews, documents and his signature were forged by the police. He is questioned about what happened while he was held in police custody, as well as about the facts connected with the robberies - the cars, the jewellery, his work shifts, etc. He has a long record of previous convictions, starting when he was about 16 years old. He admits he had committed crimes before, but he claims he had become an honest man and that he did not participate in the robberies. According to his own definition, he is a "white-black man". In the cross-examination he is described as a West Indian with a light skin. He was

⁴ In the analysis, examples will be identified by the number of the page they are in the transcript (appendix).

born in 1966 and was about 22 years old, at the time of the trial. He lived in Perry Barr area, in Birmingham, England. He lived with a lady and had a son. Before being arrested, he used to work as a driver for Ring and Ride, a company in Birmingham.⁵

The study concerns solely a specific case in the British legal system, and any findings are not to be taken as generalisations applied to all legal systems.

3.2 Methodology

My main criteria was to classify any utterance which had the function of eliciting a response. It included, therefore, interrogative, declarative, elliptical (nonclausal) forms, as well as imperative forms, since they all have the function of eliciting a response in the particular context of courtroom discourse. My data did not show any exclamative forms.

My study is based on the formal classification of sentence types proposed by Quirk et al. (1985). They identify four major syntactic types which are normally associated with the four major semantic clause types.

Syntactic Clause Type	Semantic Type
Declaratives	Statements
Interrogatives	Questions
Imperatives	Directives
Exclamatives	Exclamations

Although direct association between syntactic and semantic class is the norm, the two classes do not always match. In other words, there is not a one-to-one correlation between syntactic clause type and the function it serves in the discourse.

Questions can be realized by a declarative, interrogative, imperative or moodless structure. On the other hand, syntactically interrogative forms can serve functions other

⁵ The choice of the pronoun *he* throughout this study is not unthinkingly androcentric - the defendant, judge and counsels were all male. However, when I refer to counsels, witnesses and defendants in general the pronouns *he* and *she* will be used.

than doing questioning, for example, they can communicate requests, commands and/or invitations (Sinclair and Coulthard, 1975).

3.2.1 Selectional Criteria for Utterances Doing Questioning

The criteria for selecting forms in this study are not only morphosyntactic (inverted word order/presence of a wh-word), rather they include linguistic utterances of any syntactic form which can be interpreted as doing questioning in the interaction. There are, of course, ambiguous cases in which doing questioning may be only a possible interpretation.

An examination of the participants' behaviour to see if they considered the utterance to be doing questioning played a crucial part in deciding the classification of utterances in this study. I used the following questions based on Weber (1993: 22):

- How questioners construct utterances so that recipients recognize them as doing questioning;
- How they respond if their questions are ignored;
- How recipients construct answers (was the recipient's response constructed to demonstrate that it was responding to a question?)
- How they evade answering

I also examined each counsel turn by asking the following analytical questions, as proposed by Smith (1995):

1. Why did he say that at that point in the interaction?
2. Why did he use those particular words - what would be the effect of a different construction?
3. If I had uttered those words what sort of response would I expect?
4. If the utterance were addressed to me what sort of response could I give?
5. Were there the morphosyntactic characteristics of a question: lexical cues; inversion; a wh-word; clausal or word tags; and incomplete proposition?

3.2.2 Organization of the Data

Utterances in the data which were identified as doing questioning were first classified either as constituting or not constituting a syntactic clause. Weber (1993) states that a subject and a complete finite verb phrase are the traditional criteria for clause structure, with the exception of imperative clauses without a subject. Those utterances which fit these criteria were further classified by clause type:

- 1) Interrogative,
- 2) Declarative,
- 3) Imperative, and
- 4) Elliptical (non-clausal).

Questions were coded to reflect each of the three major question classes (yes/no, wh-questions, and declarative questions), and question subtypes (i.e. tag, alternative, and elliptical questions), following Quirk et al. (1985). The value 'declarative' is based on the sentence form (as the source material did not include intonational information and does not distinguish between declarative questions and statements).

3.2.2.1 Interrogative Clauses

In English, syntactically interrogative clauses are signaled by word order and morphology. Following Quirk et al. (1985) I define interrogatives as those clauses marked in one of two ways:

- *yes-no* interrogatives: the operator is placed in front of the subject, and expects affirmation or negation as the reply.
- *wh*-interrogatives: the interrogative *wh*-element is positioned initially, and expects a reply from an open range of replies.

Additionally, clauses with:

- *wh*-embedded: the *wh*-clause is preceded by clauses such as '*Can you tell me*' '*Tell me*' '*Do/can you remember*'.

- alternative (wh- and yes/no questions):
 - *yes/no* alternative: the operator is placed in front of the subject and expects as the reply one of two or more options presented in the question.
 - *wh*-alternative: a *wh*-question followed by an elliptical alternative *yes/no* question.

A *wh*-alternative might be taken as a reduced version of '*Which ice-cream would you like? Would you like Chocolate, Vanilla or Strawberry?*' (Quirk et al, 1985). In this study, I term alternative *wh*- question as 'alternative *wh*-question (reduced)'. The reason for that is that they are neither characterised as *wh*-questions, in which the addressee can choose a reply from a range of options; nor as alternative *wh*-question, in which the addressee can choose one from two or more options. An alternative *wh*-question (reduced), in my data, restricts the options to just one.

E.g. What was your intention when you came back, *to get in the car and report to work?* (page 28)

Examples from the data:

- Yes/No questions: Did you commit the robbery?
Were you searched?
Can you not remember the ladies?
- Wh-questions: Where did you leave the car?
What did you do then?
How long had you had that job?
Why could you not pick her up?
Can you tell us what happened? (wh-embedded)
Have you any idea why they should pick on you? (wh-embedded)
- Alternative questions:
Did you go straight to bed or did you have a glass of something?
When was it that you got it, early summer? (wh-reduced)

The interrogative clauses are traditionally the most easily identified as questions, since they are marked either by the inverted position of the operator (in front of the subject) or by the *wh*-word in the initial position. Now I proceed to the definition of declarative clauses.

3.2.2.2 Declarative Clauses

I define declarative clauses as those clauses in which:

- The subject is present and generally precedes the verb.

In my selection of declarative forms as doing questioning, I rely on the theory of turn-taking (adjacency pairs) as essential in understanding courtroom interaction. As the name courtroom questioning suggests, the whole interaction between counsel and defendant/witness is done through questions and answers and every witness assumes that any utterance produced by a counsel is a form of questioning and consequently expects a reply (I viewed every counsel turn as a possible question).

Additionally, I also analysed clauses with:

- Prior “how come” and “how about” + declarative clause
- Tag questions (declarative clauses with tags)

Declarative questions which are formed by adding a particle or a word at the end of a clause were also considered. Following Quirk et al. (1985: 814) I call these invariant tags because they have the same form regardless of the form of the declarative clause. Variant tags are those which form varies depending on the prior assertion and may be affirmative or negative (Quirk et al. 1985: 810-814). When the tag keeps the same polarity as the assertion, it will be referred to as copy tag. I also included in the analysis two other types of tags, which I refer to as mid-placed tags and projected tags. According to Quirk et al. (1985: 811), sometimes when the sentence is long, we can find tags placed in the middle of the sentence. In this case the tag is inserted in the middle of the constituent: *‘It’s true, isn’t it, that you are ...’*. I term *clause tag* and *sentential tag* just for the sake of clarity, since the terms *clause* and *sentence* are taken as synonyms in this study. Both variant and invariant tags share the basic structure: declarative + tag.

Tags

- invariant tags - word tags (right?)
- sentential tags (Is that right?)

- Variant tags - clause tags (isn't it? / is it? / does he? / doesn't he?)
- copy tags (He bought the car, did he?)

Examples from the data:**- Declarative questions:**

You were put in there?
 That is the Ring -----?
 You gave the police the address.

- Tag questions:

But they did not hire that Rover did they?
 He took the numbers HSS 171V, right?
 That is your case, is it not?
 It is a grave misfortune, is it not, that you are ...?
 You did that shift did you?

3.2.2.3 Imperative clauses

In this study I considered imperative clauses that:

- Generally have no subject, have either a main verb in the base form or an auxiliary in the base form followed by the appropriate form of the main verb (Quirk et al., 1985).

Additionally:

- Forms initiated by *Let us*.
- Forms (statements) which include the modal '*must*', the clause '*I want to*' and the expression '*never mind*'.

Examples from the data:

- Tell me the truth.
- Let us just go back now to pick up the story.
- You must answer the question.
- Just answer me the question please.
- I want to know what it was.
- Never mind protesting your innocence for the moment.

Imperative clauses are not traditionally considered as doing questioning, since they demand a reply instead of eliciting it (Stenström, 1984). Nevertheless, in my data, considering the question-answer format of courtroom questioning, they do serve to elicit a response.

3.2.2.4 Elliptical (nonclausal) forms

I considered elliptical forms the ones with:

- The absence of both a subject and a complete finite verb phrase. They are realized by words, wh-words or phrases.

Examples from the data:

- For what purpose?
- In the evening?
- To?
- Then what?

In the context of the courtroom, these elliptical forms function as full questions in that they serve to elicit more detailed information. In the data, they are usually used to clarify specific points in the narrative or to elicit extended information about the facts.

3.2.2.5 Complex questions

I considered as complex questions those forms when:

- One question is immediately followed by another question, being the first one more general, and the second one more specific.

Exemple from the data:

- How would you describe that trip, the visit to the friend, were you going to see him for a chat?

3.2.3 Data collecting and analysis

For this study I selected one case where a defendant is being questioned about his possible involvement in a series of robberies. The data comprises direct examination by the defense and cross-examination by the prosecution. I selected this case because I would like to compare the type of questions used in direct examination with the ones used in cross-examination.

After collecting the data, I went through the transcript on a line by line basis, examining each counsel turn and asking myself the analytical questions proposed in section 3.2.1 in order to identify the utterances doing questioning. Apart from interrogative forms, I looked for more subtle indications of questions based on utterance function. Due to the fact that the exchange between counsel and witness is done through the format of question-answer, I viewed each counsel's turn as a possible question, in that it elicits a response.

Once I had identified the questions, I classified them according to conventional grammatical terms for sentence types: interrogative, declarative and imperative. I classified the utterances which were not full clauses as elliptical. I also classified constructions such as '*Can you tell me*' as *wh*-embedded.

Alongside determining the questions' forms, I began considering how each question functioned within the remit of eliciting a response in both direct and cross-examination. Having identified and classified the questions I proceeded to the analysis and discussion of their form and function in the discourse.

Having presented the data and established the methodology used in the analysis of the data, I proceed now to the next chapter, where I will present the analysis and discussion of the results.

CHAPTER 4

Analysis and Discussion of Results

“You should never ask a question
to which you do not know the answer.”
(Evans, 1995:118)

4.1 The format of questions/answers in direct and cross-examination

I will start discussing the findings by comparing the format of questions/answers in direct and cross-examination. According to law manuals (Evans, 1995; Stone, 1995; Munkman, 1991; Du Cann, 1993; Wellman, 1979) and based on the Rules of Evidence, some of the main important rules for courtroom proceedings are brevity, clarity and simplicity. The counsel may preface her/his questions with some explanations so as to shorten them or clarify their meaning. In one of the law manuals (Evans, 1995: 116), the writer goes as far as saying that questions both in direct and cross-examination should not take more than one line of transcript each.

In comparing direct and cross-examination transcript layout we can see that in direct examination most questions are short or very short and, in most cases answers are quite lengthy.

Q. Where did you get them?

A. Well, I said in my interview to the police I bought one from an Indian shop in the jewellery quarter. To be honest, the ring I bought from the jewellery quarter was for my girlfriend, it was a half sovereign. The ring that I bought was from a jewellery shop, I think that is called The Jewellery Box, in Erdington High Street. That one I have I got from Philip Baker.

(page 10)

In spite of Evans' advice, in cross-examination the opposite is verified: questions are long and answers are short.

Q. Well, it is one brick after another. Let us go, please, to the 12th November, to Vyse Street in Hockley. We know the Rover car was being used on that crime because Sharpe has told us so. He has also told us that you were one half of the team, being the driver. Now, Mrs Wendy Barker had her statement read to the jury and - they may not recall the detail of it - but she told them that at around midday on the 9th November two men came to the shop and she described them, "A West Indian male with a dark complexion, another West Indian youth with a light skin, almost like a half caste".

A. Yes.

(page 33)

Questions in cross-examination are almost always prefaced with very long explanations or affirmations and answers are restricted to the basic yes/no answer or short answers.

Q. Let us just think about that. That car, the true Rover 213, bearing that registration, was kept at a garage called the Sandy Cliff garage in Aldridge Road in Perry Barr from the 12th October onwards. *Is it a mere coincidence that you were a customer at the Sandy Cliff garage?*

A. It is not so much a coincidence, sir, I have hired cars from several places in town and in Perry Barr, I am not denying that.

(page 30)

When questions are prefaced in direct examination, the preface is usually very short and has the aim of contextualising the question and mentioning evidence which will be dealt with in cross-examination.

Q. *The day of the Wirley Birch robbery it is said by a young seikh who gave evidence that he had seen a man, two men, hanging about near the post office at Wirley Birch in the afternoon prior to the robbery. Was either of those two men you?*

A. No sir, they was not.

(page 04)

These examples show that both in direct and cross-examination, even though information has to come from the witness, counsels do word the evidence and the witness is usually left with the option of having to agree or not with what was said.

In direct examination questions in general have the aim of mentioning evidence so that it gives the defendant the opportunity to explain the matter. Stone (1988: 81) argues that since an advocate's evidence-in-chief 'will itself become a target for cross-examination, s/he should anticipate the attack which will be made on it, and should rob it of its effect so far as s/he can'. The advocate's insight into her/his opponent's theory of the case will help her/him to anticipate and, if possible, to frustrate damaging lines of cross-examination.

Another reason for questions being prefaced is that there is a rule that says that the factual content of the witness's evidence must not come from the counsel (Evans, 1995). The Rules of Evidence constrain the introduction of new information. *New* (in contrast to *given*) information in the trial context refers to topics that are new to the questioning sequence of a particular witness (Woodbury, 1984). The cross-examiner cannot introduce new information, as evidentiary rules assign the task of introducing new information to the witness. A question that introduces a new topic or begins a new section of text should not suggest to the listener (not to the judge and jury, I propose) that the speaker already knows the information about which s/he is asking the question (Woodbury, 1984).

Lawyers have difficulty in relation to the production of new information. In direct examination the lawyer's task is to elicit the story from her/his witnesses without seeming to suggest it to them (rule prohibiting 'leading' questions addressed to friendly witnesses) or without seeming to testify her/himself (rule against 'presupposing facts that are not in evidence'). In cross-examination, the lawyer's task is to challenge the opponent's version by eliciting testimony that will contradict or weaken it. To accomplish these tasks lawyers must find ways of controlling the evidence that is produced during the course of the trial. I believe that together with other pragmatic

properties, the use of different types of questions ensures that control is exercised not only over the utterances of witnesses, but also over the understanding of the jury.

4.2 The use of questions in direct and cross-examination

In direct examination the counsel starts his questioning in chronological sequence. The examination-in-chief has to be done in chronological order in describing the incidents and actions in issue so that the jury can follow the story and understand fully when, where, etc. the events happened. Direct examination starts with questions about the defendant's name, address, profession and so on. These types of questions are defined by Gudjonsson (1996) as identification types. They are questions requiring the identification of person, place, group, time, etc. The questioning then goes on to factual questions about the events of the case. The questioning is done in a friendly manner. One piece of advice which is given to lawyers starting a trial career is to try to conduct the examinations in such a way as to make them sound as conversational as they can. Evans (1995: 120) goes as far as to say that the counsel should 'listen to the answers with quiet interest'. The following example is an exaggeration of this. The line of questioning is about a car the defendant had bought and which is alleged to be the car used in one of the robberies. After the defendant had described it, the counsel makes a comment about it:

- Q. When did you see the Cortina?
 A. I think it was within a day or two I saw it, that I bought it. I think he impressed me, it was a nice looking car, I had not really got a car like that before.
 Q. *We have heard it said they are quite sought after.*
 A. Yes. They are nice cars, yes.

(page 08)

In cross-examination the sequence is different and the counsel does not need to follow any chronological sequence. Since the aim of cross-examination is to attack the opponent's story, the counsel can pick up any point in the narrative and start her/his

questions from there. Her/his selection of specific points/events in the story is based on the fact that there may be incongruities, divergence or weakness in the witness's evidence that should be addressed.

Since the aim of cross-examining a witness is to damage in a way her/his evidence and throw doubt on her/his version of the story, the cross-examiner, in the case under analysis, not only constructs questions with an accusatorial function but also, in many examples, prefaces his questions with assumptions about the case. One example of this is the following:

- Q. Right, well, there is the picture the jury have got. You had been working with the man since early November, you knew nothing about any crimes he was committing, you did not learn that he was suspected of crime until 30th of November?
- A. Not really, no sir.

(page 26)

Despite the fact that it is not the scope of this study to analyse the answers given by the defendant, it is worthwhile mentioning that in this particular case the defendant was extremely skillful in his answers, in that he managed to avoid confirming or denying the assumptions of the questions in an attempt to avoid any damage to his version of the case. He also managed to qualify his answers:

- Q. Have you not been persuaded by the evidence, look at the picture of the Cortina, would you, you will find it at exhibit 29. There it is, the brown Cortina car with Mr Hand, do you remember the young man who chased it in his Mini, with his baby on the back seat?
- A. I do not remember being chased, sir, because it was not me who was driving.

(page 39)

- Q. The prosecution say you hired that car intending to keep it and use it under false plates, do you understand?
- A. I understand but that is not true, sir.

(page 27)

The presuppositions embedded in the questions are skillfully addressed and denied by the defendant. By qualifying his answers, he justifies, in the first example, why he does not remember being chased, and, in the second example, he makes clear that, even though he understands the assertion made by the prosecution counsel, it is not the truth.

The table below shows how different types of questions were distributed in the data. A total of 611 utterances was classified in both direct and cross-examination:

	Direct examination (258)		Cross-examination (353)	
1. Interrogative forms	Total: 148 (57,5%)		Total: 69 (19,6%)	
Wh-questions:	Subtotal: 65 (25,2%)		Subtotal: 28 (7,9%)	
1. Wh-questions	55	21,3%	23	6,5%
2. Wh-embedded	08	3,1%	03	0,8%
3. Negative wh-questions	02	0,8%	02	0,6%
Yes/No questions:	Subtotal: 77 (30,0%)		Subtotal: 40 (11,4%)	
1. Positive Y/N questions	77	30,0%	32	9,1%
2. Negative Y/N questions	--	---	08	2,3%
Alternative questions	Subtotal: 06 (2,3%)		Subtotal: 01 (0,3%)	
1. Alternative Y/N	04	1,5%	--	---
2. Alternative Wh-reduced	02	0,8%	01	0,3%
2. Declarative forms	Total: 88 (34,1%)		Total: 245 (69,4%)	
Declaratives	Subtotal: 68 (26,3%)		Subtotal: 180 (50,9%)	
1. With no question mark	44	17,0%	152	43,0%
2. With question mark	24	9,3%	27	7,6%
3. Declarative wh-questions	--	---	01	0,3%
Declarative + tag question	Subtotal: 20 (7,8%)		Subtotal: 65 (18,5%)	
1. Variant clause tag	02	0,8%	35	10,0%
2. Variant copy tag	02	0,8%	02	0,6%
3. Mid-placed tag	05	1,9%	12	3,4%
4. Invariant word tag	--	---	02	0,6%
5. Invariant sentential tag	08	3,1%	11	3,1%
6. Projected tag	03	1,2%	03	0,8%
3. Imperative forms	06	2,3%	16	4,5%
4. Elliptical (nonclausal)	13	5,0%	18	5,1%
5. Complex questions	03	1,1%	05	1,4%

Table 1: Forms doing questioning found in the data.

Before entering the analysis proper, it is essential that we have a general view of how questions types are distributed in the data.

By comparing the numbers shown in the table above, we can see that while in direct examination the question forms are proportionally distributed among the main categories, that is, wh-, yes/no and declarative questions; in cross-examination there is predominance of declaratives (69,4% of the forms found in cross-examination). It confirms the assumption that in cross-examination questions asked by counsels do not seek information only. The enormous amount of declarative forms suggests that the conduct of cross-examination is highly conducive, that is, the advocate asserts the facts, and the witness agrees or disagrees with them. The prosecution counsel, in this analysis, uses declarative forms to confront ideas, state alternative versions of the case and make accusations. In Stone's (1988: 114) words 'to confront one point of view with another in cross-examination is the heart of the adversarial process'. Only 69 out of 353 forms were interrogative in cross-examination, and most of these forms were used to probe into details of the opponent's version of the story, looking for inconsistencies. It is important to point out that the cross-examination analysed in this study is conducted by the prosecution and the results may differ from when cross-examination is conducted by the defense. Because proving guilt lies with the prosecution, prosecution counsels may be more forceful when conducting cross-examination. A study about this difference in approach is a suggestion for further research.

The numbers in the table above show that in direct examination only 88 forms are declaratives and that the predominant forms are interrogatives. The objective of direct examination is to let the witnesses tell their own story, that is, evidence should come from the witness (one of the rules of evidence). The counsel asks lots of identification, information and open-ended questions so that the witness has the opportunity to narrate

the story previously prepared (rehearsed). However, and this accounts for the number of declarative forms found in the data (88), despite the fact that in evidence-in-chief the aim is to elicit the relevant facts concerning the issue of the case and that the questioning is done under a supportive mode, control is still exercised in that the counsel has to lead her/his witness in the narrative of the facts. When the witness fails to address an important point, the counsel interferes by stating the facts her/himself and having the witness confirm them. The following example shows it:

Q. *It may be helpful if we keep our eye on the custody record but apparently it was ten minutes to two when you arrived at the police station.*

A. To be honest, sir, I did not realise the time, I was thinking about my girlfriend and my son and what had just happened to me.

(page 12)

It is important to refer to numbers when comparing the types of questions used in direct and cross-examination. However, numbers alone do not explain the courtroom discourse employed in both modes. What we have to do is to analyse and discuss how all these types of questions are used within and across each mode. The same type of questions may have different functions depending on whether they are being used in direct or in cross-examination.

For this reason I will start my analysis by discussing each type of questions occurred in the data in their context, that is, I will be discussing the uses counsels make of the different types of questions to achieve their objectives. In this discussion I will take into account the form as well as their strategic use (function) in the context.

For the purpose of clarity, I will analyse the data into four main headings: interrogative, declarative, imperative and elliptical. In each heading, first I will discuss the questions in direct examination and then the same types of questions in cross-examination.

4.2.1 The use of interrogative forms

	Direct examination	Cross-examination
1. Interrogative forms	148 (57,5%)	69 (19,5%)
a. Wh-questions	65 (25,2%)	28 (7,9%)
b. Yes-No questions	77 (30,0%)	40 (11,3%)
c. Alternative questions	6 (2,3%)	1 (0,3%)

Table 2. Distribution of interrogative forms in the data.

4.2.1.1 Wh-questions

In my analysis I classified wh-questions in two sub-classes: broad and narrow. According to Woodbury (1984), broad wh-questions are the ones which give the addressee the possibility to expand her/his answer, giving explanations or elaborating more on it, and are realized by the words: *what, why, how*. Narrow wh-questions are the ones which require more specific answers, and are realized by the words: *who, where, when, which*. I included in this class the words *how long (old, often, many)* and *what*, in questions such as 'what is your name?'. When the wh-element operates indirectly in the main clause, as part of another clause element, the wh-element is called a 'pushdown' element (Quirk et al, 1985). Questions with 'pushdown wh-element' - *What side* of the road was he driving on? (= He was driving *on one side* of the road) - were classified either as narrow or broad, depending on the context. Woodbury (Ibid.) points out, however, that the degree of specificity required is 'situation-bound'. Since one of the general requirements in court is that witnesses should be as specific as they can, this distinction between specificity and generality plays an important role in the discourse.

	Direct examination	Cross-examination
a. Wh-question (broad)	20 (7,8%)	16 (4,5%)
b. Wh-question (narrow)	35 (13,5%)	07 (2,0%)
c. Embedded wh-question	08 (3,1%)	03 (0,8%)
d. Negative wh-question	02 (0,8%)	02 (0,6%)

Table 3. Distribution of wh-questions in the data.

Note: Only two occurrences of negative wh-questions were found in the data in each mode, and they will not be discussed in this analysis.

4.2.1.1.1 Broad wh-questions

In direct examination broad wh-questions were regularly used. The use of this type of questions gives the impression that the counsel allows the defendant opportunity for him to produce his own account of the events. The counsel leads his witness along the narrative by prompting him to provide lengthy explanation. By using broad wh-questions, the counsel's aim is to make his witness tell his story.

Q. *What in fact occurred?* (broad)

A. They told me to - his instructions - put your left hand on the door, right hand turn the keys off and so on, until I got out of the car with my hands up. At that time I can remember looking round, seeing my girlfriend and the baby coming out of the flat. They were a bit hysterical. They make me get down on the floor, face down and put the gun to me and that was it.

(page 11)

The use of the adverbial *in fact* above emphasises the idea that what the defendant will tell in court is the truth, contrary to the evidence of other witnesses or what the prosecution alleges to be the truth.

In spite of the fact that **in cross-examination** the prosecution utilized almost the same number of broad wh-questions as the defense counsel, their function in the

discourse differs greatly from the one in direct examination. Broad wh-questions do not exactly function as eliciting lengthy information, rather they are applied when the prosecution looks for specific information. The examples below illustrate this point:

Q. *Why did you lie to the hire company about the reason for your hiring the vehicle?*

A. I did not lie sir.

(page 27)

Q. *What was it that you were afraid of?*

A. Sir, I was not afraid, I had been in the police station a long time, I had questions fired at me non-stop for hours at that period, I just got a bit weared off with the police coming at me all the time.

(page 31)

Q. *What does it say?*

A. "Log book to follow" yes.

(page 41)

Q. *What motive would Sharpe have to injure a man, who the police have framed?*

A. I do not know sir, what motives Sharpe would have.

(page 44)

4.2.1.1.2 Narrow wh-questions

Since it is essential for the sake of the jury that in direct examination a coherent and detailed account of the events is constructed, the elicitation of specific information about the topic introduced is done by the use of narrow wh-questions. Therefore, these types of questions, many times, may prompt objective answers or more qualified ones, as we can see below:

Q. How long had you had that job?

A. About six months.

(page 01)

Q. What day was that?

A. I believe it was a Monday, yes, a Monday.

(page 02)

- Q. Where did you leave the car when you went to do that shift?
 A. Well, I went to work. At dinner time I went to Ladywood to see a friend, I think it was, Morrow Street. I parked the car facing Rushton Street which is across Street West.

(page 03)

When the prosecution counsel makes use of narrow wh-questions in cross-examination his intention is not to keep a coherent narrative. Since the aim of cross examination is to make the witness contradict her/his previous statements, narrow wh-questions are used to have the witness give details of the events so that the counsel can find incongruities. What he sets out to do is to probe the witness, that is, he makes use of the probing technique of interrogation. In this kind of technique the counsel examines and searches inside each point of the narrative to detect faults. Munkman (1991) states that 'the technique of probing consists in searching deeply into the detailed facts of the story as told, so as to detect and expose its inherent weaknesses' (p. 73). The characteristic of probing is to ask questions such as *who*, *where*, *when*, as well as the broad *what* and *why*. If the story is believed to be false, the object may be to draw the witness on until s/he asserts a fact which can be contradicted. This example illustrates that:

- Q. Quite. *How long before your arrest did you buy that ring?*
 A. A month, five or six weeks maybe.
 Q. *It is just a rough nuisance that a fortnight before the theft you happened to buy a ring that was identical to the one that Mrs Downes lost.*
 A. Sir, I do not know about identical, it was my ring, I did not steal it.
 Q. *How much did you pay for it?*
 A. \$70.
 Q. *And where from?*
 A. Phillip Baker or Philip Baker & King, I cannot be precise.
 Q. Philip Baker & King is a firm of solicitors in Birmingham, I do not think they would be selling jewellery. I do not know, but I suspect not. *Maybe you are confusing.*
 A. No, I think that is the name of the jewellers where I bought the ring.
 Q. All right, what about this one, the one with the hexangular cut to it, *where did you buy that?*
 A. The corner of ... (inaudible) ... Lane, Erdington High Street.
 Q. All right. *How much?*
 A. I think it was about \$170.

- Q. *And when?*
 A. I think the first of the many I had about five months before I was arrested.
 Q. \$170?
 A. I think so, yes.
 Q. I am sorry, I did not hear the name of the shop.
 A. The Jewellery Box I think it is called.
 Q. *Do you forget so easily where you spend \$170?*
 A. No, it is months ago, sir, it is hard to remember everything.

(page 36)

Although I have classified questions like *Where from, How much, and And when* as elliptical (nonclausal) the excerpt above illustrates clearly the technique of probing. The advocate fires rapid and specific questions at the defendant in an attempt to show that there may be some incongruous facts in his story.

4.2.1.1.3 Embedded wh-questions

Wh-embedded questions were used more often in direct examination than in cross-examination. This is due to the fact that, since the mode of questioning in direct examination is friendly-like, the counsel makes use of a kind of “hedging” to elaborate some of his questions, especially in the following example. In this case the supportive counsel has to raise “a kind of accusation” directed to his own witness, so that this topic if dealt with in cross-examination does not have a big impact on the jury.

- Q. *Have you any idea why they should pick on you as opposed to all the other people in Birmingham?*
 A. No sir, no.

(page 14)

Wh-questions are traditionally characterised as information questions, in that they give the addressee the possibility of expanding her/his answers. In courtroom questioning they function differently. In direct examination, although the counsel used them to elicit information from the defendant, the questions were not used to look for information, since both the counsel and the defendant knew the answers. In cross-

examination *wh*-questions were used to raise the topic and to point out inconsistencies in the defendant's story. The use of these questions in court aims at affecting both the jury's understanding of the story and their impression of it.

4.2.1.2 Yes/No questions

Yes/no questions were divided into positive and negative questions. Positive *yes/no* questions are the ones formed by placing the operator before the subject. They may contain nonassertive forms such as *any* and *ever*. In this case, they are neutral, with no bias in expectation towards a positive or negative answer. However, they may contain assertive forms such as *someone*, *already*, etc., which indicates the kind of answer the speaker expects.

Negative *yes/no* questions are formed by placing the operator before the subject, which is followed by the negative particle. The construction with *not* after the subject is considered formal. Negative *yes/no* questions are always conducive. The negative orientation is complicated by an element of surprise or disbelief.

	Direct examination	Cross-examination
a. Positive y/n question	77 (30,0%)	32 (9,1%)
b. Negative y/n question	--	08 (2,3%)

Table 4. Distribution of yes/no questions in the data.

4.2.1.2.1 Positive yes/no questions

In direct examination positive *yes/no* questions occurred 77 times. There were no negative *yes/no* questions. Based on my analysis of the corpus, the *yes/no* questions used in direct examination had the function of eliciting information. They were used to bring evidence to light, that is, they were used to make the defendant reconstruct the facts for

the sake of verbalising the evidence, because one of the rules of evidence and also a characteristic of the adversarial process is that all the evidence should be verbal. Another reason is that it is the time of the construction of the defense's case and its anticipation for cross-examination. Even though questions seem to genuinely seek confirmation from the part of the defendant and that he is the one who is telling the story, the yes/no questions just reflect the usual practice of rehearsing the case before. The role of the defense counsel is to guide the defendant's narrative in that he keeps a coherent account of the facts. It is interesting to notice the elaboration of such questions. In the following example the defense counsel anticipates a piece of evidence, which may be the focus of attention as disputable in cross-examination:

- Q. During that weekend, *had Lloyd Sharpe ridden in that vehicle?*
 A. On the Friday he had, the day it was hired, yes.

(page 02)

The counsel, in the next example, wants to make it clear by the use of the adverbial *in fact* that what the defendant is telling is the truth. The example also illustrates that despite the fact that the primary aim of these questions is to elicit a yes/no answer, specially in direct examination they allow longer replies:

- Q. On Monday or following the weekend *did you in fact take the car back to the hire depot?*
 A. No sir, what I intended to do was to extend the hire of the car. I believe I was working that morning therefore I could not take the car back, I think it was nine o'clock Monday morning. I had asked my girlfriend to phone to let them know I would be popping in to extend the car and I would bring some more money after I finished my shift, which I think was three o'clock that afternoon.

(page 03)

Questions of this type, in direct examination, are usually inserted with the non-assertive *ever* and *any*. This not only opens the defendant's options in that he can refer

to his whole existence (as common behaviour), opposed to this specific situation, but it also projects the discourse to other contexts.

Q. Did you yourself *ever* drive that car again?

A. No sir, I never saw the car again.

(page 03)

Q. Did you *ever* go there with Lloyd Sharpe?

A. Not to that shop, not that I recall, no.

(page 04)

Q. Did you *at any time* find out that Sharpe had done that prior to your arrest?

A. No sir.

(page 04)

Q. A couple of days after the Wirley Birch robbery there was a robbery, we have heard, at Windmill Precinct, about lunchtime, 12 o'clock, did you take *any* part at all in that?

A. No sir.

(page 05)

In this last example the idea that the defendant is innocent of this accusation is reinforced by the use of the courtroom fixed clause *we have heard* and the adverbial *at all*.

However, in the context of courtroom questioning, sometimes the non-assertive words like *any*, *anything* may take a very specific use. In these cases, they carry the presupposition that they are referring to something specific, known to both the counsel and the defendant. In the example that follows, the topic had to be raised but should be disconfirmed. The word *anything* probably refers to the fact that the prosecution claim that a carrier plastic bag found in the car used in the robbery came from the defendant's flat. It was a Harveys plastic bag and his sister used to work at that shop at that time. This fact will be under attack in cross-examination.

Q. When you have left the car, the Rover, before you reported it stolen, had you left *anything* in it of yours?

A. No, not that I can recall, no.

(page 04)

Another aspect of positive yes/no questions, which emerged during the analysis, is the use of presumably known facts, confirming that the exchange between counsel and defendant is probably result of a rehearsed narrative, and that questions are not genuine questions, in terms of seeking information. These facts could only be mentioned if they were mentioned previously and if they are known to both speaker and hearer. Examples are as follows:

Q. Were you expecting *a visitor* that day?

A. Well, I cannot really say that day but I was expecting a visitor, yes. We had made arrangements for a friend to come and look at the kitchen who was quite handy at decorating.

.....
Q. Did he come *to give you a price*?

A. We haggled a little, not so much price, but he looked and, you know, in his own mind he said yes, so many rolls of paint. He had looked around the kitchen.

(page 07)

Q. What did you *notice* when you approached your car?

A. As I approached the car, the back tyre was flat, completely flat. I had a feeling someone had messed with the car. I had only had it a day, if that. I had a feeling after two days someone had messed with it. I walked over to the car, opened the door. I thought, well, I will fill it up round the corner to see if it is punctured. I sat in the car and started the engine. I looked up. I see a Montego. I do not know whether it was an estate. I saw a Montego come round the corner, pick up some speed which made me look. I heard the speed of the car swerve into the middle of the road. Two officers jumped out with guns and said, "Do not move, armed police". I froze, I was shocked, it never happened to me before, I did not know what to do.

(page 11)

Many positive yes/no questions start with the fixed form: 'can/do you remember...?', especially in direct examination. The reason for this occurrence may be the fact that the defense counsel has to allow the defendant to verbalise new information, so that they can deal with it. As said before, one of the rules of evidence is that new information has to come from the witness (lawyers must not tell the story themselves),

therefore, the defense counsel, by using 'can you remember...' avoids the impression that he is the one giving evidence and not the defendant. Examples of this are:

Q. Yes, well you arrive at the police station at ten minutes to two and Mr Faithful, upon arrival, *can you remember the custody officer, Sergeant Sidhu who has given some evidence?*

A. Yes, I can, yes.

Q. *Do you remember him reading a notice out to you of your rights?*

A. No, no.

(page 12)

In cross-examination, instead of eliciting a real yes/no answer, the positive yes/no questions served, in some examples, the function of accusing the defendant. In the example that follows the defendant is being accused of hiring cars for use in a robbery.

Q. *Can you offer any other explanation, apart from the one I am putting forward?*

A. There is plenty of cars at Sandy Cliff, I do not go round looking at cars. I went there to enquire about hiring a car.

(page 31)

One instance of positive yes/no question that emerged in the analysis and it is worth mentioning because of the amount of times they are used is the following. According to the data, it seems that the prosecution counsel makes use of any type of question to put forward an accusation. The structures *Is it a mere coincidence that.../ Is it a mere misfortune that...* are used throughout the cross-examination when the counsel wants to confront the defendant with facts and wants to show that an accusation would be in order.

Q. About the rings, since you were keen to mention them. *Is it mere coincidence, bearing in mind all the other features, that when you are arrested fifteen days after the theft, you have in your possession three rings of identical description?*

A. Four sir.

(pages 34-35)

Q. *Is it a mere misfortune that once again, not only a man, who's described like you, but a man who is identified as you, was Sharpe's companion on this crime?*

- A. Sir, I am not a white man with straight brown hair as she described, it was not me who committed the crime.
(page 38)

Truly positive yes/no questions found both in direct and cross-examination were the ones which could be considered courtroom procedures, such as:

- Q. On our custody record we can we - *have you got a copy of it?*
A. No sir.
(page 45)

- Q. Did you not? Look at exhibit 16 please. *Have you got the first page of that?*
A. (No reply)
(page 30)

The question *Are you going to answer my question, are you going to answer my question* (page 27) was syntactically classified as positive yes/no question. However, it functions in the context as a command - "answer my question" and if we consider it as part of the whole courtroom discourse in that every counsel's turn is taken as a question and the witness's turn as a response, then it has the function of eliciting a response. The counsel urges the defendant to give an answer to his question.

4.2.1.2.2 Negative yes/no questions

Worth mentioning is the fact that while 08 instances of negative yes/no questions were found in cross-examination, no one was found in direct examination. Rokosz (1988) claims that one of the leading forms of questions is the negative yes/no question. This type of question is also referred to as conducive questions and they reflect the speaker's beliefs and/or expectations (Kiefer 1983). This kind of question is said to indicate that a positive response is expected and the one most adequate. While a negative response may be accepted, it is certainly not adequate as the expectation of a positive response is left unaddressed. When the questioner asks a conducive question, it is assumed that s/he has a valid reason for expecting that the witness will respond affirmatively. In my data,

however, they seemed to project more of an idea of disbelief than expectation. The prosecution counsel shows that it is not possible for the defendant not to remember those two ladies giving evidence and being very frightened; and that it is not possible that the defendant does not believe they were saying the truth. By using marked negative yes/no questions, combined with the strategy of repetition, the counsel conveys the idea that the only possible answer is that what the ladies said is the truth.

- Q. (...) While you say you were at your mother's two women, Mrs Tallis and Mrs Scott finished work at about five o'clock and went to get to Mrs Tallis' car. Do you remember seeing them in the witness box?
- A. I have seen a few people in the witness box, sir, I do not know.
- Q. *Can you not remember the ladies?*
- A. I cannot remember names, sir, no.
- Q. *Can you not remember two ladies, never mind their names, who were very fearful of what two men were planning. Do you not remember them as you sat there listening to this case?*
- A. I remember it being said.
- Q. *Did it not make any impact on you at all, the thought of that woman going down the pavement, worrying that she was going to be attacked, did that not strike you as something rather dramatic in this case?*
- A. What, when I was listening to it? Yes, it did, I have never been a mugger, I have never been a violent man.
- Q. So I take it you do remember the evidence?
- A. I do remember hearing it, yes, sir.
- Q. Now those two women were very struck, were they not, by the two men they saw skulking across the road from the post office.
- A. That is what she said, yes, yes sir.
- Q. *Did you not believe her?*
- A. Yes, she has given evidence on oath.
- Q. Never mind the oath, you are giving evidence on oath too. Let us not trouble about that for the moment. *Did you not believe her?*
- A. What do you mean, believe her?
- Q. Because, *was she not obviously telling the truth?*
- A. Maybe she was, sir, I mean it seems she was.

(pages 37-38)

Later on in his questioning the idea that the negative yes/no questions in this data carries the meaning of disbelief is made clear by the counsel.

- Q. *Do you not recognise the importance of your position?*
- A. What do you mean sir?

- Q. *What you say, Mr Faithful, cannot possibly be true.*
 A. It is true, sir, it is true.

(page 42)

Having discussed *wh-* questions and *yes/no* questions, I will proceed to the analysis of the last kind of interrogative forms: alternative questions.

4.2.1.3 Alternative questions

	Direct examination	Cross-examination
a. Alternative yes/no question	04 (1,5%)	---
b. Alternative wh-reduced	02 (0,8%)	01 (0,3%)

Table 5. Distribution of alternative questions in the data.

4.2.1.3.1 Alternative yes/no questions

Few *yes/no* alternative questions were found in my data, and most of them occurred in direct examination. In those cases, the defense counsel presents the defendant with restricted options. Questions like those are, depending on the context, considered 'leading', in that they suggest the answer expected. In the data analysed they are not leading because they are actually about issues not disputable.

- Q. *Can you actually recollect whether that was done or not?*
 A. To be honest, sir, I was in a lot of shock, I do not think anything like that was said.

(page 12)

- Q. *Did you take it for a spin or go straight home?*
 A. Well, I took it to get back to my house. Instead of going straight up the Birchfield Road I took it across the island too. (...)

(page 07)

- Q. *Did you go straight to bed or did you have a glass of something?*
 A. No, I usually sit up and watch the sport, I might have a flick through the paper. (...)

(page 11)

4.2.1.3.2 Alternative wh-questions (reduced)

One interesting aspect about alternative questions in my data is their reduced meaning. *Wh*-alternative questions in this data are neither full wh-questions, in that a reply can be chosen from an open range of replies, nor is it an alternative wh-question, in that it expects as the reply one of two or more options presented in the question. In this case, the questions are formulated in such a way that they reduce the options to just one. In the first example below, the defense counsel suggests bluntly the answer required. In the second, he suggests, on purpose, something that should be logical, so that the defendant could have the chance to verbalise the correct happening:

- Q. If it was six months before you had that job, *when was it that you got it, early summer?*
 A. Yes, May, June, summer time.

(page 01)

- Q. If all had gone well, *when would you have gone to work on the Friday, the same shift was it?*
 A. No, I was on the late shift again, three to eleven, yes.

(page 11)

In cross-examination the only instance of wh-question functions the same as the ones in direct examination:

- Q. *What was your intention when you came back, to get in the car and report to work?*
 A. That is right, yes.

(page 28)

4.2.2 The use of declarative forms

	Direct examination	Cross-examination
2. Declarative forms	88 (34,1%)	245 (69,4%)
a. Declaratives	68 (26,3%)	180 (50,9%)
b. Declarative + tags	20 (7,8%)	65 (18,5%)

Table 6. Distribution of declarative forms in the data

Declarative forms were divided into:

- Declarative forms marked with question mark, and
- Declarative forms with no question mark (unmarked).

In my classification of declarative forms I took into consideration two basic factors. The first one is that the structure of courtroom questioning is based on the adjacency pair format in that every counsel's turn is taken as a question and that every witness's turn is, consequently, an answer. In the case of official courtroom transcripts, where contextual cues used by speakers are not shown, Woodbury (1984) suggests that perhaps no cues are necessary in trials because of the rules governing talk in this situation, where lawyers ask the questions and witnesses answer them. This is visibly noticeable in the data:

- Q. *You say you hired the car innocently intending to go to Derby.*
 A. *I had hired other cars over the month sir.*
 Q. *Just answer me the question please.*

(page 27)

- Q. *You knew they were forgeries.*
 A. *Sir, no interview took place and that is why I refused to read them.*
 Q. *Just answer a straight question with a straight answer please. (...)*

(page 46)

The second factor for the classification of declarative as a form of questioning is based on the assumption that in the courtroom setting all counsel's utterances have the

function of eliciting a response. Based on this assumption, even imperative forms were considered in the data as eliciting a response. However, direct requests/commands such as *Answer the question* were syntactically classified as imperative forms and not as declarative questions.

4.2.2.1 Declaratives

The number of declarative forms in both direct and cross-examination is significant. However, it is important to point out that while in direct examination the use of declarative forms accounts for 34,1% of the total amount of questions employed by the defense counsel; in cross-examination this use accounts for 69,4% of the total questions posed by the prosecution counsel. The high number of declarative forms, especially in cross-examination, is perhaps due to the fact that new information or the presupposition of a fact may be disguised as given information. The rules of evidence regulate that a question may not presuppose as a fact a proposition that is not part of the evidence. Woodbury (1984: 28) states that this rule is often violated in cross-examination by including factive verbs and 'the discourse function of the declarative question (this is given information) combines with the factivity of the verb to suggest that the 'fact' being presupposed is given information, or evidence'. When heard in context they focus the hearer's attention on given information. According to Woodbury (1984:218), declarative questions make it possible for the counsel to word the evidence, to signal their beliefs about the truth of the evidence, and to indicate the answer s/he expects. They are important tools to establish communication with the jury, without addressing it directly.

Declarative forms are usually used by counsels to state a fact and have the witness confirm or deny it. Declarative questions very often express the speaker's expectation that her/his belief will be confirmed. In direct examination counsels are

warned not to use this kind of structure because of the rule of evidence that says that the evidence should come from the witness and not from the advocate. However, in cross-examination advice to lawyers is that they should assert the facts and have the witnesses agree to them. The number of declarative forms used both in direct and cross-examination in my data seems to illustrate clearly these procedures in the different modes.

4.2.2.1.1 Declaratives in direct examination

In direct examination declarative forms basically function as elicitation of evidence, that is, as prompts for the defendant to verbalise his version of the story. The following examples show that, even though the counsel seems to give the impression that he is eliciting the responses from the defendant, he is, in fact, producing the facts himself and just having the defendant agree with them. The exchanges were developed under very supportive mode. Examples of this are the following ones:

Q. I think at that time you were living with a lady, what was her name?

A. Julie Palmer.

Q. *By whom you had had a child.*

A. That is correct, yes.

(page 01)

Q. *When you were arrested you were informed that that robbery had taken place at five minutes past five.*

A. That is about right.

.....
Q. *You gave the police the address.*

A. That is right, yes.

(page 05)

Sometimes this prompting can be done by producing a gap in the assertion, which should be supplied by the defendant. In this case, instead of expecting just a confirmation or denying to the assertion, the assertion presupposes that there is a variable missing and

which must be supplied by the listener. The following example illustrates these two kinds of declarative forms:

Q. *He asked for a lift?*

A. Yes, that is right.

Q. To?

A. To Handsworth, sir. I dropped him off by the gate.

Q. *That is the Ring -----?*

A. Ring and Ride, yes.

(page 02)

Q. *Your friend Mr Lawrence lived or worked?*

A. He worked in the taxi office next door, A-Z cars.

(page 09)

4.2.2.1.2 Declaratives in cross-examination

In cross-examination declarative forms were found to have multiple functions in the discourse, apart from just eliciting a response. Some declarative forms were used by the counsel to state evidence dealt with during the trial that constitutes the case, and have the defendant agree or not with it. This is how information is managed along the speech event. Due to the fact that information should come from the witness and that new information should not be raised in cross-examination, the cross-examiner uses either a declarative form to state what was said before or uses a declarative form lexically marked: “*you said*”, “*I take it from what you said*”, complying with the rule of evidence. Under this function I place most of the declarative forms marked with question mark found in the data.

Q. In that case, Mr Faithful, you have served an alibi notice on the prosecution which states that you do not know where you were on that day at that time.

A. That is correct sir.

(page 32)

Q. I see. Now, he was no longer working with you and *I take it from what you said* that you knew nothing about the crimes that he was committing.

A. No sir.

(page 25)

Q. Right, well, there is the picture the jury have got. You had been working with the man since early November, you knew nothing about any crimes he was committing, you did not learn that he was suspected of crime until 30th of November?

A. Not really, no sir.

(page 26)

In the last question above, by bringing forward what the defendant claims to be true, the evidence he has given previously, the prosecution counsel introduces the topic, so that he can pursue one specific line of questioning, in which he will try to weaken the defendant's evidence.

In many cases, the prosecution counsel makes an assertion and expects that the defendant agree to that, that is, the counsel proposes an alternative version to the case (his version of the case) and wants the defendant to agree with it. This is called a technique of confrontation by law manuals (Munkman, 1991). The counsel is sometimes so emphatic in his assertion that even if the defendant disagrees totally with it, the jury by then will have made a notice of it:

Q. No, Sharpe committed his crimes when you were not at work.

A. I do not know when Sharpe committed his crimes.

(page 37)

Q. It is just a rough nuisance that a fortnight before the theft you happened to buy a ring that was identical to the one that Mrs Downes lost.

A. Sir, I do not know about identical, it was my ring, I did not steal it.

(page 36)

Sometimes declarative questions are prefaced with cohesion markers *but, so, and, then*, etc. This not only anchors what the counsel is saying to previous discourse but also introduces controversial information. It sometimes links incorrect conclusion or contentious information with previous testimony and with the rest of the text. When I say incorrect conclusion I mean to confront a witness with a conclusion not drawn from the evidence but invented to align the witness's version of events with that of the advocate's.

However, this use of cohesion markers is not restricted to declarative forms. These markers may be found prefacing any kind of question form.

Q. *But you told Mrs Ingram you wanted it because your mother was ill and you wanted to visit her.*

A. Sir, I cannot remember making any suggestion like that at all.

(page 28)

After reading the defendant's record of his previous convictions, the counsel states:

Q. *So you are the man who alleges that in this case it is the police who are lying and fabricating evidence.*

A. Sir, I have been a man of dishonesty in the past, yes, I am not denying that. When I came out of prison I turned over a new leaf, I got myself a job, handling money, working with disabled people, I was making a go of things until I am arrested for these series of offences of armed robbery which I never done.

(pages 47-48)

Among the multiple functions declarative forms have in cross-examination, in my data, the three most important ones are accusation, irony and making a point.

4.2.2.1.2.1 Accusation

In many examples, the declarative forms were used to put forward an accusation. In cross-examination an accusation is a very strong form of confronting facts. It means 'what you said is totally wrong and *this* is the truth, do you agree with that?' And the jury will take it in as: 'I am telling you (jury) the facts as they are - this is the truth'. The data analysed shows a vast number of declarative forms as accusation:

Q. *Mr Faithful, there is only one explanation for you not answering about Sandy Cliff and E128 ROL, which you knew you had taken from a car that was on the forecourt.*

A. I did not.

Q. Can you offer any other explanation, apart from the one I am putting forward?

A. There is plenty of cars at Sandy Cliff, I do not go round looking at cars. I went there to enquire about hiring a car.

- Q. *I think you have the point about the question Mr Faithful, but I will move on now.*
 A. Yes sir.

(pages 31-32)

4.2.2.1.2.2 Irony

As seen in the example above, sometimes declarative forms are combined with irony, reinforcing the idea that the defendant should not be taken seriously or that he is not telling the truth. Therefore, it may serve to discredit or weaken his evidence. Another example is the following:

- Q. Sharpe must believe you are an innocent man who has been framed by the police.
 A. Sir, I am innocent of the crimes, I did not rob anybody.

(page 44)

In this example the prosecution counsel confronts ironically the defendant with a fact which may not possibly be true, highlighting the fact that the defendant is probably lying.

4.2.2.1.2.3 Making a point

Declaratives in cross-examination are also used to convey a certain idea, to make a point, as the example below shows. The counsel uses a series of declarative questions in order to show divergent points in the defendant's evidence. The building of his reasoning about the fact is logically signalled by the use of cohesion markers: *or... but... and... so*.

- Q. (...) Why were you telling the insurance company you had been away from the car for half an hour when you were careful to tell the jury you were only away for five or ten minutes?
 A. Maybe I am mistaken in the times sir.
 Q. *Or maybe you are wrong about it.*
 A. No, I am not wrong sir, it seemed about 10 minutes to me.
 Q. *But think about it, this version cannot be true, on your present account, because you were only as far as the jury is from the front door of your friend.*
 A. Yes.

- Q. *And the fish and chip shop is no more than two or three minutes from there.*
- A. (No reply)
- Q. *So you would have been away for half an hour.*
- A. *Maybe. I was not, sir, no, but it seemed like about ten minutes to me.*
- Q. *The problem is, Mr F., that when you make up stories you may not always remember what it is you have made up.*
- A. *It was not made up sir, it was an accurate account of what I can remember at the time.*

(page 29)

4.2.2.1.3 Declaratives - “*Reported words*” and “*Imaginary Thoughts*”

Under the heading of declarative forms two other types of sentences were considered. Both were classified as declarative forms with no question mark. The first type is a declarative sentence which contains direct **reported words**, as counsels just read previous official statements and have the defendant confirm or deny what is read. I found 13 instances of those in direct examination; and 11 in cross-examination. They have the same function both in direct and cross-examination as other declarative forms previously discussed. For example:

- Q. *They say that this was mentioned to you, “You understand you are under arrest, on suspicion of armed robbery, a post office at Smethwick on Wednesday, do you not? You do not have to say anything unless you want to”.*
- A. *Nothing like that was said to me, sir, nothing at all.*

(page 12)

The second type is extremely interesting. They occurred only in cross-examination (5 instances) and are a useful tool the counsel uses to express his beliefs (and claims) about the case without running the risk of seeming to be giving evidence (or giving new information) himself. I called this instance “**imaginary thoughts**”, because the counsel states his opinion about what happened as if it were the defendant’s thoughts, words or reactions. The fact itself is left unaddressed, since the defendant, in

his answer, refers only to what was imagined, and this not necessarily reflects what really happened.

- Q. You must have thought, "*good grief*".
 A. I felt relief.
 Q. "*I wonder what is going to happen now I am back in these cells.*"
 A. Yes I did.
 (page 46)

- Q. Listen to your reaction. "*Sharpe says that, fuck me he got rid of that.*"
 A. That is not true, sir, I did not make any admissions like that at all.
 (page 48)

- Q. Oh, Mr. Faithful, just think about it, here is an innocent man in the police station and after three days with this solicitor present he has a chance to say, "*How on earth could I help you about the gun, I have been telling you for the last three days I am innocent.*"
 A. I answered the question as best I could.
 (page 51)

4.2.2.2 Declarative forms + tag questions

Declarative forms followed by tag questions were divided into six different types, according to the types found in the data. For variant and invariant tags I used Quirk et al. (1985) categories. The term copy tag is taken from Woodbury's (1984) categories of tags. I then sub-divided the invariant types into word tag and sentential tag and added two more types to the category of tags: mid-placed tag and projected tag. Projected tags occur when the declarative form is interrupted and the tag is projected by the speaker into her/his following turn. It does not function as a main question, rather it is part of the previous declarative form. I termed this kind of tag as projected tag because it reflects the form it has in the discourse. One example of this is as follows:

- Q. I see. Now, he was no longer working with you and I take it from what you said that you knew nothing about the crimes that he was committing.
 A. No sir.
 Q. *Is that right?*
 A. That is right sir.
 (page 25)

	Direct examination	Cross-examination
a. Variant clause tag	02 (0,8%)	35 (10,0%)
b. Variant copy tag	02 (0,8%)	02 (0,6%)
c. Mid-placed tag	05 (1,9%)	12 (3,4%)
d. Invariant word tag	---	02 (0,6%)
e. Invariant sentential tag	08 (3,1%)	11 (3,1%)
f. Projected tag	03 (1,2%)	03 (0,8%)

Table 7. Distribution of tag questions in the data.

The numbers show that only 20 (7,8%) of the 258 questions in direct examination are tag questions, whereas in cross-examination the number increases to 65 (18,5%) of the total of 353 questions asked. Tags in general signal a variety of attitudes of the questioner and they also contain an explicit invitation to answer. The expected answer can be either a confirmation of the facts (= 'am I right?/ do you agree?); or checking information. Formally, all tags are similar to one another in that they invite the hearer to affirm or deny the propositions contained in the declarative sentence (Woodbury, 1984). However, in my data, they serve different functions in the discourse. Apart from mid-placed and invariant sentential tags, few tags were used in direct examination. In cross-examination tag questions occurred more often than in direct examination, being variant clause tags the most used (35), followed by mid-placed tags (12) and invariant sentential tags (11).

4.2.2.2.1 Projected tags

One interesting type of tag to be discussed is the projected tag occurred in direct examination, in that the hearer is led to confirm the proposition twice. This fact may have two explanations. Firstly, the counsel may have paused between the statement and

the tag and the hearer assumes an answer is in order, since the structure of courtroom questioning imposes that questions are necessarily followed by answers. Secondly the counsel separates both on purpose as a strategy to have the witness confirm the proposition twice so that it is emphasised for the sake of the jury. The second hypothesis may prove right, as the following example illustrates:

Q. You said in the interview, it was put to you in the interview, that you were a born and bred Erdington man.

A. That is right sir.

Q. *Is that right?*

A. Yes, that is right.

Q. I do not know - the Jury will - how far (...)

(page 04)

Q. That was said to be the 18th that you took delivery of it?

A. That is about right.

Q. *As far as you know is that about right?*

A. That is about right, I had the Cortina a week, a week at the most, a week.

(page 09)

It could be argued that a third explanation, in these cases specifically, would be possible, that is, the tag is just an echo to the answer given. In this case, by using the strategy of echoing the answer given, the same result is achieved. Both the use of projected tags and the use of repetition are utilized to highlight the information given. In the last example the tag is hedged by 'as far as you know' reinforcing the idea that the defendant's confirmation is important.

The next example is interesting in that the information reinforced in the projected tag is disputable. By projecting the tag and having the defendant repeat his answer twice, the counsel anticipates a possible damaging line of questioning in cross-examination, and allows the defendant to qualify his answer.

Q. So when you told the police you had bought one in the jewellery quarter from an Indian shop.

A. I was mistaken.

Q. *That was wrong?*

- A. It was my girlfriend, I mean I was under a lot of pressure, I had been in the police station a good few hours, I just could not think properly at the time.

(page 10)

In cross-examination projected tags have also the function of having the witness repeat the answer, consequently confirming the assertion twice, as seen in the example below:

- Q. I see. Now, he was no longer working with you and I take it from what you said that you knew nothing about the crimes that he was committing.
 A. No sir.
 Q. Is that right?
 A. That is right sir.

(page 25)

However, we can see in the next example, the use of projected tag in cross-examination may take a more forceful approach. In this example, the prosecutor, not satisfied with the defendant's answer, repeats the tag from his previous turn, projecting it to his next turn. The defendant's first answer was an attempt to explain what had happened. The prosecutor, by repeating the tag, insists on an appropriate answer, in this case just a yes/no answer.

- Q. Now the only people on that occasion who can tell us where you were are your relatives, your mother or your girlfriend, *is that right?*
 A. Sir, when I was being interviewed.
 Q. *Is that right?*
 A. Yes. I want to explain myself if you would let me.
 Q. Certainly.
 A. While I was being interviewed, I told the police I went to my mother's, which is correct. Within a few hours of making that interview I realised on that Monday I did not take my girlfriend and my baby, it was the day before I took them. We visited my mother's very often and on that Monday I went to my mother's on my own. I admit I did make the mistake while being interviewed, yes.
 Q. *We will not trouble with that for the moment, let us just consider what was happening at Wirley Birch. (...)*

(page 37)

The above example also illustrates the advice given to cross-examiners that they should restrict the witness in providing explanations. Witnesses should be forced to restrict their answers to just yes/no. When witnesses break this rule (by asking, for example, for permission to qualify their answers), the counsel may well just ignore their explanations, even when permission was granted.

4.2.2.2.2 Invariant sentential tags

In my data, invariant sentential tags in direct examination usually serve the function of asking for confirmation of previously stated information. Because of the friendly and cooperative mode followed during direct examination, the counsel usually allows his witness to qualify his answers.

- Q. It is noted in the custody record that you were in the cell from two o'clock until three o'clock and that you were visited at three o'clock, when you were all in order, by Sergeant Sidhu and that you were left there until five past four, apparently so that you were in a cell, according to the record, for two hours and five minutes, *is that right?*
- A. To be honest, sir, it is very hard to remember everything but I know I was taken to that room upstairs on two or three occasions where I was assaulted. They kind of blackmailed me and, "if you do not admit it, your child is going to be put into care and your girlfriend is going to be charged," and things like that.

(page 14)

However, they may be used to check with the defendant if what has been said is correct or not, that is if the events really happened or not.

- Q. (...) They gave evidence to the court that you answered their questions to the extent that you named Sharpe as being a man who was concerned in the robbery at Smethwick, *did that occur?*
- A. No, sir.

(page 15)

The main function of invariant sentential tags in cross-examination is to ask for agreement. In the first example, the counsel uses the expression 'do you follow?'

Despite the fact that in everyday conversation it has phatic function, in that it just checks if the hearer is listening to the conversation; in cross-examination questioning it functions more than just checking for the hearer's attention. It encapsulates the assertions uttered before and puts forward the idea of 'do you agree that this is the truth?'

Q. You see, this just eliminates all the other people bit by bit, *do you follow?*

A. I follow, yes sir.

(page 34)

Q. Now I want to turn from Drip Gold to Park House Drive and the Wirley Birch estate. This time the crime was committed, not at midday but at around five o'clock. Once again, unfortunately, you were not at work. *That is right is it not?*

A. Maybe I was not, sir, I cannot be precise.

(page 37)

4.2.2.2.3 Mid-placed tags

Another type of tag used in direct examination was the mid-placed tag, presented in section (3.2.2.2.). In this classification I included the expression 'I think' as tag, because at the same time they hedge what is being affirmed, they project an expectation of confirmation of the speaker's understanding of the facts. It is for the defendant to confirm the information or not.

Q. When you got to court, *I think*, there was an application by the police, *was there not*, that you should be further remanded in the police station?

A. Yes.

(page 18)

Q. You had an opportunity, *I think*, of taking advice?

A. Yes.

(page 21)

Q. That is Exhibit 25 that the jury have got. And your solicitor was there present and it is right, *I think*, *is it not*, that you do not disagree with anything about that interview?

A. No, not really, sir, no.

(page 22)

Mid-placed tags in cross-examination are especially interesting in that they ask for the witness's confirmation before the assertion has been made. We can see that while the defense counsel used mid-placed tags eight (5) times; the prosecution counsel used them twelve (12) times. They serve the function of confirming or checking information. However, they differ in form from the ones in direct examination. As I consider 'I think' as tags, most mid-placed tags in direct examination were used with 'I think'. This expression, at the same time that tags an expectation of confirmation, it hedges and minimises the speaker's expectation, carrying the meaning of: 'it seems that this is correct, what do you think, is it correct, did it really happened?'. In cross-examination, however, this is not the case, and the defendant is invited to confirm the assertion before hearing it:

- Q. That reminds you, *does it not*, of the first time you ever heard that Lloyd Sharpe was part of this armed robbery?
 A. Maybe it was the first time, yes. (page 26)
- Q. It is very striking, *is it not*, that the man who is alleged to have stolen the car and changed the plates did go to the garage where that number would have to be obtained after the 12th October.
 A. Sir, to be honest, I do not know nothing about them plates or that car. I have hired cars from Sandy Cliff cars same as other places. (page 30)
- Q. Oh really. It has never struck you, *has it*, as a workman, when accused of a crime in the working day, that you might wonder to yourself, can my employers help, it never occurred to you?
 A. Sir, as I have said, when I was arrested and they spoke to me about (...) (page 33)
- Q. All right, that is perfectly clear. Let us have this. Having returned from court you asked, *did you not*, I suggest, to see those two police officers.
 A. No I did not. (page 45)

In the examples above, the prosecution counsel's line of questioning is to confront the defendant with damaging alternatives to the facts. His technique is to have

the defendant agree to it before he completes, or even starts, the assertion. By saying ‘*that reminds you, does it not, (...)*’ or ‘*it is very striking, is it not, (...)*’, for example, the counsel transfers the burden (responsibility) of what he is about to say to the defendant.

Also, this early statement, built into the tag question, creates a scenario, a frame, or a schema (Meurer, 1997) within which the rest of the utterance is supposed to be processed. This expectation may thus make it more difficult for the defendant not to give the answer that the counsel aims at.

4.2.2.2.4 Variant clause and copy tags

Bolinger (1975) argues that variant tags - clause and copy tags - are specially polite. Clause tags consist of operator and subject in that order: *is he?*, *didn't she?* In formal English the negative particle is placed after the pronoun: *did they not?* The operator is the same as the operator of the preceding statement. If the statement has no operator the auxiliary *do* is used. If the statement is positive, the tag is negative and vice versa (Quirk et al, 1985). When both statement and question are positive, it is termed *copy tag* (Woodbury, 1984): *your car is outside, is it?* Since friendly-like questioning is exercised in direct examination, one may assume that these types of questions would be highly utilized here. However, as the numbers show, only 2 copy tags and only 2 clause tags were found in my data. They seem to play a minor role in the structure of direct examination in my data.

- Q. You did that shift *did you?*
 A. Yes sir, that is right.

(page 03)

The question above refers to the defendant's previous answer and has the function to check if the defendant really did the shift, an important issue in the case.

Another example, which functions as checking if the information is correct or not, is the following:

- Q. (...) That is, what, about twenty minutes before you leave the court, which is just around the corner, *is it not?*
 A. Yes, you go under a passageway.

(page 18)

Variant clause tags in **cross-examination** are used to ask for confirmation. However, as we can see in the examples below, the counsel confronts the defendant with possibly damaging alternatives for his version of the story, and employs the tags to make the defendant consider these alternatives as correct. The tags are strategically used, because having the defendant agree that they are possible (and probably true) reinforces his line of questioning. By checking every detail of the defendant's story, and inserting possible alternatives, the prosecution counsel not only hopes to cast doubt on the defendant's story but he also hopes to destroy the defendant's evidence. It is important to mention here that it is the prosecution that has to prove that the defendant is guilty. That is why the prosecution counsel seems to be so forceful in his assertions.

- Q. They followed up Sergeant Robbins saying we have arrested Sharpe.
 A. Yes.
 Q. Well, that sticks as the date in your mind *does it not?*
 A. Yes sir.

(page 26)

- Q. Who had been kept in a police station and accused of a crime which you had not committed, the moment you were told that a workmate and friend of yours was the other half would be a very dramatic moment indeed, *would it not?*
 A. I was quite surprised, yes sir.

(page 27)

- Q. Let us just stay with the Rover for a minute. On the 10th and 11th of November a Rover bearing those plates was seen at the Windmill precinct, that is the evidence, *is it not?*
 A. That is what they say, yes sir.

(page 32)

- Q. If you had been at work, there are rotas, *are there not?*
 A. Sir, when I was interviewed about the theft (...). It is very hard to remember where you were when you are talking about weeks or months and to the day. (page 32)
- Q. But you know the prosecution allege you were in the jewellery quarter at around midday on the 9th of November, *do you not?*
 A. Sir, if what you are trying to say, I took part in any taking of rings, I did not steal any rings. (page 33)
- Q. So you told us. Mr Faithful, you were and are a dishonest man, *are you not?*
 A. I am not, sir. I was a dishonest man -----
 Q. You demonstrated that this morning over and over again.
 A. I have committed petty crime in the past, I have never been a violent man, I never will be, I have not robbed anyone. (page 51)

Tag questions are the most conducive types of questions and, specially in cross-examination, by employing such questions the counsel is able to make assertions clearly damaging for the defendant's version of the story, inducing the defendant to agree with what was said. Even when the defendant avoids giving a straight yes/no answer, the question may still have a strong effect on the jury's impression of the case.

4.2.3 The use of imperative forms

	Direct examination	Cross-examination
3. Imperative forms	06 (2,3%)	16 (4,5%)

Table 8. Distribution of imperative forms in the data.

It seems obvious that due to the adversarial mode of cross-examination imperatives should be used more often there. The numbers show that the defense counsel made use of only 06 imperatives; while in cross-examination the prosecution counsel used 16 imperatives. Stenström (1984) argues that imperative forms can not function as doing questioning, because they impose/order an answer instead of eliciting it. According

to Sinclair and Coulthard (1975) and Coulthard (1977: 104), both cited in Weber (1993: 27), the act “elicitation” functions to request a linguistic response, whereas the act “directive” functions to request a nonlinguistic response. I include them in my analysis, taking into consideration the structure of courtroom questioning in that any counsel’s utterance implies the elicitation of an answer. In the data they were used in a wide range of functions, such as *command, request, recommendation, suggestion, etc.*

In direct examination, the instances occurred are either part of courtroom procedures, as shown in the two first examples or requests hedged by, for example, ‘let us...’, as it is illustrated in the third example.

Q. Take it slowly because his Honour is making a note. (page 01)

Q. Turn it over and have a look.
A. Yes. (page 21)

Q. Let us go back and deal in a little more detail with the Cortina motor car.
A. Yes. (page 08)

This last example above also illustrates how the defense counsel signals to the defendant (and to the jury) the way the narrative is being conducted. Because of the characteristic of direct examination, that is, that facts should be elicited in a chronological sequence, when the defense counsel signalled on page 06 of the transcript that he would return to the subject of cars later on (*‘We will return to the cars in a moment (...)’*), he indeed fulfilled it (the example above, page 08).

In cross-examination this kind of signalling is not necessarily fulfilled. When the cross-examiner, for example, says: *“I will come back to it”*, it does not necessarily mean s/he will talk about the subject again in the course of the questioning. Rather, it is a way to abandon the subject and move on to something else.

Imperative forms were also used by the defense counsel to further signal the narrative, as the examples below show:

- Q. Mr Faithful, *let us go back now to pick up the story* (...). (page 10)
 Q. *Let us just take it in stages* (...). (page 11)
 Q. *Let's complete the picture* because the story then goes quiet until the day (...). (page 23)

In cross-examination imperatives are more frequent and are, in most cases, a way to ensure that the rules of courtroom questioning are followed strictly. The examples are:

- Q. *Just answer me the question please.*
 A. Yes sir. (page 27)
- Q. *Yes or no, never mind maybe.*
 A. Well, not far from the address. (page 28)
- Q. You were answering the questions where you chose to but when they asked you about Sandy Cliff garage you had some reason for choosing not to answer those questions, *I want to know what it was.*
 A. As I have said, sir, it was not some reason, I just got fed up of being asked about something that I had not done. (page 31)
- Q. *Think about it, if you are telling us the truth.*
 A. I am. (page 41)
- Q. *But I think you must make an effort at it.*
 A. I cannot make an effort, I did not sign any document, I am not framing anyone else. (page 42)

Cross-examination is led under adversary circumstances, and it is through imperative forms that the rules that regulate courtroom procedures are reinforced. This allows an enormous number of reprimands, that is, the prosecution counsel constantly demands that the defendant comply with the rules of courtroom questioning, consequently, ensuring that order is kept.

Since the aim of cross-examination is to undermine the opponent's story, the prosecution counsel can pick up the story at any point. Some imperative forms, therefore, are used to signal the narrative, so that the hearers (defendant, judge and jury) can follow his line of questioning. Examples are:

- Q. *I would like to go into a little detail, please, the Rover car (...).* (page 27)
 Q. *Let us just stay with the Rover for a minute (...).* (page 32)
 Q. *Well, it is one brick after another. Let us go, please, to the 12th November (...).* (page 33)

One instance worth mentioning in this section is the use of '*never mind*'. By using '*never mind*' the prosecution counsel makes the audience ignore the defendant's testimony. Rokosz (1988) terms them 'discourse downgrading'. However, in my data, '*never mind*' was classified as imperative form. It is used by the prosecution counsel either to downplay the significance of the information given by the defendant or when the counsel does not reach the results expected with the defendant. The examples are:

- Q. *Just listen to the question, never mind protesting your innocence for the moment.* (page 39)
 Q. *Never mind whether you think it is shameful or not.* (page 47)

Besides interrogative, declarative and imperative forms, I considered two other forms as doing questioning, elliptical and complex questions, presented now.

4.2.4 The use of elliptical (nonclausal) forms

	Direct examination	Cross-examination
4. Elliptical	13 (5,0%)	18 (5,1%)

Table 9. Distribution of elliptical (nonclausal) forms in the data.

Elliptical forms in the data serve multiple functions. They may be a continuation of *wh*-questions; a continuation of *yes/no* questions; or parts of declarative forms. They usually serve the purpose of probing into more detail about the topic being mentioned. In

direct examination, by using elliptical questions, the counsel makes the interaction resemble a conversation. The point again is to raise topics which will be dealt with in cross-examination and, therefore, counterbalance their effect on the jury. The examples are the following:

Q. What at that time was your occupation?

A. I was a driver.

Q. *For Ring and Ride*, as we have heard.

A. That is right.

(page 01)

Q. Did you yourself ever drive that car again?

A. No sir, I never saw the car again.

Q. *Or pay for it?*

A. No sir, I never saw the car again after that day.

(page 03)

Q. Did you ever go there with Lloyd Sharpe?

A. Not to that shop, not that I recall, no.

Q. *In Hockley?*

A. I may have done once.

Q. *For what purpose?*

A. To be honest, sir, it is going back a long time, I cannot really be precise about that, it certainly was not anything to do with any mischief or anything like that.

(page 04)

Q. Did you go straight back?

A. Yes I did, I was home within ten or fifteen minutes of dropping him off.

Q. *Then what?*

A. Oh, I think I had my dinner, I think she done me some dinner and I must have left the flat about five to three, ten, to get to work and give myself five minutes to get there, it is not far.

(page 08)

Q. If one runs very fast, how long does it take, not in a car but on foot?

A. Three minutes.

Q. *Three minutes?*

A. Yes.

(page 06)

In spite of the fact that counsels are not allowed to repeat the witnesses's answers, especially when rephrased, cases like the last example above are frequent. In

this case the counsel repeats it exactly the same way it was said to call attention to the defendant's answer.

In cross-examination, they serve basically the same function, only that they are much more forceful in meaning, since the counsel's questions aim at finding fault in the defendant's discourse. The examples are as follows:

- Q. When did he finish working for Ring and Ride?
 A. I cannot be exact sir.
 Q. *No, when?*
 A. Two, three weeks before I was arrested, I would say.

(page 25)

A good example of the use of elliptical questions is the one given under narrow wh-questions (page 36 in the transcript). In that example, the line of questioning into details of the facts does not resemble a conversation, rather it resembles an inquisition and clearly shows the point the counsel wants to make. The example of page 36 is followed as shown below:

- Q. (...) Where did you buy this last one, exhibit 11? I have referred to 9 and 10.
 A. I have got all the sovereigns from Fred off the Jewellery Box while I was being interviewed.
 Q. *How much?*
 A. I think that was \$130 or \$145, something like that.
 Q. *And when?*
 A. And when?
 Q. *When?*
 A. About two months before I was arrested.
 Q. If I have got it right, in the five months prior to your arrest.
 A. I had all the rings, yes.
 Q. You spent \$370?
 A. Yes sir.

(page 36)

This line of questioning is conducted in a brisk manner. By using elliptical questions, the prosecution counsel manages to elicit the facts from the defendant and,

based on these facts, he ends this series of questions by making his point, that is, that the defendant had spent \$370 in jewellery in five months.

4.2.5 The use of complex questions

	Direct examination	Cross-examination
5. Complex questions	03 (1,1%)	05 (1,4%)

Table 10. Distribution of complex questions in the data.

Finally, a remark should be made about a special instance of question, which was found in the data and that I termed 'complex question'. Despite the fact that counsels are advised that they should avoid the multiple questions, eight instances of this kind of question were found altogether - three cases in direct examination and five ones in cross-examination. Their form is: two questions, in that the first one is general and introduces the topic, which is followed by a specific one. They suggest and lead the witness to the specific answer expected, exerting control over the information given.

Examples in direct examination:

- Q. *And that is a question of doing what? Do you have to take the car in?*
 A. No, sometimes I would phone. If I was close I would go in and see the lady. She would say, "Do not worry, just settle the account when you come in."

(page 02)

- Q. *Tell us a bit more about that. You were arrested on the Friday?*
 A. Yes that is right, yes.

(page 05)

Examples in cross-examination:

- Q. *How would you describe that trip, the visit to the friend, were you going to see him for a chat?*
 A. We had a drink together now and again, we were going to see if he wanted to come with a couple of lads to Derby for the weekend.

(page 28)

Q. *What do you mean, you think it was purchased, how much jewellery did you possess in November 1987?*

A. That was a latest ring of the four.

(page 36)

Q. All right, *what about this one, the one with the hexangular cut to it, where did you buy that?*

A. The corner of ... (inaudible) ... Lane, Erdington High Street.

(page 36)

In this section I have presented the types of questions occurring both in direct and cross-examination, and I have discussed how each type of question is used by the prosecution and defense counsels, so that they can tell their own version of the case. The tools both counsels have to convince the jury of their story are the questions. Each type of question employed plays a vital role in the way the narrative is conducted. By carefully selecting the questions, the counsels manage to convey claims and beliefs about the case, which, consequently, have an effect on the jury.

In their attempt to convince the jury of their story, counsels not only choose carefully their questions, but also use these questions in a strategic way. Now I proceed to the discussion of some of these strategies.

4.3 Strategies in courtroom questioning

A trial in the adversarial system may be compared to a “battle”, and in this specific setting, this “battle” is fought with words (Maley, 1994). Counsels have the task to either accuse or defend the person charged with the crime. Since courtroom questioning is based on the question-answer sequence (adjacency pair), their “weapons” are questions. It is not enough to ask questions in court, the counsels have to use the questions strategically, so that they can convince the jury that their version of the story is the truth.

The first part of this analysis covering sections 4.1 and 4.2 is important, in that we could discuss the types of questions found in each section of the courtroom questioning, and the function they have in each specific mode. I also presented a general outline of how they may be used in the narrative of each story in order to convince the jury.

In this part of the analysis I will discuss some specific strategies applied by counsels both in direct examination and in cross-examination. I have already referred to some of them in the body of the previous analysis, but it is essential that we discuss them separately in order to understand more clearly the use of questions in courtroom questioning.

4.3.1 Repetition

4.3.1.1 Repetition of questions

Repetition plays a vital role in courtroom questioning both in direct and cross examination. It is a strategy to highlight evidence for the sake of the jury.

The example presented below is taken from cross-examination. Before this exchange the defendant and counsel have been arguing about the hiring of a car, which was alleged to be the car used in the attempted robbery. The defendant presents his reason for hiring the car as he intended to go to Derby and the prosecution says his reason was to use the car in the robbery.

- Q. The prosecution say you hired that car *intending* to keep it and use it under false plates, do you understand?
- A. I understand but that is not true, sir.
- Q. *You say you hired the car innocently intending to go to Derby.*
- A. I had hired other cars over the month sir.
- Q. Just answer me the question please.
- A. Yes sir.
- Q. We will get along a lot better. *You say you hired the car innocently, intending to use it to go to Derby.*
- A. That is right sir, yes.

The prosecution counsel starts the exchange accusing the defendant by proposing another alternative version for the story. The counsel suggests that the car was used in the robbery and compares this alternative to what the defendant affirms to be the truth, inserting in his rephrasing of the defendant's ideas the modifier *innocently*. Structurally speaking, what happens is that the counsel proposes the prosecution version. For this affirmation he gets a negative answer. He then compares his version to the defendant's, rephrasing what was said in the evidence given by the defendant in direct examination. This time he obtains an evasive answer. He makes it clear that he is not happy with the answer, by requesting an answer - in his view, the expected (and only possible) answer. After saying so, he repeats the defendant's words again. By repeating them, and using the adverb *innocently*, he hopes to contrast strongly the two versions, implying that the one he proposes is the correct one. However, this part of the exchange is just an introduction to what follows. The next exchange is a fine example of the strategy of repetition.

Q. *Why did you lie to the hire company about the reason for your hiring the vehicle?*

A. I did not lie sir.

Q. Let me remind you of the evidence of Mrs Ingram who hired it to you, which is at page one, your Honour, this is the statement which was read to the jury. "He gave me the reason for the hire of the car as his mother was ill and that he wanted to visit her". Now, *why did you lie about the reason for the hiring of the vehicle?*

A. Sir, when I hire vehicles, not on this occasion, but on several occasions, there was hardly - they are asking why are you hiring the car - the reason I hire the car is because we used to go shopping, Sheffield and other places.

Q. Are you going to answer my question, are you going to answer my question?

A. What is it sir?

Q. *Why did you lie about the reason for hiring the vehicle?*

A. I did not lie.

(page 27)

When asked the first time '*Why did you lie to the hire company about the reason for your hiring the vehicle?*', the counsel obtains the answer. However, once again he is not satisfied with it. He then prefaces his next question with the evidence of another witness and confronts the defendant with it, using the word *now* to start his next question (the repetition). The word *now* summarises the idea: 'this X witness said this and now what do you say? Your version is probably not correct.' This time the counsel gets a longer explanation, but is still not satisfied with it. It is followed by his asking the defendant to answer his question again - '*Are you going to answer my question, are you going to answer my question?*'. To which the defendant answers by asking what the question was. The defendant got lost in the middle of the questioning. This chaos caused by the firing of multiple prefaced questions is part of the strategy. The counsel finally repeats the same question and again obtains the same answer given the first time.

Even though he receives the same answer again and again, by using this kind of line of questioning he hopes to produce an effect over the jury. By asking a question, functioning as an accusation, then confronting the defendant's version with the evidence of a "reliable" witness, repeating the question - that means, 'are you going to keep your version or agree with mine?' - he probably hopes to build a negative impression on the jury about the defendant. This negative impression will be reinforced later on in the discourse when the counsel attacks the defendant's character (page 51 in the transcript). The implied meaning is that the jury will have to decide which words - the defendant's or the witness's - are reliable.

Constrained by the rules of evidence, in **direct examination** counsels seem not to use the repetition strategy so often. When it occurs, it has minor relevance in the case.

The three instances found in the data are the following:

- Q. Did you try it before accepting?
- A. Yes, I had driven it before.
- Q. *Did you try it?*

A. Yes, I did. I said I had turned it over, I had seen it moving before, I had seen the garage man testing it before.

(page 07)

Q. Do you remember signing that?

A. I did sign the odd form once or twice, for property and things like that, yes.

Q. *Do you remember signing that?*

A. On that Saturday night, sir, a couple of officers came to my cell. They told me I was being moved to West Bromwich Police Station. They handcuffed me, took me back to the charge desk, they told me (...).

(page 20)

In the two examples above, the repetition is used to make sure that the evidence is highlighted. Those facts are important, because they are disputable. According to Stone (1995: 86), 'it is prudent to repeat evidence of crucial facts to make sure that they were grasped and for emphasis.' However, in the next example, the counsel uses repetition to emphasise the innocence of his client. Repetition is not about the same point, rather it refers to two distinct occasions, and in both the defendant behaved the same - and this is his case.

Q. Then I think, following that episode, there was a further interview with your solicitor present and that is exhibit 16. That was an interview that was conducted by Police Constable Taylor. Your solicitor was present, Mr. Summers was present, the police officer and Sergeant Hodgson was present. And in that matter various allegations were put to you and the motor cars were discussed, *did you in fact tell the officers the truth?*

A. Yes I did.

Q. That was quite a lengthy interview of forty minutes or so and then I think finally on the 26th of January officers came to see you and there was the further interview, exhibit 34, when you were further asked about the jewellery snatch that had taken place. *Did you there tell the police the truth?*

A. Yes I did.

(page 24)

By asking the defendant if he had told the truth in one occasion, and by asking him again the same question concerning another occasion, the defense counsel is, in fact, stating the defense's case, that is, his client is telling the truth. It serves, at the same time,

to anticipate any damaging line of questioning in cross-examination and to convince the jury of his client's innocence.

4.3.1.2 Echo questions

Echo questions differ from repetition of questions, in that they repeat the witness's answer or part of it. Even though this kind of repetition is not allowed in court, echo questions are found in the data. Once an answer has been given, an advocate can only ask further questions. Stone (1995: 98) argues that 'an answer should not be repeated without a good reason, eg to emphasise it.' He says that an advocate should never comment on answers at the stage of questioning a witness. It is objectionable to repeat an answer in different words, or in a tone of voice, which insinuate a meaning unintended by the witness.

The only two instances of echo questions in **direct examination** are the following. The strategy here is clearly to emphasise the answer - the evidence.

Q. He said that he said to you, "Did you know the gun was loaded?" And you replied, "Sort of, but I never thought he would fire at him."

A. I did not make any reply.

Q. *You did not.* That takes us through to ten past one (...).

(page 17)

Q. (...). Are these the three photostats that you were shown by your solicitor?

A. Yes, they are, yes.

Q. *They are?*

A. Yes.

(page 21)

The examples below illustrate what happens in **cross-examination**. In the three examples the counsel, by repeating the answer given as a question, does not want to emphasise the evidence given, rather he aims at throwing doubt on what the defendant is saying, showing clearly his disbelief about it.

- Q. Did you think Sandy Cliff garage might connect you with E128 AOL?
 A. I did not know anything about plates.
 Q. *Did you not?* Look at exhibit 16 please. Have you...(...)?

(page 30)

- Q. In that case, Mr. Faithful, you have served an alibi notice on the prosecution which states that you do not know where you were on that day at that time.
 A. That is correct sir.
 Q. *It is, is not it?*
 A. Yes that is correct.

(page 32)

- Q. Because, was she not obviously telling the truth?
 A. Maybe she was, sir, I mean it seems she was.
 Q. *Maybe she was?*
 A. I could not dispute what the lady said.

(page 38)

This next example is interesting in that the counsel echos the defendant's answer given moments before, expressing the meaning: 'you are saying you spent \$170, is that really true?'. It has the force to call the jury's attention to this fact (the amount of money spent).

- Q. All right. How much?
 A. I think it was about \$170.
 Q. And when?
 A. I think the first of the many I had about five months before I was arrested.
 Q. *\$170?*
 A. I think so, yes.

(page 36)

Even though echo questions are not permitted in courtroom questioning, they are used in my data, as the examples above illustrate. They are an important tool for the counsel to evaluate what has been said by the witness. By echoing the witness's answers, sometimes slightly rephrased, the counsel expresses not only his beliefs but also his personal evaluation of the facts.

4.3.1.3 Repetition of parallel structures

The last kind of repetition observed in my data concerns repetition of parallel structures.

In **direct examination** the defendant is being questioned about the moment he was arrested. The counsel then asks:

- Q. What in fact occurred?
 A. They told me to - his instructions - put your left hand on the door (...)
 Q. *Were you searched?*
 A. From what I can remember they just cuffed me.
 Q. *Were you handed over to other police officers?*
 A. Yes, I was handed over to two police officers, yes.
 Q. *And taken off to the police station at Smethwick?*
 A. That is right, yes.

(page 11)

This strategy aims at calling attention to the details of the event, in the way and sequence they happened. It is important in the reconstruction of the story. The repetition creates an environment for the replacement of new information (Winter, 1979).

In **cross-examination** this technique is used differently. In the first example the counsel fires a sequence of structurally similar questions at the defendant in order to show that it is not possible that he is telling the truth; and this is suggested in the question that follows the sequence:

- Q. *Did you know Sharpe's address?*
 A. I knew Albert Road but I did not know the actual number, no sir.
 Q. *Did you know the Florence Road address?*
 A. No sir.
 Q. *Did you know the Wytham Court address?*
 A. No sir.
 Q. Did you ever discover how, by the evening, by the time the 27th November was over, the police had written down not only S's name but those two addresses in the notes the jury are going to see in due course. *Do you know where they got the information from?*
 A. No, I do not, sir.

(page 43)

The same strategy is used in the following example to show that what the defendant claims happened to him in prison is incompatible with his claims about the forged signature. The defendant is claiming that the document and his signature were forged and not that he did not sign the document because it was a forged document. Although this line of questioning shows the point the counsel wants to make, it falls into what is called the fallacies of argumentation, in that, the premises presented do not support the conclusion.

- Q. Just think about that, Mr Faithful, would you please. You see, you had refused to sign anything when you went into that police station, had you not?
- A. At first, yes sir.
- Q. *You had then been dreadfully treated.*
- A. Yes sir.
- Q. *You had been beaten up.*
- A. Yes sir.
- Q. *You had been threatened.*
- A. Yes.
- Q. *You had interview records forged.*
- A. There was no interview taken place without my solicitor.
- Q. *Interview records forged. You had been shown the forgeries that Saturday morning before you went to court.*
- A. I had been shown two papers, yes sir.
- Q. You knew they were forgeries.
- A. Sir, no interview took place and that is why I refused to read them.
- Q. Just answer a straight question with a straight answer please. Is it not your case that the police produced to you what you believed to be forged interviews, is that your case?
- A. Yes sir.
- Q. Right. You would not sign anything then?
- A. No sir.

(pages 45-46)

This long stretch illustrates how the prosecution counsel makes use of repetition of parallel structure to make a point for the benefit of his side of the story, contrasting with the use the defense counsel makes of the same kind of repetition. In direct examination this kind of repetition has the function of emphasising and highlighting the evidence being given.

4.3.2 Reformulation

The second most important strategy found in the data is the use of reformulation. Not surprisingly, all examples occurred in cross-examination. The non-occurrence of this type of strategy in direct examination may be because the evidence is being given (verbalised) at first hand by the witness and, therefore, should not be re-addressed by the counsel. In cross-examination, on the other hand, by reformulating what the witness has said, the counsel may also verbalise the evidence, expressing at the same time his beliefs and attitudes towards it. Linguistically disguised, the rephrasing of evidence allows the counsel not only to evaluate what has been said but also direct tendentiously the hearer (in this case, the jury) back in the discourse.

In this first example the reformulation follows a line of questioning in which the prosecution alleges a certain car was used in the robbery and that the defendant had hired the car. The defendant denies the accusation, by saying that he had hired a Cortina car and returned it before the date of the robbery; and that the other person accused of the crime as well had not had access to the car.

- Q. Oh, I thought you were at pains to explain to the jury that you had returned that car.
- A. That is right.
- Q. To the garage, Sports and Classic Cars on the morning of the 25th of November.
- A. That is right, sir, yes.
- Q. That is your case, is it not?
- A. That is what happened, sir.
- Q. *What you are saying to the jury is this: "Well, if the car was used in a robbery, it was no longer in my possession."*
- A. Sir, any car I ever owned has never been used in a robbery.

(page 39)

In the next example the counsel summarises the defendant's answers in one personal conclusion, which benefits the counsel's side version of the case. The issue is about the defendant's signature in one document, which he claims was forged.

- Q. *What it means is* Mr Hunt or his partner Mr Bird for some reason forged the signature on the document.
 A. I am not framing anybody sir.

(page 42)

By reformulating what the defendant said, the counsel is, in fact, summarising and interpreting the defendant's words. This clearly creates a frame for the jury, in which the counsel "helps" the jury in their task of understanding and judging the defendant's evidence.

4.3.3 "Appealing to personal involvement" strategy

- Q. It may be helpful if we keep our eye on the custody record but apparently it was ten minutes to two when you arrived at the police station.
 A. To be honest, sir, I did not realise the time, I was thinking about my girlfriend and my son and what had just happened to me.

(page 12)

This strategy is specifically used in direct examination. The example above illustrates how previously rehearsed information is fished out (raised) in the course of courtroom questioning, in this case, in direct examination, so that issues can be developed to benefit one's side of the story. The defense counsel probably knew that, by mentioning the precise time of the defendant's arrival at the police station, it would give the defendant the opportunity to imply that he was so worried about his family and about what had happened to him, that he did not pay attention to the time.

Apart from reminding the defendant that they have to follow what was recorded previously, that is, keep a coherent story, the counsel also gives opportunity for the defendant to express his feelings about the whole matter. This, at the same time, gives

place to the introduction of personal matters in that the defendant starts discussing about what happened to his girlfriend and son. The next question asked then is about the defendant's girlfriend and son.

- Q. Did you actually see, as you left the scene, what was happening to your son and girlfriend?
- A. Yes, I tried to look back as they were dragging me and there was a bit of force. I tried to slow them down. I had my hands behind my back, they were pushing me from behind. I could see my baby and my girlfriend crying, I think she was shouting something like, "What shall I do?" I shouted, "Phone a solicitor, it will be all right", something like that.

(page 12)

This gives a sense of realism to the story. It brings the legal actor (the defendant) close to people's lives, to a private domain, giving the impression that the defendant is telling a story which could happen to anyone. Anyone may identify her/himself with having boyfriend/girlfriends and children. When discussing the strategies used in direct examination, Stone (1988) suggests that the story should seem vivid and real, and should not resemble a business or police report. He says that an advocate 'cannot manufacture dialogue like a playwright' (p.87), but s/he may guide the witness into contributing factual and human detail, showing personal involvement. This may win the jury's sympathy, contributing for the jury's preference for one or other of the two competing stories in their verdict. It is interesting to notice that even though the focus of the question is the *wh*-word (= what happened?), the defendant addresses both the *yes/no* form of the question (Q. Did you actually see? - A. Yes.) and the *wh*-word when he tells what happened in his answer (A. I could see my baby and my girlfriend crying...).

Another example that focuses on this strategy of making the story personal is the following.

- Q. What happened on the Thursday?
- A. My girlfriend went into hospital to have the operation. I dropped her off at the hospital, Kings Norton or something around there. I think it was about eight o'clock in the morning, it can be a bit later. I could not pick her up that afternoon, I think she got a taxi back to my mother's.

- Q. Why could you not pick her up?
 A. I had to be in work for three o'clock, she was not due out, if I remember rightly, for about four. I did not know, she signed herself out, or discharged herself out earlier on than that, what she should have.
- Q. *There is no secret about it, she was going there for a ladies operation.*
 A. Yes.
- Q. *One that would only detain her for maybe a day but not longer than that.*
 A. Yes.
- Q. *If it was successful.*
 A. Yes.
- Q. What time did you finish work, then, on the Thursday?
 A. It was, again, a three to eleven shift. I got home, ten past, quarter past eleven, from Ring and Ride.
- Q. *Did you go straight to bed or did you have a glass of something?*
 A. *No, I usually sit up and watch the sport, I might have a flick through the paper. That night I think I went to bed quite early.*

(pages 10-11)

In the above example a series of points is addressed. Apart from showing to the jury that the defendant leads an ordinary life - he watches television and reads the paper; the exchange shows that he is also a sensitive man. When he says 'that night I think I went to bed quite early' means that he might not be feeling very well, since his girlfriend had an operation and was not at home. Another aspect to consider in the analysis of this exchange is the importance of mentioning what he did and the time of his work shift on Thursday, the day after the armed attempted robbery took place and the day before his arrest. This point is disputable and is attacked in cross-examination. One more point worth mentioning about this excerpt is the pace conveyed by the counsel in stating the facts. He unfolds the question in three parts and for each part the defendant provides a confirmatory *yes*.

- Q. *There is no secret about it, she was going there for a ladies operation.*
 A. Yes.
- Q. *One that would only detain her for maybe a day but not longer than that.*
 A. Yes.
- Q. *If it was successful.*
 Q. Yes.

(page 10)

In this section I have discussed some strategies used by counsels both in direct and cross-examination. These strategies play a vital role in the management of information in the courtroom questioning. They can highlight, recycle and evaluate the evidence being given for the sake of the jury.

4.4 Summary

In this chapter I have presented and discussed the results of my data. I discussed each type of questions found in the data and their use by the defense and prosecution counsels. I also discussed some of the strategies employed by the counsels in their task of managing and conveying information relevant to their version of the case for the benefit of the jury. It is through the format of question-answer that counsels present information and control the flow of it for the sake of the judge and the jury. Therefore, the questions selected by each counsel played a vital role in the management of information verbalised in the speech event.

In direct examination, the defendant had ample opportunities to tell his story and extend his answers, since 25,2% of the questions asked were wh-questions - that is, information questions. 32,3% of the questions asked the defendant were yes/no questions and alternative questions. Although the defendant extended his answers to these questions, and that it seemed that he was telling his story, in fact, most of this type of questions just reflected that the defense's case had been previously well-rehearsed. By using the yes/no questions and alternative questions, the defense counsel worded the evidence and had the defendant agree to that.

The declarative forms and declarative followed by tag questions used in direct examination accounted for 34,1% of the questions asked by the defense counsel. It was due to the fact that, even when examination was conducted in a friendly-like manner, and

that counsel and defendant were in tune, control still had to be exerted. The declarative forms were used to guide the defendant in his account of the facts. In this case, the defense counsel made an assertion and the defendant just agreed or not with that. By doing so, the narrative was worded by the counsel and done in a logical and convincing way.

In cross-examination, questions were used differently. Only 7,9% of all questions asked by the prosecution were wh-questions. These questions in cross-examination, instead of allowing the defendant to expand his answers, were asked aiming at specifically damaging points in the defendant's evidence. By using these questions, the counsel aimed at showing inconsistencies in the defendant's story. Yes/no questions and alternative questions accounted for 11,7% of the questions asked in cross-examination. This kind of questions allowed the counsel to verbalise the evidence, leaving the defendant with the option of agreeing or not with it.

The significant finding in this study was the number of declarative forms used in cross-examination (69,4%). In my analysis, declarative forms were basically used by the prosecution to confront the defendant with alternative versions of the case, to make a point and, therefore, to formulate an accusation towards the defendant. The prosecution counsel conducted his questioning by gradually building up his case. He probed into the defendant's story, confronted him with other possible alternatives for the facts up to the point of formulating the accusation. His aim was not to weaken the defendant's version of the story, but to destroy it totally.

I will now proceed to the last chapter, where I will be presenting the final remarks.

CHAPTER 5

Final remarks

“In the English adversarial system of trial, the day of the trial is crucial. This is when the two contestants, their training and preparation completed, climb into the ring. The result is always in doubt”.

(Berlins, M. & Dyer, C. 1994: 133)

The examination of witnesses is a type of speech situation which shows language use as a complex communicative encounter in an institutionalised setting. The argumentative aspect of questioning is developed differently from other conversationally-based interactions. Rules governing trial impose the condition that counsels and defendants/witnesses must do their talk through questions and answers only. The counsels' strategies in witness examination are greatly affected by whether they are conducting direct or cross-examination.

In direct examination, questioning is a means of bringing uncontroversial information into the speech event. The counsel works collaboratively with the witness to elicit facts central to the construction of their case and her/his questions are not aimed at establishing alternative interpretation of the witness's testimony.

Cross-examination, on the other hand, is a conflictive speech situation. In cross-examination the counsel is either involved in getting the witness to agree with the facts which support the counsel's case or is involved in asking the kinds of questions which will discredit the witness or her/his testimony, so that the jury will minimise or disregard them.

Given that in the structure of court questioning all the exchanges are conducted by question and answer, in this study I have analysed the types of questions employed by counsels in direct and cross-examination and their use in the courtroom. The study

concentrated on the analysis of the evidence of a defendant in a criminal trial in the British legal system. Direct examination was conducted by the defense counsel and cross-examination was conducted by the prosecution. I proposed that not only the types of question chosen by the counsel, but also how these questions are strategically used in direct and cross-examination, are vital in conveying and managing information for the benefit of the jury. By doing so, counsels built their story, aiming at convincing the jury of it. Each question type had different pragmatic characteristics and their distribution in the text was significant. By judiciously choosing the question type, counsels were able to contribute to the evidence, evaluate it for the jury and control its flow, imposing their own interpretation on the evidence. Moreover, the rules of evidence discussed along the analysis of the data clearly had implications for the kinds of questions asked and for the distribution of certain types of questions in the questioning of the defendant.

In direct examination, questions had mainly the purpose of providing for the output of new information. It was under this mode of questioning that the defendant had the opportunity to tell his own story. Because the examiner had to elicit the story, without leading (the examiner should not lead her/his own witness) or seeming to testify himself (evidence should come from the witness), he had to find a way to control the evidence and, therefore, the understanding of the jury. Because in direct examination, a coherent story should be told, the examiner designed his questions so as to avoid any confusion on the part of the defendant. Most of the time, the examiner was brief and precise. The types of questions used by the examiner in the data were generally open-ended, formulated in a way to give the defendant a chance to expand on his answers. The exchanges were congruent and cooperative, and together, counsel and defendant built their own story. In fact, the story told by the defendant was the one which benefited the counsel's side of the case, and, as seen in the analysis of the data, there

were clear signs that the account given by the defendant was the result of a carefully rehearsed performance.

Broad wh-questions used in direct examination permitted the defendant to formulate his answers and develop new information. Narrow wh-questions served a narrative purpose, in that they allowed the construction of a coherent and detailed account of the defense's case for the sake of the jury. While broad wh-questions produced new information in direct examination, yes/no questions were used to detail this evidence, mainly in the counsel's words. It was not really the utterances of the defendant that became evidence when a yes/no question was asked and the defendant's affirmations or denials transformed the counsel's utterances into evidence.

In cross-examination the question-answer pattern was quite different. Since the main purpose of the cross-examiner was to challenge or attack the defendant's evidence, the form most favoured was the declarative, which sought confirmation, not information, as a response. Declaratives allowed the counsel to word the evidence, signalling his beliefs about the facts. The cross-examiner either designed his questions as assertions in order to pursue his own version of the story or designed his questions so as to lead to an accusation against the defendant. The facts were gradually built, and by getting the defendant's agreement to those facts, the prosecution counsel formed the basis for the accusation.

Contrary to direct examination, narrative coherence was not an issue during cross-examination and narrow wh-questions were used to have the defendant provide details of his story so that the cross-examiner could test and attack it in order to reveal inconsistencies. Broad wh-questions were used to expand on a particularly incriminating point.

In order to influence the jury, the cross-examiner clearly displayed disbelief in what the defendant said. Sometimes, the cross-examiner explicitly referred to the possibility that the defendant's evidence had been rehearsed with his own counsel.

Finally, based on the analysis of courtroom questioning, it was verified that questions could be realized by many different forms and only slightly resembled questions used in other conversationally-based interactions. Moreover, questions in court were not necessarily used to seek information. In courtroom, questions did not genuinely seek information only, since the answers were known by both the counsel and the defendant. Rather, they were used to elicit responses, so that a story was constructed. In direct examination questions were used to elicit information (the story) so that the evidence was verbalised. In cross-examination, they were used to raise topics (about the story told in direct examination), so that a new version/alternative of this story could be constructed.

Since this study is based on one case, where the evidence is given by a defendant, further research is necessary to verify if the same patterns of questioning emerge in other cases. Furthermore, research could also be carried out on cases where witnesses are questioned, in order to contrast the questioning of witnesses and defendants.

Other two suggestions for further research would be 1) the investigation of the use of hypothetical questions as one of the strategies employed by counsels in their questioning, and 2) the analysis of the use of discourse markers, that is, how the narrative in direct and cross-examination is signalled by counsels.

I hope to have contributed, with this study, to a better understanding of courtroom questioning.

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Appendix

In the Crown Court
at BIRMINGHAM

Queen Elizabeth II Law Courts
1 Newton Street, Birmingham

Thursday 1st December 1988 and
Friday 2nd December 1988

B e f o r e

HIS HONOUR JUDGE R SMYTHE

(and a Jury)

R E G I N A

- v -

LLOYD SHARPE

and

PETER EDWARD FAITHFULL

(Transcript of the shorthand notes of Marten Walsh Cherer Ltd, 27/29 Cursitor
Street, London EC4, Official Court Reporters)

MR S LINEMAN appeared on behalf of the Prosecution

MR D PERRETT appeared on behalf of the Defendant, Faithfull

E V I D E N C E

of

PETER EDWARD FAITHFULL

I N D E X

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Mr Peter Edward FAITHFULL	
Examined	1
Cross-examined	25

Thursday 1st December 1988

PETER EDWARD FAITHFUL: Sworn

Examined by MR PERRETT

- Q. What are your full names please Mr Faithful? A. Full names, sir?
- Q. Full name. A. Peter Edward Faithful.
- Q. Before you lodged in prison, awaiting your trial, what was your address? A. 31 Tweed Tower, Birchfield Road, Perry Barr.
- Q. What at that time was your occupation? A. I was a driver.
- Q. For Ring and Ride, as we have heard. A. That is right.
- Q. How long had you had that job? A. About six months.
- Q. I think at that time you were living with a lady, what was her name? A. Julie Palmer.
- Q. By whom you had had a child. A. That is correct, yes.
- Q. How old was the child? A. At the time he was three and a half, about that, yes.
- Q. If it was six months before you had that job, when was it that you got it, early summer? A. Yes, May, June, summer time.
- Q. Did you have set hours in which to work? A. No sir, there were different shifts, it was marked down on a sheet, a three month rota kind of thing.
- Q. How long if you spent doing one shift was the three to eleven? A. About eight hours, sir, you actually drive for about five or six hours.
- Q. Was it the same, day after day, for a set period or was it a different shift every day? A. No, it all depends how they worked it out in the office. Sometimes it was a set period, sometimes it was a different shift.
- Q. How long have you known Lloyd Sharpe? A. A year or so, if that, not very long.
- Q. Did you know him before you went to Ring and Ride?
A. Not really, no. I had seen him around but we had not actually spoken.
- Q. I wonder if, Mr Faithful, you would tell his Honour and the Jury what your country of origin, or your family's country of origin, is? A. What is your origin?
- Q. Yes. A. Half-caste.
- Q. Half-caste what? A. White-black.

Q. Yes, in last October time, did you hire a Rover that we have heard about? A. Yes I did.

Q. For what purpose did you hire it? A. Well, every now and again, there was a group of us, we used to go to clubs, well, nightclubs, to Derby, Sheffield, four or five of us used to chip in £15 each and we would drink in the car. I was the only one with a clean license, therefore I rented the car.

Q. It was not the first time, I think, you rented cars?
A. No, it was quite regular, quite regular, yes.

Q. As the witness has said, when you hired the Rover for how long did you intend to have it? A. It was a weekend then, I was going to extend it when it was stolen.

Q. Had you in fact extended the hire before with this lady?
A. Yes I had.

Q. And that is a question of doing what? Do you have to take the car in? A. No, sometimes I would 'phone. If I was close I would go in and see the lady. She would say, "Do not worry, just settle the account when you come in".

Q. What happened to that car? A. I ~~was~~ it stolen from Ladywood, I believe it was, during a dinner time of my shift at work.

Q. What day was that? A. I believe it was a Monday, yes, a Monday.

Q. During that weekend, had Lloyd Sharpe ridden in that vehicle? A. On the Friday he had, the day it was hired, yes.

Q. Can you remember why? A. Well, I had seen him at work, I met him at work, we got talking, I told him my address and he said he lived in Handsworth. That morning I was going into Handsworth, I do not think I was working. I opened the front door to come out and he was just about to knock the door. I told him I was going to pass this, this is Ring and Ride and he asked me if I could give him a lift into Handsworth as it was not far from where he lived. I said yes and I drove off.

JUDGE SMYTHE: You told him where you lived and one day he knocked the door as you were setting off? A. That is right, sir, yes.

Q. He asked for a lift? A. Yes, that is right.

Q. To? A. To Handsworth, sir. I dropped him off by the gate.

MR PERRETT: That is the Ring -----? A. Ring and Ride, yes.

Q. Where did you leave the car that day? A. That Friday, or the day it was stolen sir?

Q. On the Friday did you just drop him off and then drive off somewhere else? A. Yes, I dropped him off, I think it was at the back of vans.

Q. Did you in fact go off to Derby or Sheffield that weekend? A. Yes, I did, if I can remember rightly, it was a voluntary thing, every other weekend or every weekend.

Q. On Monday or following the weekend did you in fact take the car back to the hire depot? A. No sir, what I intended to do was to extend the hire of the car. I believe I was working that morning therefore I could not take the car back, I think it was nine o'clock Monday morning. I had asked my girlfriend to 'phone to let them know I would be popping in to extend the car and I would bring some more money after I finished my shift, which I think was three o'clock that afternoon.

Q. You did that shift did you? A. Yes sir, that is right.

Q. Where did you leave the car when you went to do that shift? A. Well, I went to work. At dinner time I went to Ladywood to see a friend, I think it was, Morrow Street. I parked the car facing Rushton Street which is across Street West.

MR PERRETT: Take it slowly because his Honour is making a note.

JUDGE SMYTHE: Do you know whom you went to see, a friend where? A. Yes, but he was not in.

Q. Where? A. Morrow Street, sir, he was not there. There was a chip shop, it was not far from where I was parked at the time. I walked round to the fish shop, I had only left the car a matter of five minutes, ten minutes at the most when I got back -----

MR PERRETT: Just a minute, had you got the keys with you? A. Yes, I had, yes. When I got back to where the car was it had gone and I immediately contacted Ladywood police and explained.

Q. Did you yourself ever drive that car again? A. No sir, I never saw the car again.

Q. Or pay for it? A. No sir, I never saw the car again after that day.

Q. Had it still got the proper numberplates on it when you left it parked? A. Everything was in order when I parked, I locked the car, everything was just like when I hired it.

Q. Mr Faithful, that was back in October. A. Yes that is right.

Q. In the course of the next month did you ever go to Hockley jewellery quarter? A. I may have done once with my

girlfriend, only to look round for a ring for her, which I did buy her.

Q. Who did you buy that from? A. An Indian shop in the jewellery quarter.

Q. Did you ever go there with Lloyd Sharpe? A. Not to that shop, not that I recall, no.

Q. In Hockley? A. I may have done once.

Q. For what purpose? A. To be honest, sir, it is going back a long time, I cannot really be precise about that, it certainly was not anything to do with any mischief or anything like that.

Q. Had he become a friend of yours? A. Sort of, it was not as if he was a good friend, we talked as any workmates.

Q. Did he ever go to your house? A. Only the time when he went and had knocked the door, when I was coming out, he never entered my house - well, it is a flat - he never entered.

Q. When you have left the car, the Rover, before you reported it stolen, had you left anything in it of yours? A. No, not that I can recall, no.

Q. Returning to the jewellery quarter, did you at any time go on a ring snatch raid with Sharpe? A. No, no sir, no.

Q. Did you at any time find out that Sharpe had done that prior to your arrest? A. No sir.

Q. In the weeks before the Post Office attempted robbery at Windmill Precinct, did you ever go to that precinct?

A. No, sir, as I stated in the interviews, I have never been to Smethwick before, no.

Q. You said in the interviews, it was put to you in the interview, that you were a born and bred Erdington man.

A. That is right sir.

Q. Is that right? A. Yes, that is right.

Q. I do not know - the Jury will - how far is that from Smethwick? A. Twenty minutes in a car.

Q. You have never been to Smethwick before? A. Never, no, never.

Q. The day of the Wirley Birch robbery it is said by a young seikh who gave evidence that he had seen a man, two men, hanging about near the post office at Wirley Birch in the afternoon prior to the robbery. Was either of those two men you? A. No sir, they was not.

Q. Did you commit the robbery? A. No sir, certainly never, no.

Q. Did you ever have in your possession a double barrelled shot gun? A. No sir, I have never owned a firearm, like I told the police.

Q. When you were arrested you were informed that that robbery had taken place at five minutes past five. A. That is about right.

Q. In the evening? A. Yes.

Q. Where were you at that time? A. I was at my mother's, sir.

Q. How often have you visited your mother? A. Three or four times a week, it can be a bit more, very often, very often.

Q. She still lives in Erdington? A. That is right, yes.

Q. And did then? A. Yes that is right.

Q. You gave the police the address. A. That is right, yes.

Q. What is it that enables you to remember that you were there on that occasion, at that time? A. Well, when the police arrested me they were asking me of an event that had only happened four days ago. My memory was reasonably fresh, I could remember where I was a few days back.

Q. A couple of days after the Wirley Birch robbery there was a robbery, we have heard, at Windmill Precinct, about lunchtime, 12 o'clock, did you take any part at all in that? A. No sir.

Q. Where were you? A. I was at home, sir, with my girlfriend and a friend of mine, with my son.

Q. Tell us a bit more about that. You were arrested on the Friday? A. Yes that is right, yes.

Q. There was Thursday the day before and this robbery where the elderly Indian gentleman was shot was on the Wednesday. Tell us, if you can, how you in fact spent Wednesday?

A. I had got up about 9.30, it was about the usual time.

Q. What time were you due to go to work? A. Three o'clock, three to eleven shift I was on that day. I got up about 9.00, 9.30, I was going to part exchange a car I owned, a Cortina, then. And it was in my name, I would go and change it that morning. My girlfriend had the breakfast as usual for my son.

JUDGE SMYTHE: Just a moment, your girlfriend got breakfast?

A. My girlfriend was doing the breakfast for all of us, she asked me if I wanted mine. I said leave it until I had sorted the car out, I was going to go and part exchange, but she had breakfast with the baby, I do not know what it was. I had a

wash and got dressed, I left the flat twenty past ten, half past ten.

MR PERRETT: Just take it slowly. You left the flat at twenty past ten? A. Near them times, yes.

Q. How far away is the garage? A. Oh it is minutes in a car, a minute if that.

Q. It appears on the map which is labelled and there is a label for your Tweed Tower address as well. A. Yes.

Q. If one runs very fast, how long does it take, not in a car but on foot? A. Three minutes.

Q. Three minutes? A. Yes.

Q. We will return to the cars in a moment but you must complete your movements that day. A. Yes.

Q. You left, you think it was about twenty past ten? A. Yes.

Q. That is quite an accurate time to remember. A. Twenty past, half past, within five or ten minutes of the time.

Q. What did you do? A. Well, I left the flat, drove the car round the island and parked it on the side of the garage where I had previously brought it from.

Q. How long were you at the garage? A. Ten minutes, so it was not very long, or it did not seem that long anyway, five or ten minutes.

Q. What happened? A. Well, I had already seen the BMW, it had been there maybe a week, maybe a bit less, I had already seen it and I decided I liked the car. I had problems with the Cortina during this, before the part exchange took place, the gearbox went, there was also a very small hole in the petrol tank.

Q. You managed to trade it? A. I beg your pardon?

Q. To trade it in. A. Yes, I did, I managed to trade it in.

Q. You got the other one out? A. For the BMW, yes.

Q. You heard what the proprietor of the garage said? A. Yes.

Q. He thinks you took that one away, the BMW, while you still had the Cortina. A. No.

Q. So you had them both out at the same time? A. What had happened is I took the Cortina back and then I got the BMW out.

Q. Was there anything to pay? A. There was. We haggled a little over the price. He wanted, if I remember rightly, £50 on top for the BMW but he had not got any of the papers, log book, MOT, things like that. I was not prepared to give him the full whack and not have any document or anything myself. We agreed between us I would go back on the Friday and he reckoned then he would have the log book and everything else for the car. I drove the car back home within minutes.

Q. Did you try it before accepting? A. Yes, I had driven it before.

Q. Did you try it? A. Yes, I did. I said I had turned it over, I had seen it moving before, I had seen the garage man testing it before.

Q. On the earlier occasion when the gearbox had gone on the Cortina, had you had to pay to put that right? A. Yes, it cost me £25.

Q. Did you take it for a spin or go straight home?
A. Well, I took it to get back to my house. Instead of going straight up the Birchfield Road I took it across the island too. It is like a block, you get a reasonable drive in that, I took it that way and round the back of the flat where I live.

Q. What time did you get back in? A. About twenty to quarter to eleven, it was not long after I left the flat, it is not far from where I lived.

Q. When you got back, who was there? A. My girlfriend and son.

Q. Were you expecting a visitor that day? A. Well, I cannot really say that day but I was expecting a visitor, yes. We had made arrangements for a friend to come and look at the kitchen who was quite handy at decorating.

Q. Who's that? A. His name is Ken Spencer, Kenneth Spencer.

JUDGE SMYTHE: Ken? A. Spencer. I got home, had some breakfast, read the newspaper, showed my girlfriend the car from the fifth floor which is where I was living, you know, pointed down to it, do you like the car? At twelve o'clock, round about then, five to or, you know, not long between when I was in, the door knocked. I answered it and it was Ken. He wanted to have a look at the kitchen to see how much paper or paint it would take because I did not know, I was not very good at that kind of thing.

MR PERRETT: Did he come to give you a price? A. We haggled a little, not so much price, but he looked and, you know, in his own mind he said yes, so many rolls or paint. He had a look around the kitchen.

Q. When was the work to be done? A. I think my girlfriend was going into hospital the next day, it was a

Thursday morning, for a small operation. I think he was going to try and finish it before she came out of the hospital, or Friday at the latest, one of those days.

Q. When he came about twelve-ish, when did he go?

A. After he had a look at the kitchen I think my girlfriend - I think ~~she gave him coffee~~ - he had a cup of coffee, I might have had one myself, I cannot be a hundred percent sure of that, we had a drink and a talk, I dropped him off, well he said he was going home, it must have been twenty past one, it may be half past one. I said I would give him a lift home and I drove him home.

Q. Where did he live? A. Erdington, not far from my mother's house, round the corner.

Q. Did you go straight back? A. Yes I did, I was home within ten or fifteen minutes of dropping him off.

Q. Then what? A. Oh, I think I had my dinner, I think ~~she gave me some dinner~~ and I must have left the flat about five to three, ten, to get to work and give myself five minutes to get there, it is not far.

Q. Off you went. A. And off I went to work, until the night-time.

Q. Let us go back and deal in a little more detail with the Cortina motor car. A. Yes.

Q. The jury - to be reminded of the documents they have about this, Exhibit 5 and then 6. Mr Faithful, why did you go to Sports and Classic Cars in the first place? A. In the first place? Well, I knew a lad from the taxi office next door. I got speaking to Malcolm and the other lad - I cannot remember his name properly - but I got talking to them, you know. They said, "Do you want to buy a car?" I used to pass quite often, as I lived in the area.

Q. Had you ever been to those premises before you went there on the 18th to buy the Cortina? A. I had, yes.

Q. You had never bought a car before, I do not think?

A. No, I had not bought a car, no.

Q. For what purpose had you been there? A. I would see a nice car there, pop in, ask him how much he wanted. Sometimes he would take me for a little test drive up the road - I think he once took me back - then drive and try and impress me to buy the car, kind of thing.

Q. When did you see the Cortina? A. I think it was within a day or two I saw it, that I bought it. I think he impressed me, it was a nice looking car, I had not really got a car like that before.

Q. We have heard it said they are quite sought after.

A. Yes. They are nice cars, yes.

Q. Exhibit 5 is the carbon copy, apparently, of a used car invoice the top copy of which, it is said, was given to you. Did you ever have a top copy? A. No sir, I never had a copy. When I brought the car again he said he did not have the log book, he did not have the MOT, I do not think he had anything for the car. I did give him £850 if I remember rightly, I gave him the £50 or the £800 first and came back and gave him the rest to finish it off. He said he would have the log book and the rest of the documents in the next couple of days but during those next couple of days the gearbox went and that is when I took it back. I think it was the next day, after I bought the car, the gearbox went.

Q. Before we go into details, for it is declared the name that appears on the used car invoice is Roy Smith and there is an address at 55 Sandy(?) Road, Great Barr which written purpose, apparently it is some other address. Did you give the proprietor of that garage that information? A. No, I have never used that name, there is no need to use that name, he did not have any document therefore I did not see any. I was hoping to see them in a couple of days of having the car. I knew him to talk to, as far as I was concerned he could not go anywhere. Quite frankly I thought, well in a couple of days he will have the document and I would sign them then.

Q. Your friend Mr Lawrence lived or worked? A. He worked in the taxi office next door, A-Z cars.

Q. That was said to be the 18th that you took delivery of it? A. That is about right.

Q. As far as you know is that about right? A. That is about right, I had the Cortina a week, a week at the most, a week.

Q. Then, looking at - the jury can see - exhibit no. 6, this is the time apparently, so it is said, the details on the top of that were copied out by the rear from the details of exhibit 5, the date at the top, there and in the middle and at the bottom is the 26th of November. That of course would be the date before your arrest. A. That would be a Thursday, would it, a Thursday?

Q. When did you take the vehicle back? A. I was a morning but days before I was arrested, a Wednesday morning, I was given work on the nightshift again, the day I took the car back it was free until eleven o'clock. I took the car back, ten o'clock, eleven o'clock, sometime that morning.

Q. We have given that evidence already, do you see, can you remember now, what happened on the Thursday. Well, maybe before we get to the police station you must deal with the rings that you had. A. Yes.

Q. When you were arrested, how many did you have? A. Four, four rings.

Q. We have seen those? A. Yes.

Q. Where did you get them? A. Well, I said in my interview to the police I bought one from an Indian shop in the jewellery quarter. To be honest, the ring I bought from the jewellery quarter was for my girlfriend, it was a half sovereign. The ring that I bought was from a jewellery shop, I think that is called The Jewellery Box, in Erdington High Street. That one I have I got from Philip Baker.

JUDGE SMYTHE: Just a minute, you had how many rings from The Jewellery Box? A. I think I had three, sir, two or three.

Q. That is from The Jewellery Box in Erdington High Street?
A. Yes, the corner of Cotton Lane.

Q. Yes? A. I think the other one, I cannot remember there was a signet ring, Philip Baker, something like that, it is the third one up the High Street in Erdington.

MR PERRETT: When was the last one purchased of those four rings? A. The last one, I think I had it about a month before I was arrested, something like that.

Q. So when you told the police you had bought one in the jewellery quarter from an Indian shop. A. I was mistaken.

Q. That was wrong? A. It was my girlfriend, I mean I was under a lot of pressure, I had been in the police station a good few hours, I just could not think properly at the time.

Q. Mr Faithful, let us go back now to pick up the story. On the day after you took delivery of the BMW. A. The day after, yes.

Q. What happened on the Thursday? A. My girlfriend went into hospital to have the operation. I dropped her off at the hospital, Kings Norton or something around there. I think it was about eight o'clock in the morning, ~~it was~~ it ~~was~~ be a bit later. I could not pick her up that afternoon, I think she got a taxi back to my mother's.

Q. Why could you not pick her up? A. I had to be in work for three o'clock, she was not due out, if I remember rightly, for about four. I did not know, she signed herself out, or discharged herself out earlier on than that, what she should have.

Q. There is no secret about it, she was going there for a ladies operation. A. Yes.

Q. One that would only detain her for maybe a day but not longer than that. A. Yes.

Q. If it was successful. A. Yes.

Q. What time did you finish work, then, on the Thursday?
A. It was, again, a three to eleven shift. I got home, ten past, quarter past eleven, from Ring and Ride.

Q. Did you go straight to bed or did you have a glass of something? A. No, I usually sit up and watch the sport, I might have a flick through the paper. That night I think I went to bed quite early.

Q. Did you see Sharpe at all on the Thursday? A. Not that day, no, not that I recall, no.

Q. Friday morning? A. No.

Q. If all had gone well, when would you have gone to work on the Friday, the same shift was it? A. No, I was on the late shift again, three to eleven, yes.

Q. Did you go out that morning? A. No, I do not think we did, no.

Q. What were your plans for the afternoon? A. If I remember right, we were going to go to the fish shop about one thirty, one thirty to twenty past one. We had been in all morning, we were going to go to the fish shop. When I went out to the car I told my girlfriend to put my baby's shoes on when I got out to the car the police pulled up with guns and I was arrested.

Q. Let us just take it in stages. When you went down to the car were you on your own? A. Yes, I was on my own, yes.

Q. What did you notice when you approached your car?
A. As I approached the car, the back tyre was flat, completely flat. I had a feeling someone had messed with the car. I had only had it a day, if that. I had a feeling after two days someone had messed with it. I walked over to the car, opened the door. I thought, well, I will fill it up round the corner to see if it is punctured. I sat in the car and started the engine. I looked up. I saw a Montego. I do not know whether it was an estate. I saw a Montego come round the corner, pick up some speed which made me look. I heard the speed of the car swerve into the middle of the road. Two officers jumped out with guns and said, "Do not move, armed police". I froze, I was shocked, it never happened to me before, I did not know what to do.

Q. What in fact occurred? A. They told me to - his instructions - put your left hand on the door, right hand turn the keys off and so on, until I got out of the car with my hands up. At that time I can remember looking round, seeing my girlfriend and the baby coming out of the flat. They were a bit hysterical. They made me get down on the floor, face down and put the gun to me and that was it.

Q. Were you searched? A. From what I can remember they just cuffed me.

Q. Were you handed over to other police officers?
A. Yes, I was handed over to two police officers, yes.

Q. And taken off to the police station at Smethwick?
A. That is right, yes.

Q. It may be helpful if we keep our eye on the custody record but apparently it was ten minutes to two when you arrived at the police station. A. To be honest, sir, I did not realise the time, I was thinking about my girlfriend and my son and what had just happened to me.

Q. We have had some evidence given by the officers who took you over after your arrest, that is Richards and Mackintosh, in the car. Apparently the first thing that was mentioned was when you said to them, "I did not want anyone to get hurt, I did not have the gun". A. That is not true, sir, I did not even know what I had been arrested for. I was too shocked and thinking about my son and my girlfriend, I did not know what they had arrested me for.

Q. Did you actually see, as you left the scene, what was happening to your son and girlfriend? A. Yes, I tried to look back as they were dragging me and there was a bit of force. I tried to slow them down. I had my hands behind my back, they were pushing me from behind. I could see my baby and my girlfriend crying, I think she was shouting something like, "What shall I do?" I shouted, "'Phone a solicitor', it will be all right," something like that.

Q. On the way to the police station, was there any conversation between you and the police officers? A. None at all, sir, they just asked me, what was your part in the job? A. I replied, "What job?" I did not even know what I had been arrested for.

Q. They say that this was mentioned to you, "You understand you are under arrest, on suspicion of armed robbery, a post office at Smethwick on Wednesday, do you not? You do not have to say anything unless you want to". A. Nothing like that was said to me, sir, nothing at all.

Q. You are alleged to have answered, "But I did not have the gun, is the bloke all right? I did not want him to get hurt". A. Like I said, I did not even know what I had been arrested for, I did not say anything like that to the police officers, I was in too much of a shock to even think of that.

Q. They also said you said this, "Who was the other man with you then (... reading to the words ...)" A. I did not mention anything like that, sir. I had not done anything wrong therefore I would not mention anybody. I had not done anything wrong.

Q. Yes, well you arrive at the police station at ten minutes to two and Mr Faithful, upon arrival, can you remember the custody officer, Sergeant Sidhu who has given some evidence? A. Yes, I can, yes.

Q. Do you remember him reading a notice out to you of your rights? A. No, no.

Q. Can you actually recollect whether that was done or not?

A. To be honest, sir, I was in a lot of shock, I do not think anything like that was said.

Q. The time came, apparently, when you were told about an option that was available to you as to whether you wanted a solicitor as soon as possible or whether you did not want one at all. Can you remember that option being put to you?

A. All what I can recall, sir, when I was taken to the custody desk the Indian officer said something to the effect: "You will not be able to have a solicitor now because of the seriousness of the charge," or something like that.

JUDGE SMYTHE: Wait a minute. A. "But when the police officers have finished with their enquiries, you may well be able to have one", or something like that, and he asked me to sign a dotted line.

MR PERRETT: What did you do? A. I refused.

Q. What in fact were your wishes at that time? A. I did want a solicitor.

Q. Did you say so? A. Yes.

Q. It is also said on the form, the jury can see, that the time of service of notification of detention to a named person requested or not requested underneath, it says "wife already aware" and you apparently refused to sign there as well?

A. That is correct, sir.

Q. What happened to you after that? A. After I refused to sign the form?

Q. Yes. A. They took me round to the female cells and shut me in there and locked the door.

Q. Who was it who took you, can you remember? A. The same two officers that had arrested me.

Q. You were put in there? A. Yes that is right.

Q. Did they leave you there? A. They left me there but it was not for long.

Q. What happened? A. They came back.

Q. The same officers? A. I think it was different officers, they took me, they said to me: "Come with me." I did not know what they wanted, where I was going. I followed them. They took me out onto a corridor and up some stairs into a room where they assaulted me.

Q. What did they do in fact? A. First of all they said, "What was your part in the job?" They repeated it a couple of times. I said, "What job?" I was poked very hard in the chest, pushed up against a wall and ~~thrust~~ on the floor a couple of times. There were two or three of them in the room if I remember, different ones kept coming in and out, now and

again. I just kept saying, "What job?" They were like getting more violent as if they wanted answers from me. I could not give them answers because I had not done anything. I did not know why I was arrested.

Q. It is noted in the custody record that you were in the cell from two o'clock until three o'clock and that you were visited at three o'clock, when you were all in order, by Sergeant Sidhu and that you were left there until five past four, apparently so that you were in a cell, according to the record, for two hours and five minutes, is that right?

A. To be honest, sir, it is very hard to remember everything but I know I was taken to that room upstairs on two or three occasions where I was assaulted. They kind of blackmailed me and, "if you do not admit it, your child is going to be put into care and your girlfriend is going to be charged," and things like that.

Q. Charged with what? A. At first they did not say. At first they kept on saying "she is going to be charged unless you start to tell us who the other man is and what your part in the job was." Then it eventually came out as a conspiracy. I do not really understand that.

Q. Have you any idea why they should pick on you as opposed to all the other people in Birmingham? A. No sir, no.

Q. Mr Faithful, the record mentioned that you were at five minutes past four taken away by Richards and Mackintosh to be interviewed, that that interview lasted for something less than twenty minutes, fourteen minutes in all, and that you then returned to the cell. Do you remember officers trying to interview you? A. It was not so much an interview, sir, it was as far as I was concerned, more of a rough-up, like, what I have just explained. There was not any paper there for me to sign, I was just being pushed and thrown around.

Q. It is said by Sergeant Sidhu that in view of what had happened on your reception at ten to two and your refusal to make an option as to a solicitor he inquired of you again, apparently, at five past four, as to whether you wanted a solicitor, that is what he said. A. I do not remember that sir.

Q. If you had been asked that, what would have been your reaction? A. Yes, I knew my rights when I was arrested, as I have said. I shouted back, "Phone a solicitor" or something like that, words to that effect.

Q. Did you know what happened to your wife? A. At first I was worried for her. I could see them marching her back towards the flat, the back door where we came out, me first, her second. They shoved me in the car and that was it, until the hours passed and they were taking me backwards and forwards to this room upstairs. As I passed a room I could hear her voice. I said something like, "Are you all right Julie?" She said, "Yes Pete, I am all right," and I knew then

that they got her, but they had not mentioned anything to me about that at that stage.

Q. Well, the record continues to the effect that you then spent from twenty-five past four to quarter to five in the cells and then the two - the big pros - came to see you, the Detective Chief Inspector and the Detective Inspector Underwood. A. I was seen by a few officers, sir, quite a few and it is very hard to remember faces. I had not seen these police officers before but I was being taken up and downstairs from this room, ~~police officers come into the cell.~~

Q. Well you have seen now, some year later almost to the day, the Detective Chief Inspector and the Detective Inspector, did you actually recognise them? A. I think, if I am right, I remember the name. His name is Edward, I remember he came into one of the rooms but he did not actually assault me, he just told me to buck my ideas up and start talking, start talking, but he did not actually assault me.

Q. Did they tell you what the allegation was? A. While in the room, yes, they said that a gun had been shot, they wanted to know who was responsible. They kept asking me, what was your part in the job? That was mainly the most they were using.

Q. They say that you told them that it was Lloyd Sharpe who had been involved in the raid and done the shooting. A. Well, as I have said, I did not know what I had been arrested for. I had not committed any crime like what they said. I am not a violent man, I never have been. I did not name anybody because I had not done anything with anybody.

MR PERRETT: Your Honour, I wonder if that might be a convenient point, I have not finished in chief but -----

JUDGE SMYTHE: Very well, if this is a convenient stage in your examination in chief we shall certainly rise now.

(Addressing the witness): Very well. Now, Mr Faithful, you understand you are a witness like any other witness so during the course of the adjournment you must not discuss this case with other people. Very well.

(The court adjourned)

Friday 2nd December 1988

MR PERRETT: Mr Faithful, we were at the police station at the close of yesterday's proceedings, but I have just got to the stage where you were seen by the senior police officers, Detective Chief Inspector Edwards and Detective Inspector Unwin. I asked you about that. They gave evidence to the court that you answered their questions to the extent that you named Sharpe as being a man who was concerned in the robbery at Smethwick, did that occur? A. No, sir.

Q. They say that they saw you at interview for what must have been something well under ten minutes. It appears in the

custody record and the jury know that it was at 16.45 that you apparently were taken away - according to Sidhu's note - and it was 16.55 when you were returned, so that it was in that time that that interview took place and you had been taken up to the third floor, they say. Do you remember being taken by them up to the third floor? A. I had been taken upstairs to the third floor on a few occasions, two or three, it is hard to remember the times exactly.

Q. Did you at any time there admit to them that you had taken part in the robbery? A. No sir.

Q. Can you remember what they said to you, why did they take you up to the room to be with them? A. Well, when they took me into the room, first of all they repeated themselves: "What was your part in the job?", it was mainly the question. They did ask me a couple of questions which I answered.

Q. What was that? A. They asked me about a car I owned which I told them at the time was a BMW, how long I owned it, which had only been a matter of days. One of them left the room and came back and showed me a carrier bag. They asked me if I noticed that bag, had I seen it anywhere before? I told them, "Yes, it is just like a carrier bag in a shop where my sister works."

Q. On the second occasion they say they came to see you - this is the senior officers - was it they who produced the carrier bag to you? A. I cannot remember exactly, I am not sure about that sir, I am not sure who produced what, but the carrier bag was produced.

Q. On the day of your arrest? A. That is right, yes.

Q. Apparently, after that episode, which they called an interview, you were taken back ten minutes later, just before five o'clock to the same cell and you were left there, I think, for twenty minutes, twenty-five minutes. You were taken out again, apparently at twenty minutes past five and on that occasion you were interviewed, according to the police officers, for some forty-eight minutes from 17.23 (twenty-three minutes past five) until eleven minutes past six before being sent back to the cell. At a quarter past six, that was half way apparently, Holmes and an officer called Bernstein who's given evidence, can you remember those three? A. Yes sir, when the three officers were in the room that is when they started to rough me up, throw me around a bit. It seemed like they were losing their temper, they wanted the answers from me.

Q. Can you remember what answers they wanted, what questions they put to you? A. Mainly they were just asking me what my part was in the job, where I was. They asked me my whereabouts. It was only a few days before and I told them where I was, who I was with.

Q. Did they write down anything that you said? A. There was no paper, no pens, it was mouth to mouth, it only lasted a couple of minutes, if that, actually talking, the rest of the

time I was being pushed, I was roughed up, I was being thrown about the room.

Q. Was your wife mentioned, your girlfriend? A. Not at first, I think later on they might have, they mentioned that she was there. I did not reply to that. They said if I did not start talking that she would be charged and that they would put my child into care.

Q. According to the custody record, you are sent back to the cell at a quarter past six and your visit or detention is reviewed, as we can see, and in fact there is nothing really of importance until we get to half past ten when apparently you are given some tea. Then, at twenty-three fifty eight you are charged by Detective Sergeant Hodson, can you remember that? A. I do not remember the tea, sir, because I do not drink tea, but I was charged, yes.

Q. And bail was refused apparently? A. Yes.

Q. Then at one o'clock you are checked and you are found to be in order and then later, at ten past, there is an entry that says, "Talks D C Summers." I think by now you had been transferred, had you not, to another cell, and we can see that on the top of page 2 of the record, "moved to MC4 in the night". Do you remember being changed over to another cell? A. Yes, they brought me round some time during the night, they brought me round to another section of the cells, I believe it was the male cells.

Q. Do you remember Summers coming to see you? A. Yes, I did not know the time, the door opened, I was asleep at the time. He opened the door and he came in with another officer who I had never seen before. He said that he just needed to see me for a few minutes and that did I know the whereabouts of a gun, to which I replied no.

Q. I remind you of what that officer's evidence was, he gave evidence to the effect that you blurted out to him, he said you said this, "I am in the shit now (... reading to the words myself). A. That is not true, sir, I never made no admissions because I hadn't done any crime at all. All what they were saying.

Q. Furthermore, he said that after you looked like blurting things out he cautioned you and said he reminded you you did not have to talk to him about the offence or answer any questions. A. No, I do not remember being cautioned sir, no.

Q. Did you make any sort of admission to him? A. No, sir.

Q. He said that he said to you, "Did you know the gun was loaded?" And you replied, "Sort of, but I never thought he would fire at him". A. I did not make any reply.

Q. You did not. That takes us through to ten past one in the morning. After that, were you taken back to the cell?

A. Yes I was. I think they took me round to do my fingerprints, or something like that. I was brought back to the cell within ten minutes, fifteen minutes, something like that.

Q. Were there any other people in the adjoining cells, do you know? A. Yes, I believe there were, a couple of people, I do not know how many, I heard a couple of people talking, the cells were very close to each other.

Q. The next entry as we go through the record comes at 10.21, the next day, the following morning when Sergeant Hodson came to see you before you went to court. Do you remember seeing the police officer before you went to court? A. I remember two officers coming to the cell.

Q. Had you asked to see them? A. No, I had not.

Q. What they say about that is that they came to see you and said, "Peter, I believe you want to see us in relation to the notes you refused to sign". You apparently said, "Yes, can I have another read through them". A. No sir, I had not seen any notes, as far as I am concerned no interviews took place.

Q. They say that you were given photostat copies on that occasion of the notes to look at. A. Yes, when they came to the cell they had paper with them. They asked me to read the notes saying that there was a true record of what I had said. I knew no interview had taken place therefore I refused to read them. I told them, "I am not reading the notes because I have not made any statement." I had not had any interview.④?

Q. The interview was to this effect, that Detective Inspector Unwin said, "Peter, that is the note of what you have said, there is nothing different in that". You apparently replied, "No, they are right (reading to the words) longer". A. No, that is not true, sir. At that time the duty solicitor was making his way round to the cells seeing each individual who was waiting to be produced at court. As the duty solicitor approached my cell the officers left fairly quickly before he could come in to see me.

Q. Did they take the documents with them? A. Yes, one of them put the documents behind his back and said, "I will see you later" and walked past the duty solicitor as he was making his way to my cell.

Q. Apparently you were taken to court. We can see from the record that you went to court at 10.48, do you see - no, you do not see that - and it is at 10.21 that Unwin and Hodson came to see you. That is, what, about twenty minutes before you leave the court, which is just around the corner, is it not? A. Yes, you go under a passageway.

Q. When you got to court I think there was an application by the police, was there not, that you should be further reminded in the police station? A. Yes. a

Q. For them to continue other enquiries? A. Yes that is right.

Q. What application was made on your behalf? A. Well, I told the solicitor that I had been assaulted the night before. They tried to get me to sign false papers. He made a note of it, he took me to court. When he spoke to the magistrate, who was a woman, he told her that they would not give me a solicitor on the allegations I had made about being assaulted and she ordered that they have a solicitor within twenty-four hours, which was the next day when I eventually did see my own solicitor, which was on I think a Sunday, Sunday morning.

Q. We will go through it, that was the form with them. I think the police successfully applied for you to remain in their custody? A. Yes.

Q. You went to Smethwick Police Station. Going on through the day we can see that at, I think - has the jury got page 3, yes - from the record apparently at ten minutes past one - that is at the top of the page - you are given a drink and also requested Mr Eyre(?) solicitor - I cannot read it, but it is clearly to the effect he - should come and see you to be informed. Then he 'phoned on Monday, later, you spoke to him. It is quite difficult to read. I think it says "wanted him to come to the station A.S.A.P.", as soon as possible, that's what the record said. You mentioned that gentleman's name to a police officer at that time. A. Mr Eyres(?) I had asked for my solicitor several times.

Q. It was? A. As soon as I had been arrested.

Q. That, in fact, is apparently what happened, there is a note a little further down that we can see, at 15.30 to this effect, it is again in Sidhu's writing, "Mr Eyre rang, he will not be coming to see, available only a.m. the 29th of the 11th, which would of course in fact have been the next day, Sunday. A. Sunday yes.

Q. But what the police officer goes on to say thereafter is that at ten minutes past eight that evening you went on out and showed them an address at which Sharpe could be found. Did you do that? A. No I did not.

Q. It is said you showed them and took them on a guided tour. You showed them the address and that on the way to Smethwick Police Station you said, "Can I have another read through the notes that you have done, when I was interviewed, as I am not happy about mentioning Lloyd". A. That is not true, sir. As I have said, I have never been to Smethwick in my life, I do not know the area at all, I did not show them anything.

Q. They said they had that discussion with you on the way back. If we look at the record again we can see that it is recorded that at ten minutes past eight they came to see you. I think it is earlier than that, I think it is at 19.20. Again in Sidhu's writing it says, "To DC Holmes for enquiries". That apparently refers not to an interview but to your going out of the police station, although it does not

actually say you go out of the police station. What is said is that when you got back they came to see you again and had a further discussion with you but prior to that you are asked yourself, whether you wanted your solicitor to be present. You apparently signed the record to the effect you did not want your solicitor to be present. A. No that is not right, sir, I did sign the form - maybe on a couple of occasions i.e.

Q. Would you like to look at the original? I wonder if you have it there. (Handed) I do not think we have been through this together so just familiarise yourself with it, would you. Can you see the timings on the left hand side? A. Yes sir.

Q. And the dates, if you go to about the 19.20 - that is twenty past seven, do you see? A. Yes.

Q. That is on the day after your arrest and this will be the Saturday. What is said there, in Sidhu's writing, is that at that time: "To DC Holmes for enquiries", it is no more than that. Then this is followed up, do you see, 40: "To cell, PACE" and, I cannot read it, "a copy P.I." something or other and then there are some signatures from the police officers and someone says, "Review, no change". Then at ten past eight it says that your interview and, do you see, under that it says, "Faithful does not wish a solicitor to be present during this interview", and that is signed by him, and there is your signature, do you see, underneath? A. Yes.

Q. Do you remember signing that? A. I did sign the odd form once or twice, for property and things like that, yes.

Q. Do you remember signing that? A. On that Saturday night, sir, a couple of officers came to my cell. They told me I was being moved to West Bromwich Police Station. They handcuffed me, took me back to the charge desk, they told me they would have to send the form to say I would be moved to that police station. I did sign the form. I was put back in the cell and within minutes they told me I would not be going then and that I would be going that Monday when they did take me to West Bromwich police station.

Q. We will be able to see from the record when you moved. It was in fact in the afternoon of the next day. But you say that is how your signature came to be on there is it?

A. Yes sir, I am not having that, I did sign the form yes.

Q. Can you remember them, though, offering you a solicitor, because there had been a discussion earlier in the day about a solicitor. A. I had asked several times. Every time I asked sometimes I didn't get a reply, sometimes I was told I would not get one until they finished with their enquiries.

Q. Do you remember if there was mention of a solicitor made to you that evening? A. No sir, I do not, no.

Q. Apparently, what happened according to the police officers is that they, again, had a photocopy of the notes. They say

following the request from you and that you read them through and you said, "Look, I am not happy about anything in about Lloyd". A. The only piece of paper I was shown was the Saturday morning before I went before the magistrates. I refused to read them because I know ~~there was no interview taken place~~. I just refused to read them and they went as a solicitor was coming to the cell.

Q. Mr Faithful, that completes the Saturday and we now come to Sunday and apparently at 11.30 on the Sunday - the jury do not have this, I do not think it matters - you saw a solicitor for the first time? A. Yes that is right.

Q. Well, it is not quite accurate, that, because you had seen the duty solicitor at court. A. Yes, but I had seen my solicitor for the first time on the Sunday.

Q. You had an opportunity, I think, of taking advice?
A. Yes.

Q. From the solicitor. And on that Sunday did you in fact see photostat copies of the alleged first three interviews that you had apparently and refused to sign for? A. I think my solicitor showed me two sets of papers saying that the police had said that I had interviews with them. I told him that it was not true, I had not had any interviews at all and they docked it. He just said, leave it with me.

Q. He said leave it with him but did you in fact do anything to the notes - this is the photostat notes that you were shown? A. No sir.

Q. Well, I said "notes", I had not realised when I first got them they were the originals, I had written on them, but I hand you three photostats. Are these the three photostats that you were shown by your solicitor? A. Yes, they are, yes.

Q. They are? A. Yes.

Q. Did you date or write on them the date that you saw them? Would you look at the top of the first one I think. A. I think I did, yes sir.

Q. Can you see some writing at the top? A. Yes, I can see "P Faithful, 30th of November".

Q. "30th of November" I think it says. A. Yes, that is what it says, yes.

Q. Did you, in the presence of your solicitor, write something on the back of one set? A. I did, but I cannot exactly remember what.

Q. Turn it over and have a look. A. Yes.

Q. What did you write on the back? A. I have wrote these notes and I deny having any interview like this and I cannot understand some of the writing anyway.

MR PERRETT: Even though those notes in their original form, your Honour, were not accepted, and quite properly, may I ask that they be put in?

MR LINEMAN: Your Honour, my learned friend knows quite well that self serving statements made by a defendant to his solicitors are not admissible. I have not interrupted to prevent him from reading the evidence, it would be different if I was suggesting a reason. I have none and I have not done so and I object to the course that is being proposed. I have not objected to the evidence, although it is clearly inadmissible but is going too far to admit self serving statements made by the defendant to his solicitor.

JUDGE SMYTHE: Mr Perrett?

MR PERRETT: Well, the fact is that I am leading evidence of the fact why he said he did that on that day, and that was the opportunity he had after seeing his solicitor.

JUDGE SMYTHE: The jury have heard it anyway and about the matter, self-serving it may be - but it is not inadmissible about that. He can say what he did. As I say, the jury have heard it anyway, they might as well have what he wrote on it. That will be Exhibit 37. (Marked Exhibit 37).

MR PERRETT: Can I just explain that I have squiggled on them, but not to any great extent.

JUDGE SMYTHE: Yes.

MR PERRETT: I think we can get on quite quickly now. You saw your solicitor on that occasion and then the next day, Monday the 30th, at before midday, you were interviewed by the officers from Erdington about the Wirley Birch allegation.
A. Yes.

Q. That is Exhibit 25 that the jury have got. And your solicitor was there present and it is right, I think, is it not, that you do not disagree with anything about that interview? A. No, not really, sir, no.

Q. That being so, and the jury have copies of that, we will not go through that, but did you at any time admit that you played any part in the Wirley Birch matter? A. No sir, I have not.

Q. Were you able to tell the police where you were?
A. Yes, when I was interviewed I told them where I was at the time they stated the robbery took place, which was at my mother's house.

Q. After that, going on in time, at five minutes to five, you arrived at West Bromwich police station, so that is the transfer that took place and, in order to put things into their historical perspective it may be the jury should be asked, your Honour, to bear in mind that it was at twenty-five past five that afternoon that Sharpe was arrested. So far as

you are concerned, the record is then silent about anything that is relevant, until ten minutes to twelve when Mr Robins came over to see you. The police officer came over in the middle of the night. He said that he had a conversation with you - that we must deal with. He said that you made some admissions to him. It is said, "This is all games, see, this is all games. I told them ... (reading to the words) ... police one thing, I told my brief another. That way nobody knows what is going on and I get off with it. Shall I do that with you?" A. No truth at all whatsoever in that conversation, sir.

Q. Apparently, one of the other officers said, "Look, you either want your brief or we have got more important things to do and you allegedly said, "OK, call my brief and I will tell him exactly where the gun is, call him out now." A. No, that is not true sir, I did not know the whereabouts of any gun. When they came to the cell I was asleep. A man did wake me up and ask me if they could interview me without my solicitor. I said "No". It was then they said they would 'phone him and I spoke to him on the 'phone.

Q. He after a struggle managed to get there? A. Yes he did.

Q. Arriving at half past one, or just after, and then an interview took place. That is Exhibit No. 24. In that they are short, but we notice on its face that it is timed at 1.35 and Mr Eyre and Mr Jones, from your solicitors, have arrived and you are asked about the gun. You take some advice. You have an opportunity to be advised and you allegedly say this: "If I could help you with assistance to the gun I would, but I never touched a firearm or never owned one and do not know where one is at this moment". Is that true? A. That is true yes.

Q. The story then goes on to the 1st of December. It was on that day, just after four o'clock in the afternoon, that there was a long interview that was recorded with your solicitor present, exhibit no. 15. Again, I do not ask the jury to look at it, maybe so they can get the order right, because I am afraid it is not in the right numerical order. They had a long discussion about the police officer, about other matters that we have had read out to the court and I think in that matter also, in that interview, you denied any robbery in Smethwick. A. I had not robbed anyone sir, I denied all knowledge of it, yes.

Q. Let's complete the picture because the story then goes quiet until the day of the identification that took place, the confrontation that took place on 17th December. We have heard evidence about that. I think you had signed a form and consented to go in on an identification parade a fortnight or more before, had you not? A. I agreed to go on any identification because I knew I was not the one involved. I signed and agreed, yes.

Q. Come the day of the proposed identification, taken for some reason or another by arrangement. A. Yes, that is what I cannot understand, yes.

Q. You had your solicitor with you? A. Yes.

Q. Nevertheless you were a willing participant in the confrontation that took place, just you and a police officer stood in a room. A. Yes, although it was not a very fair idea to me, I agreed, yes.

Q. Why didn't you think it was a fair idea? A. I had got the impression that an identification parade was of ten or more similar men looking like me and I was told I would have to be confronted with the witness where I would be sitting in a room on my own with a police officer and the witness would come in and look at me. I agreed to that.

Q. Yes, apparently two of them recognised you. A. Yes, that is right.

Q. You remember that happening when you were there?
A. I remember them coming into the room, yes.

Q. There was the late Mrs Scott who said she saw you outside the Wirley Birch Post Office. A. Yes, I remember.

Q. There was the postman who said he had seen you hanging about just prior to the robbery at Smethwick. Were they right? A. No sir, ~~they was not right.~~

Q. Then I think, following that episode, there was a further interview with your solicitor present and that is exhibit 16. That was an interview that was conducted by Police Constable Taylor. Your solicitor was present, Mr Summers was present, the police officer and Sergeant Hodgson was present. And in that matter various allegations were put to you and the motor cars were discussed, did you in fact tell the officers the truth? A. Yes I did.

Q. That was quite a lengthy interview of forty minutes or so and then I think finally on the 26th of January officers came to see you and there was the further interview, exhibit 34, when you were further asked about the jewellery snatch that had taken place. Did you there tell the police the truth?
A. Yes I did.

Q. Now, is it right, Mr Faithful, that your tracksuit top has been produced in court? A. Yes sir.

Q. I cannot remember the exhibit number I am afraid - oh, it is 36 - what make is it? A. It is a Puma, Puma make.

Q. So far as you know, are there many of them?

A. Everybody wears them in the summer, they are very popular.

Q. Did you commit any of these offences? A. No sir.

Cross-examined by MR LINEMAN

MR LINEMAN: Your Honour, just before I cross-examine the defendant, it has occurred to me, one of the helpful side wings of my learned friend's successful application to exhibit those three interviews is that the jury, instead of having to try and remember the evidence, will have copies in front of them. What I propose to do, therefore, is to have typed copies prepared. When the jury examine the documents they will be able to have typed copies with them at the same time. It may also assist your Honour in summing the matter up.

JUDGE SMYTHE: Certainly, yes, I do not object to that.

MR LINEMAN: I will see that is done for Monday. (Addressing the witness): Just one or two general matters first, Mr Faithful. Sharpe, I take it from what you have said, was no longer working at Ring and Ride at this time. Is that correct? A. That is about correct, yes sir.

Q. When did he finish working for Ring and Ride? A. I cannot be exact sir.

Q. No, when? A. Two, three weeks before I was arrested, I would say.

Q. You were arrested 27th November, some time in early November? A. It could have been, it could have been, yes about then.

Q. Had you seen him since he finished working for Ring and Ride? A. Yes I had, yes.

Q. Where? A. Around Handsworth sir.

Q. I see. Now, he was no longer working with you and I take it from what you said that you knew nothing about the crimes that he was committing. A. No sir.

Q. Is that right? A. That is right sir.

Q. The first time you learnt that he might be committing crime was when you were told by police officers that he had been arrested. A. That is right, sir, yes.

Q. You were not told that until the 30th of November, I think, at West Bromwich Police Station. A. I cannot be exact when I was told sir.

Q. It was when Mr Robbins came to see you at West Bromwich and told you Sharpe had been arrested and your solicitor came to the station in the early hours of that morning. There was an interview, do you remember the date? A. I have been in the police station a good few dates.

Q. Come along, you have been preparing this case for nearly twelve months, you know perfectly well it was 30th November that your solicitor - forgive me the early hours of the 1st of December - that he came to the police station and you were

asked as to the whereabouts of the gun. A. Yes I remember that interview, yes.

Q. They followed up Sergeant Robbins saying we have arrested Sharpe. A. Yes.

Q. Well, that sticks as the date in your mind does it not?
A. Yes sir.

Q. Right, well, there is the picture the jury have got. You had been working with the man since early November, you knew nothing about any crimes he was committing, you did not learn that he was suspected of crime until 30th of November?
A. Not really, no sir.

Q. You agree with all that? A. Part of it.

Q. Well, what do you not agree with? A. Well, when I was arrested, sir, as I have said, on the first day I was arrested I was being taken to and from the interview rooms, so the police officers kept saying, "What was your part in the job?", "Who is the other man?" and so on.

Q. Yes. A. This is one day in days, I cannot actually remember all the interviews. The police told me, like, Sharpe had committed crimes.

Q. You must remember that. A. Sir, you are talking twelve months ago, it is not easy to remember everything.

Q. Do forgive me. Think how a dramatic piece of news it would be to you, just think about how dramatic it would be if you had no idea that Sharpe was an armed robber. A. I did not.

Q. The moment they said Sharpe has been arrested, he is your mate in these crimes, you could not forget a thing like that.
A. Well, it is not so much as forgetting, this is just the times, days.

Q. Well, let me help you. Look, would you please, at exhibit 24 (handed). There is a typed copy. It is 1st December and it is early hours of the morning, 1.35 am. A. Yes.

Q. Sergeant Robbins is there, along with Mr Holbrook, do you see, and the first question is, "We have now arrested Lloyd Sharpe in connection with the same incident". A. Yes.

Q. Well, you will remember that interview? A. Yes.

Q. And not long before then the Sergeant had come and told you that and asked you if you wanted your solicitor present and you said you did. A. That is right, yes sir.

Q. That reminds you, does it not, of the first time you ever heard that Lloyd Sharpe was part of this armed robbery?
A. Maybe it was the first time, yes.

Q. What do you mean, maybe? A. Well, sir, it is hard to be precise, we are talking a long time ago.

Q. Mr Faithful. A. I had plenty of interviews.

Q. Mr Faithful, if you were an innocent man. A. I am sir.

Q. Who had been kept in a police station and accused of a crime which you had not committed, the moment you were told that a workmate and friend of yours was the other half would be a very dramatic moment indeed, would it not? A. I was quite surprised, yes sir.

Q. You must remember if you are an innocent man, Sergeant Robbins coming in - and innocent - Sharpe had been arrested.
A. Yes, I am not saying I do not remember that.

Q. Right, well now just bear that in mind because we will come back to it in due course but I would like to go into a little detail, please, the Rover car, the one that was hired from Colliers in Sutton Road by you on the 23rd of October.
A. That is right, yes.

Q. The prosecution say you hired that car intending to keep it and use it under false plates, do you understand?
A. I understand but that is not true, sir.

Q. You say you hired the car innocently intending to go to Derby. A. I had hired other cars over the month sir.

Q. Just answer me the question please. A. Yes sir.

Q. We will get along a lot better. You say you hired the car innocently intending to use it to go to Derby. A. That is right sir, yes.

Q. Why did you lie to the hire company about the reason for your hiring the vehicle? A. I did not lie sir.

Q. Let me remind you of the evidence of Mrs Ingram who hired it to you, which is at page one, your Honour, this is the statement which was read to the jury. "He gave me the reason for the hire of the car as his mother was ill and that he wanted to visit her". Now, why did you lie about the reason for the hiring of the vehicle? A. Sir, when I hire vehicles, not on this occasion, but on several occasions, there was hardly - they are asking why are you hiring the car - the reason I hire the car is because we used to go shopping, Sheffield and other places.

Q. Are you going to answer my question, are you going to answer my question? A. What is it sir?

Q. Why did you lie about the reason for hiring the vehicle?
A. I did not lie.

Q. But you told Mrs Ingram you wanted it because your mother was ill and you wanted to visit her. A. Sir, I cannot remember making any suggestion like that at all.

Q. She is lying, is she, about that, you say? That statement was read to the jury, you will remember. A. I am not saying she is lying, I just cannot remember saying anything like that, they do not usually ask you when you hire a car what you want it for.

Q. I suggest the jury make up their mind about it, you deliberately lied to her about the reason you hired the vehicle. A. I did not, sir, no.

Q. The jury will make their mind up about that. Let me ask you this please. The same vehicle, 26th October, the day it was reported stolen by you. A. Yes sir.

Q. You told the jury you go to Ladywood to visit a friend during your lunch hour. A. That is right.

Q. Is that right, but the friend was not in? A. No sir.

Q. That you parked it outside their address. A. Close to it, yes sir.

Q. Within a few yards of it? A. Maybe, yes sir.

Q. Yes or no, never mind maybe. A. Well, not far from the address.

Q. Tell the jury, you remember the day the car was stolen? A. Yes, I went, if you recall sir, to see a friend at Morrow Street, I cannot remember precise, he was not in.

Q. Answer my question. How far from his address did you park it? A. If his house was where the jury was, maybe parked here, within walking distance.

Q. That is good enough. Very close to. He was not there and you went to the fish and chip shop. A. That is right, sir, I went round to the fish and chip shop, yes.

Q. You were away no more than five or ten minutes, that is what you told the jury, you were at pains to tell the jury you were only away a brief time. A. Yes, that is about right.

Q. What was your intention when you came back to get in the car and report to work? A. That is right, yes.

Q. How would you describe that trip, the visit to the friend, were you going to see him for a chat? A. We had a drink together now and again, we were going to see if he wanted to come with a couple of lads to Derby for the weekend.

Q. You were then going to visit him to see if he wanted to go out the following weekend? A. Yes, I see him every week now and again in the pubs and in the clubs.

Q. Why did you lie about the purpose, about what you were doing at the time the car was stolen? A. I did not lie, sir.

Q. Look at exhibit 2, we have not seen this yet. The original is not with us at the moment, Mr Sharpe, but it will be. (Addressing the Clerk of the Court): Have you got a photostat copy of it. May he? Yes, a photostat for the moment. (Addressing the witness): These are papers, of course, you and your solicitor have been in possession of for months. (Handed) Is it headed, "Avon Insurance Plc"? A. It is sir, yes.

Q. What it is, is, it is a form made out by Colliers when they were going to claim from their insurance company in respect of their stolen vehicle. A. Yes sir.

Q. But the part that concerns us is the part that you entered on the form. Go to the second page, would you please. You see the paragraph, Address of Accident, and someone has crossed that out and written theft? A. Yes.

Q. Then it says, "Please explain exactly how the accident" - in this case, the theft - "occurred", etc and then in your writing is a description. It is your writing is it not? A. Yes it is sir.

Q. You wrote down there, "I left the car locked at about one o'clock Monday afternoon by a road facing Rushton Street in Ladywood and everything was in order at the time. I returned at 1.30 when I discovered the car was missing and nobody seen anything at all." Why were you telling the insurance company you had been away from the car for half an hour when you were careful to tell the jury you were only away for five or ten minutes? A. Maybe I am mistaken in the times sir.

Q. Or maybe you are wrong about it. A. No, I am not wrong sir, it seemed about ten minutes to me.

Q. But think about it, this version cannot be true, on your present account, because you were only as far as the jury is from the front door of your friend. A. Yes.

Q. And the fish and chip shop is no more than two or three minutes from there. A. (No reply)

Q. So you would have been away for half an hour. A. Maybe. I was not, sir, no, but it seemed like about ten minutes to me.

Q. The problem is, Mr Faithful, that when you make up stories you may not always remember what it is you have made up. A. It was not made up sir, it was an accurate account of what I can remember at the time.

Q. If you were telling the truth you have told it from your memory what you remember happening. A. That is right.

Q. But when you make something up, it is difficult to remember, is it not? A. What I have said, sir, from what I can remember I said.

Q. Well, now, we will see as we go on, but I suggest to you whenever we check your story we can find that it is not true and I am going to show you some more examples as we go along. Now, still with the car, the jury know that that was used under false plates. Can we have exhibit 4 please, the registration plates. These are the very plates that somebody had made up and put on the vehicle. A. I do not know nothing about that sir.

Q. Let us just think about that. That car, the true Rover 213, bearing that registration, was kept at a garage called the Sandy Cliff garage in Aldridge Road in Perry Barr from the 12th October onwards. Is it a mere coincidence that you were a customer at the Sandy Cliff garage? A. It is not so much a coincidence, sir, I have hired cars from several places in town and in Perry Barr, I am not denying that.

Q. It is very striking, is it not, that the man who is alleged to have stolen the car and changed the plates did go to the garage where that number would have to be obtained after the 12th October. A. Sir, to be honest, I do not know nothing about them plates or that car. I have hired cars from Sandy Cliff cars same as other places.

Q. I know you have. Why did you not hire the car, or a similar car, from Sandy Cliff when you wanted to go to Derby? A. Well, you look around to see which is the cheapest option, the best rates at the time.

Q. Did you have any guilty feelings about Sandy Cliff garage after you were arrested? A. Not really, no sir.

Q. Did you think Sandy Cliff garage might connect you with E128 AOL? A. I did not know anything about plates.

Q. Did you not? Look at exhibit 16 please. Have you got the first page of that? A. (No reply).

Q. Your solicitor, is with you on that occasion. It is 17th December, right? A. That is right to say, yes.

Q. Various questions are asked of you and you gave your answers. Then they turned to questioning you about the Rover, bottom of page 28 in our copy, at the bottom, and they are talking about the Rover, which is the Rover that was hired from Colliers. All right, go to page 29. Have you got it? A. Yes sir.

Q. About two thirds of the way down the page they suddenly ask you about Sandy Cliff garage. A. Yes.

Q. "Do you remember the Rover (reading to the words) is it true that you have hired motors from Sandy Cliff motors, Aldridge Road?" And you said no reply. A. That is correct, sir, yes.

Q. "Well let me tell you that you have hired vehicles
(reading to the words)" interrupted you to say no reply.
A. That is correct.

Q. "That you have seen a Rover on the forecourt of Sandy
Cliff? Answer: Yes, same model and colour. Question: And the
same registration number, E128 (reading to the words)
.....right? No reply. What are you worried about?" And
then you paused to think and you said no reply and then the
subject changed and you picked up and answered questions
again. A. Yes sir.

Q. What was it that you were afraid of? A. Sir, I was
not afraid, I had been in the police station a long time, I
had questions fired at me non-stop for hours at that period, I
just got a bit weared off with the police coming at me all the
time.

Q. Forgive me, this was the 17th of December? A. That is
right, yes.

Q. This was an interview with your solicitor? A. Yes.

Q. You were answering the questions where you chose to but
when they asked you about Sandy Cliff garage you had some
reason for choosing not to answer those questions, I want to
know what it was. A. As I have said, sir, it was not some
reason, I just got fed up of being asked about something that
I had not done.

Q. Well you see ----- A. At that time I did not reply, I
had had enough.

Q. You see, if you look through exhibit 16, and it is quite
lengthy, I think I am right in saying those are the only
questions in the course of that interview that you would not
reply to. A. That is right sir, yes.

Q. Well now, let us just think about your answer. "I was fed
up with answering questions". This is not correct, you chose
not to answer, only about one topic - Sandy Cliff garage. You
went on to continue answering other questions, explain to the
jury what was the subject about Sandy Cliff garage?

A. There was nothing subject in it, sir, it might have been
any other question at that time, maybe I would have said no
reply, I was fed up of being questioned and being arrested for
something I had not done.

Q. Mr Faithful, there is only one explanation for you not
answering about Sandy Cliff and E128 ROL, which you knew you
had taken from a car that was on the forecourt. A. I did
not.

Q. Can you offer any other explanation, apart from the one I
am putting forward? A. There is plenty of cars at Sandy
Cliff, I do not go round looking at cars. I went there to
enquire about hiring a car.

Q. I think you have the point about the question Mr Faithful, but I will move on now. A. Yes sir.

Q. Let us just stay with the Rover for a minute. On the 10th and 11th of November a Rover bearing those plates was seen at the Windmill precinct, that is the evidence, is it not?

A. That is what they say, yes sir.

Q. Of course, it was during the course of the working day, it was about lunchtime. Is it just a coincidence that you were not at work at that time, on the 10th and 11th of November?

A. I could have been, I may not have been.

Q. Do forgive me. Twelve months this case has been in preparation. We have seen your lawyers here, there has never been any suggestion made in this case that you were at work at the time that car was seen on the Windmill Precinct because there would have been nothing easier for the defence to prove.

A. Well sir, I am not saying I was at work, I am not saying I was not at work, it is hard to remember everything.

Q. But you know perfectly well because, you see, in the preparation of your defence that question about whether it could be proved that you were at work that day would have been looked into, so you know absolutely clearly that you were not at work, do you not? A. I did know what I would be looked into, I did not know that.

Q. Oh come along, look, look at it, this is the defence team, are you really wanting to pretend to the jury you may not have been at work and no-one has troubled to demonstrate that, do you really want to pretend that to them? A. I am not pretending anything, sir, I am telling the jury the truth.

Q. Mr Faithful, you see, on the 12th of November, think about it, a crime was committed in the course of the working day, at Drip Gold and, again, is it some coincidence that you were not at work on that occasion? A. I cannot say if I was at work or I was not, sir, I am not taking that.

Q. In that case, Mr Faithful, you have served an alibi notice on the prosecution which states that you do not know where you were on that day at that time. A. That is correct sir.

Q. It is, is not it? A. Yes that is correct.

Q. If you had been at work, there are rosters, are there not?

A. Sir, when I was interviewed about the theft of the jewellery they asked me where I was on that day, four weeks back. It is very hard to remember where you were when you are talking about weeks or months and to the day.

Q. Do not be silly, do not be silly, you simply go back to your employers, these people, and say to them, get the work sheets out, let us see where he was at lunchtime on the 12th of November because if he was driving at Ring and Ride for us a document will show it. Please do not be silly about it, you know perfectly well on this occasion you were not at work, do

you not? A. Well, I am answering these questions to the best of my knowledge, sir.

Q. Oh really. It has never struck you has it, as a workman, when accused of a crime in the working day, that you might wonder to yourself, can my employers help, it never occurred to you? A. Sir, as I have said, when I was arrested and they spoke to me about the jewellery they asked me where I was

because about four weeks ago I could not - I cannot remember every day, thinking four weeks back.

Q. Do not be silly, and I am not talking about the time of your arrest, it is December 1988, you have been preparing this case for twelve months. A. I have not been preparing, sir, I will tell the jury the truth, sir, I have not prepared anything.

Q. An alibi in this case was served on the prosecution in March of 1988 in which it states "between twelve midday and (reading to the words) Vyse Street" it follows, does it not, that you were not at work? A. I cannot be precise about that, sir. As I have said, I cannot offer an alibi, I am not going to make excuses up about it, I cannot remember.

Q. Mr Faithful, there it is, the jury have listened to what you say about it, the point I make is this, that when the Rover appears in Smethwick, watching those premises, it is very odd that on two days a working man, it coincides, has time off from work and when the jury look at this case they will find that every time you are alleged to be in Smethwick, ⁷ missing a crime, it coincides with the time that you are not at work. A. It does not mean I have committed a crime, same if I was not at work.

Q. Well, it is one brick after another. Let us go, please, to the 12th November, to Vyse Street in Hockley. We know the Rover car was being used on that crime because Sharpe has told us so. He has also told us that you were one half of the team, being the driver. Now, Mrs Wendy Barker had her statement read to the jury and - they may not recall the detail of it - but she told them that at around midday on the 9th November two men came to the shop and she described them, "A West Indian male with a dark complexion, another West Indian youth with a light skin, almost like a half caste". A. Yes.

Q. You have read her statement, have you not? A. I have heard it in court.

Q. You have heard it while you have been waiting in prison for this case. A. No sir, I have not been prepared, I have heard what was said in court.

Q. But you know the prosecution allege you were in the jewellery quarter at around midday on the 9th of November, do you not? A. Sir, if what you are trying to say, I took part in any taking of rings, I did not steal any rings.

Q. Mr Faithful, pay attention to the question, you know the prosecution have alleged that you were in the jewellery quarter at midday on the 9th of November, which is again a time that you were not at work is it not? A. I do not know sir.

Q. You see, you are sighted on the 9th, the 10th, the 11th, and I suggest the 12th - four opportunities for an alibi to be produced, are there not? A. Sir, I am not going to produce an alibi if I cannot remember where I was. I am not going to bother writing and making excuses.

Q. ^{It's?} If the precise occasion for an innocent man to prove where he was. A. I know I did not steal any rings, sir.

Q. And it so happens, listen to Mrs Barker's description, "about five foot ten inches tall, slimmer build than the first, maybe younger, about twenty-two to twenty-three years old (reading to the words) jewellery". You used jewellery, did you not, when you were at liberty? A. Yes I did, sir, yes.

Q. "He almost had an asian appearance. He was wearing a leather bomber jacket, he was wearing two half-sovereign rings on his right hand". She said you had nice teeth. It is a description of you is it not? A. I wore three sovereign rings on my right hand, sir, not two.

Q. We will come to this, not before the 12th November you did not. A. I did sir.

Q. Two half sovereigns, I suggest. A. No. The full sovereign, sir.

Q. We will come to the rings in a moment. Do you agree that description fits you? A. Yes, close to me, yes.

Q. It is a grave misfortune, is it not, that you are not only linked to the car, you cannot prove where you were and then a witness describes you to a tee. A. Sir, just because the lady says I am light-skinned, ~~than me~~ than me around who look like me.

Q. But it is height and weight and hair. A. Well, I can show you hundreds of half-castes with my height, weight and hair.

Q. But they did not hire that Rover did they? A. I did hire a Rover, I am not denying that.

Q. They did not go to Sandy Cliff garage where the Rover, E128, which we know now to be stolen. A. Sir, I do not know anything about any 128.

Q. You see, this just eliminates all the other people bit by bit, do you follow? A. I follow, yes sir.

Q. About the rings, since you were keen to mention them. Is it mere coincidence, bearing in mind all the other features,

that when you are arrested fifteen days after the theft, you have in your possession three rings of identical description?
A. Four sir.

Q. Forgive me, I am only dealing with three of them, I know you had another ring of your own. A. Yes, that is right.

Q. All three identical with the three stolen in theft, albeit two of them had sovereigns, is that mere coincidence?
A. That is not correct, sir, there is three full sovereigns, they was not stolen.

Q. Let us have the rings, please, exhibits 9, 10 and 11.
(Handed) Thank you. You do understand the picture that has developed, Mr Faithful, do you? A. Yes I do.

Q. Right. Well here is another piece of bad fortune for you. On the 12th November, the day the prosecution say you were not at work but were with your friend Sharpe stealing rings, three rings like this I am now holding up, exhibits 9, 10 and 11 (displayed) were stolen from Drip Gold. A. I can show you thousands of sovereigns, sir.

Q. Of course you can, I am not suggesting they are unique. Just take your time about it. One is a Jones signet ring, oblong, divided in half, with diamonds, little diamonds down one half, rather a triangular appearance, all right?
A. Yes.

Q. Another is a sovereign mount, now with the sovereign in it. A. It always has been.

Q. It has got a hexangular look to it, another is round, is it mere coincidence that three like that were all on the drawer that was stolen? A. Sir, I do not know about coincidence, the sovereigns are all the same to me and they would be to a lot of other people.

Q. Never mind the sovereigns, think about the rings from Appollo Kutock. A. I am thinking about sovereigns, you are asking about sovereigns.

Q. You see how odd it appears for these three coincidences: in the hands of the man who hired the vehicle that was used for the theft, to have the same appearance as one of the thieves, and he cannot prove where he was on the 9th, 10th, 11th or 12th of November. A. The rings are not stolen, sir.

Q. Mr Faithful, you would not make any admission in this case, would you now? A. Because the rings are not stolen, that is why.

Q. Well, we will deal with that. When and where did you purchase them, pick them one by one, the signet ring first. So we can understand what evidence is right. When and where?
A. I think it was purchased from Philip Baker or Philip Baker & King.

Q. What do you mean, you think it was purchased, how much jewellery did you possess in November 1987? A. That was a latest ring of the four.

Q. Quite. How long before your arrest did you buy that ring?
A. A month, five or six weeks maybe.

Q. It is just a rough nuisance that a fortnight before the theft you happened to buy a ring that was identical to the one that Mrs Downes lost. A. Sir, I do not know about identical, it was my ring, I did not steal it.

Q. How much did you pay for it? A. £70.

Q. And where from? A. Philip Baker or Philip Baker & King, I cannot be precise.

Q. Philip Baker & King is a firm of solicitors in Birmingham, I do not think they would be selling jewellery. I do not know, but I suspect not. Maybe you are confusing. A. No, I think that is the name of the jewellers where I bought the ring.

Q. All right, what about this one, the one with the hexangular cut to it, where did you buy that? A. The corner of ... (inaudible) ... Lane, Erdington High Street.

Q. All right. How much? A. I think it was about £170.

Q. And when? A. I think the first of the many I had about five months before I was arrested.

Q. £170? A. I think so, yes.

Q. I am sorry, I did not hear the name of the shop.
A. The Jewellery Box I think it is called.

Q. Do you forget so easily where you spend £170? A. No, it is months ago, sir, it is hard to remember everything.

Q. But these rings have been in your mind for the last twelve months, ever since your arrest. They must have been then because you were asked where you bought them. Where did you buy this last one, exhibit 11? I have referred to 9 and 10.
A. I have got all the sovereigns from Fred off the Jewellery Box while I was being interviewed.

Q. How much? A. I think that was £130 or £145, something like that.

Q. And when? A. And when?

Q. When? A. About two months before I was arrested.

Q. If I have got it right, in the five months prior to your arrest. A. I had all the rings, yes.

Q. You spent £370? A. Yes sir.

Q. On jewellery, which was what, equivalent to just over a month's earnings? A. Sir, I am a very good saver, I am careful with my money.

Q. You must be to spend 20% of your income on jewellery.
A. I do not smoke, I only drink once a week.

Q. And what about trips to Derby and the hiring of cars?
A. That is once a week, five of us chip in, it is only about £15 each between us.

Q. Now I want to turn from Drip Gold to Park House Drive and the Wirley Birch estate. This time the crime was committed, not at midday but at around five o'clock. Once again, unfortunately, you were not at work. That is right is it not?
A. Maybe I was not, sir, I cannot be precise.

Q. It seems that Sharpe had an uncanny habit of committing his crimes when you were not at work, but he was not working with you at the time. A. Sir, I did not commit any crimes with Sharpe.

Q. No, Sharpe committed his crimes when you were not at work.
A. I do not know when Sharpe committed his crimes.

Q. Now the only people on that occasion who can tell us where you were are your relatives, your mother or your girlfriend, is that right? A. Sir, when I was being interviewed.

Q. Is that right? A. Yes. I want to explain myself if you would let me.

Q. Certainly. A. While I was being interviewed, I told the police I went to my mother's, which is correct. Within a few hours of making that interview I realised on that Monday I did not take my girlfriend and my baby, it was the day before I took them. We visited my mother's very often and on that Monday I went to my mother's on my own. I admit I did make the mistake while being interviewed, yes.

Q. We will not trouble with that for the moment, let us just consider what was happening at Wirley Birch. Forgive me, I have been amiss pronouncing it. While you say you were at your mother's two women, Mrs Tallis and Mrs Scott finished work at about five o'clock and went to get to Mrs Tallis' car. Do you remember seeing them in the witness box?
A. I have seen a few people in the witness box, sir, I do not know.

Q. Can you not remember the ladies? A. I cannot remember names, sir, no.

Q. Can you not remember two ladies, never mind their names, who were very fearful of what two men were planning. Do you not remember them as you sat there listening to this case?
A. I remember it being said.

Q. Did it not make any impact on you at all, the thought of that woman going down the pavement, worrying that she was

going to be attacked, did that not strike you as something rather dramatic in this case? A. What, when I was listening to it? Yes, it did, I have never been a mugger, I have never been a violent man.

Q. So I take it you do remember the evidence? A. I do remember hearing it, yes, sir.

Q. Now those two women were very struck, were they not, by the two men they saw skulking across the road from the post office. A. That is what she said, yes, yes sir.

Q. Did you not believe her? A. Yes, she has given evidence on oath.

Q. Never mind the oath, you are giving evidence on oath too. Let us not trouble about that for the moment. Did you not believe her? A. What do you mean, believe her?

Q. Because, was she not obviously telling the truth? A. Maybe she was, sir, I mean it seems she was.

Q. Maybe she was? A. I could not dispute what the lady said.

Q. Dear me. It is obvious to everybody in this court, including you I suggest, that those two women were particularly struck by the two men, they were frightened of them, one much more than the other and it worried them. A. That is what she said, yes sir.

Q. Later, on the 17th of December Mrs Scott had no doubt that one of the men she watched was you. A. Sir?

Q. Is that a mere coincidence? A. ~~I was not the man she~~ I am not a white man with straight brown hair. She is mistaken. It was not me she has seen.

Q. Mrs Tallis said that she was not sure. A. No, she said I was not the man.

Q. The jury remember her evidence. She told them that when she said to the police officer, no, she was meaning to say I am not sure. A. It is there in the statement, sir.

Q. I know. Well, the jury will decide her evidence. A. If you show the jury they can see what she said.

Q. Is it a mere misfortune that once again, not only a man, who's described like you, but a man who is identified as you, was Sharpe's companion on this crime? A. Sir, I am not a white man with straight brown hair as she described, it was not me who committed the crime.

Q. Let us leave Wirley Birch and come to the Windmill precinct. On the 25th of November there was a Ford Cortina used in that attempted robbery, was there not? A. Yes, sir, that is what they say, yes.

Q. Have you not been persuaded by the evidence, look at the picture of the Cortina, would you, you will find it at exhibit 29. There it is, the brown Cortina car with Mr Hand(?), do you remember the young man who chased it in his Mini, with his baby on the back seat? A. I do not remember being chased, sir, because it was not me who was driving.

Q. Forgive me, from the evidence you will remember, Mr Hand(?). A. From the evidence, yes, sir.

Q. Right. He took the numbers HSS 171V, right? A. Yes, that is not the number of this car.

Q. I know it is not. But Sharpe has told us this is the car. What other brown Cortina car would Sharpe have had access to other than this one? A. Sir, he did not have access to my car.

Q. Oh, I thought you were at pains to explain to the jury that you had returned that car. A. That is right.

Q. To the garage, Sports and Classic Cars on the morning of the 25th of November. A. That is right, sir, yes.

Q. That is your case, is it not? A. That is what happened, sir.

Q. What you are saying to the jury is this: "Well, if the car was used in a robbery, it was no longer in my possession. A. Sir, any car I ever owned has never been used in a robbery.

Q. That is what you are saying to the jury? A. That is the truth.

Q. Just listen to the question, never mind protesting your innocence for the moment. If it was used you are saying it was not in your possession. A. Sir, as far as I am concerned while I drove the car it was not used in any robbery.

Q. Think about this. The evidence in this case proves that you returned the car to that garage on the day after the robbery, does it not? A. No sir, I returned that car on the Wednesday, I only had it seven days.

Q. Face up to this would you. Just take a look at exhibit 6, it is the used car invoice from Sports and Classic Cars. Have you got it? A. Yes sir.

Q. Do you see the date on it? "26th November". That is the date the witness said that he filled that form out, swapped the BMW for the Cortina. A. On what day would that be, sir?

Q. That is the day after the robbery, which is the Thursday, the day before your arrest on the Friday. I do not suppose you have forgotten your arrest on the Friday, the 27th, that

must be a red letter day for you. A. It would be, sir, if you had gone bashed on your head.

Q. Of course it would. This is why I am puzzled why you say it was the 26th. A. Dates are very hard to remember, sir.

Q. Never mind that. You have been told it is the day after the robbery, all right. Your counsel put to the witness that he might have misdated that document. A. He must have done, sir.

Q. I quite agree with you, it is easy to misdate a document. A. It is.

Q. I do accept that, indeed we have had examples in this case, the police putting the wrong dates on these documents, but you have said that is sinister but in fact the police collected that vehicle, Mr Hunt told us the very next day, he was not mistaken about that, was he? "I had it in one day and the police took it away the next" A. I do not know anything about the police collecting that car.

Q. You heard him say that did you not? A. I heard him giving evidence, yes sir.

Q. We know the police took it away on the 27th, no-one disputes that. Now, you think about it. If they took it on the 27th, it is not disputed, and it came in the garage the day before, the 26th is right on this document is it not? A. Sir, the reason I know I part-exchanged the car on the Wednesday is because that morning my shift of work from three; to eleven, that is how I know I took that car back that morning. CD

Q. Mr Faithful, the problem in this case for you is that you simply refuse to accept any piece of evidence that is not consistent with your innocence. A. Sir, I am refusing because I have not done the crime.

Q. That is not the reason, I suggest. A. It is the reason sir.

Q. That is for the jury to judge. A. Yes sir.

Q. You explain this to them, please. Have exhibit 5 available. Whoever bought that Cortina we know who it was, it was you was it not? A. Yes, that is right sir.

Q. But the person buying it gave a false named address - Mr Roy Smith of 55 Sandy Road, Great Barr. A. That is not me sir.

Q. I know it is not but it is you who gave it, is it not? A. Sir, as I explained, when I bought the car he did not have any log book, it did not have any MOT, or anything at all. We arranged for me to go back within a couple of days then hopefully he would have all the forms and I would sign them.

Q. Now look, the fact that there was no log book or MOT.
A. Yes.

Q. Is endorsed on this document, is it not, you have got the original. A. Yes, I have found mine now. Where does it say that, sir?

Q. Chassis number, the book to follow or log book to follow, they have put it down on the receipt they gave to the purchaser. A. All I can see is "No MOT, sold as seen".

Q. Now look here, "Chassis number", got it? "Log book to follow". A. It does not say that here, sir, it does not say that here.

Q. Forgive me, let me have the document, it may be that he has been given exhibit 6. (Handed) (Addressing the Court): It does say it, he has got the right document.

THE WITNESS: Well, where is it sir?

MR LINEMAN: Just lift the label up and look underneath, the jury will look at the originals themselves, look at it, I have pointed it out to you, read it out now, opposite chassis number. It is much clearer on your copy than it is on mine.
A. Yes, my mistake.

Q. What does it say? A. "Log book to follow" yes.

Q. Very clearly. Furthermore the garage have not got the top copy of this document any longer. A. They have.

Q. To whom do you think they gave -----? A. Sir, when I bought the car they did not have any document, I did not sign any form, I tried to get my solicitor to trace the signature for R Smith, but apparently it could not be traced because it was photocopied, or something like that.

Q. Do not be silly, you cannot trace a false signature.
A. I know, but that is not my signature sir.

Q. Are you suggesting, because the jury can see it is signed by the purchaser, the garage have gone in for a bit of forgery themselves? A. I am not making a suggestion like that, I am just telling the jury what happened.

Q. Faithful, your problem is you do not understand logically where your answers lead. This document has been produced by a garage who simply say our purchaser gave us those details and our purchaser signed it. Are they lying when they say the purchaser signed that document? A. It is not possible for me to say he is a liar, sir, but I did not sign any forms.

Q. You did not and you are saying someone has forged the signature? A. I agree, I had the Cortina, I did not sign any forms.

Q. Think about it, if you are telling us the truth. A. I am.

Q. Just have forged a signature on the document.

A. Well, that is why I asked my solicitor if they could try and take on an expert.

Q. Who did you suggest has forged that signature? A. I am not suggesting, or framing anybody.

Q. But I think you must make an effort at it. A. I cannot make an effort, I did not sign any document, I am not framing anyone else.

Q. What it means is, Mr Hunt or his partner Mr Bird for some reason forged the signature on the document.

A. I am not framing anybody sir.

Q. Do you not recognise the importance of your position?

A. What do you mean sir?

Q. What you say, Mr Faithful, cannot possibly be true.

A. It is true, sir, it is true.

Q. Well now, I am going to leave the Cortina, we have dealt with it but the Cortina we know was used on the Windmill precinct robbery, attempted robbery. A. My car was not used on a robbery.

Q. Just look at exhibit 18 and we will see what the robbers carried in the vehicle. It was not just your car the robbers took. That was a plastic bag, that came I suggest from your flat. A. No it did not sir.

Q. Your sister at this time worked at that shop Harveys did she not? A. That is correct, sir, yes.

Q. And you had Harveys plastic bag available in your flat, did you not? A. I did sir.

Q. Is it just a coincidence, then, that the robbers not only were in your car but, of all the plastic bags available to them, by chance alighted upon one that could be connected to you. A. Sir, the carrier bag which the police said was left at the post office, did not come from my house, or not from me anyway.

Q. It is just another misfortune that you suffered in this case? A. It is not a misfortune, no sir.

Q. It may turn out to be. Now, I am going to move, please, from those matters to the interviews. I understand your case and it is this, is it not, "I never at any time admitted involvement in the attempted robbery at Windmill precinct"? A. That is right, sir, yes.

Q. The police, large numbers of them, at Smethwick police station, have falsified their evidence? A. Sir, what I told the jury was the truth.

Q. I just want to repeat it so we understand it, do you see?
A. Yes, sir.

Q. "They roughed me up". A. That is right sir.

Q. "And threatened me to get admissions". A. Yes.

Q. "But I never made any". A. I never made admissions because I had not done anything wrong.

Q. Right. "I knew nothing about who was involved in this crime". A. No sir.

Q. Did you know Sharpe's address? A. I knew Albert Road but I did not know the actual number, no sir.

Q. Did you know the Florence Road address? A. No sir.

Q. Did you know the Wytham Court address? A. No sir.

Q. Did you ever discover, how, by the evening, by the time the 27th November was over, the police had written down not only Sharpe's name but those two addresses in the notes the jury are going to see in due course. Do you know where they got the information from? A. No, I do not, sir.

Q. It is perfectly clear that they had managed somehow to find out the name and two addresses of the man who subsequently turned out to be the gunman. A. Sir, I do not know who was the robber. At the time I did not mention any addresses or show them anything.

Q. Mr Faithful, they could only have it from you.
A. Sir, I did not even know what I had been arrested for, at first.

Q. And by the 28th November, the Saturday, they had obtained and written down the 5 Wytham Court address, do you know where they got that from? A. No sir.

Q. Now just think about this, I will come back to it again I suspect. That it was put by your counsel to Sharpe that he was lying in this case and lying because he believed you had informed upon him. A. Me, that is right.

Q. That is what was put to him, but if you are innocent Sharpe knows that you have never informed upon him, does he not? A. Sharpe believes I informed on him, from what the police had told him.

Q. How can he believe that if you were not his co-robber?
A. I was not the robber sir.

Q. Just think about it, if Sharpe knows that you were not there, and he knows you knew nothing about the crime or crimes. A. Yes sir.

Q. How can he believe that you have informed upon him?

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Q. How can he believe that you have informed upon him?

A. I do not know, sir, I cannot answer those kind of questions. I did not rob anywhere.

Q. Mr Faithful, there is no answer to it otherwise than you are guilty. A. I am not guilty sir.

Q. Can you not see the difficulty you have in your way?

A. It is not a difficulty.

Q. Sharpe must believe you are an innocent man who has been framed by the police. A. Sir, I am innocent of the crime, I did not rob anybody.

Q. Sharpe has been served, we know, with the same papers that you have had. A. I do not know about that.

Q. He must know that those confessions on your account are fabricated. A. I did not make any admissions, sir.

Q. What motive would Sharpe have to injure a man, who the police have framed? A. I do not know sir, what motives Sharpe would have.

Q. I am discussing the motive put by your counsel, do you see? A. Yes sir.

Q. Let us just think about it. I quite accept, do you understand, that Sharpe does believe that you informed on him to the police. A. He must have done, sir, to say I was with him.

Q. He must believe it but he could only believe it if you were guilty. A. I am not guilty sir.

Q. There it is, in that case he cannot believe it.

A. I do not know what he believes, sir, but I did not commit the crime.

Q. Mr Faithful, now you have had a rough time, you have told us, at the hands of the police officers. A. Very rough, yes.

Q. Certainly by the end of Friday evening you must have been in a mood to say, "I want nothing to do with any of these police officers at all." A. ~~I have got no choice, sir,~~ when I was in a room with three of them being knocked about.

Q. They were treating you dreadfully? A. Yes ~~they was~~

Q. It must have been a considerable relief when, on the Saturday morning, that duty solicitor popped into your cell.

A. It was a big relief, I told him what had been going on.

Q. Nobody tried to stop him coming into your cell.

A. They could not, sir, because he was making his way round to everybody with the custody sergeant.

Q. Forgive me, it was put on your behalf that the police have power to deny access to a solicitor. A. That is right.

Q. Nobody denied the duty solicitor access. A. The reason why, sir, is because they had to produce me in court that morning with some kind of solicitor to ask for ...
(inaudible) ...

Q. Let me make this clear to you. I do put to you that you never told the duty solicitor the account you are now giving to the police. A. I did sir.

Q. I do suggest that that is an invention. A. It is not, sir, I told the duty solicitor exactly what happened to me the night before.

Q. I put it in those clear terms so that your defence is enabled to call that solicitor if they choose, do you understand? A. Yes sir.

Q. Because having alleged that is an invention it can, if that allegation is not correct, be disproved. A. Sir, that is exactly what happened that morning.

Q. All right, that is perfectly clear. Let us have this. Having returned from court you asked, did you not, I suggest, to see those two police officers. A. No I did not.

Q. Mr Hodson and Mr Summers, forgive me, Mr Holmes. A. No, no, I did not plea, sir, I did not ask to see any officers, no sir.

Q. On our custody record we can see - have you got a copy of it? A. No sir.

MR LINEMAN: You have the original because it is easier to follow (handed).

JUDGE SMYTHE: Which page?

MR LINEMAN: I think it is the second, it is 28th November that I am dealing with, page three. You see an entry, 19.20 To DC Holmes for enquiries, signed by Mr Holmes and the custody officer. A. Yes sir.

Q. Were you in fact taken out of the cells at that time?

A. Sir, ~~the only part I can remember of being taken out of the cell round about that time I was told I was being taken to West Bromwich police station. I signed the form, I was put back in the cell and handcuffed and then I was told I was not being moved until Monday.~~ cl

Q. Just think about that, Mr Faithful, would you please. You see, you had refused to sign anything when you went into that police station, had you not? A. At first, yes sir.

Q. You had then been dreadfully treated. A. Yes sir.

Q. You had been beaten up. A. Yes sir.

Q. You had been threatened. A. Yes.

Q. You had interview records forged. A. There was no interview ~~taken place~~ without my solicitor.

Q. Interview records forged. You had been shown the forgeries that Saturday morning before you went to court.

A. I had been shown two papers, yes sir.

Q. You knew they were forgeries. A. Sir, no interview took place and that is why I refused to read them.

Q. Just answer a straight question with a straight answer please. Is it not your case that the police produced to you what you believed to be forged interviews, is that your case?

A. Yes sir.

Q. Right. You would not sign anything then? A. No sir.

Q. You are taken up to court, remanded, back to the cells with a signature here I suppose? A. Yes, I was informed by the duty solicitor, sir that ~~he may need to contact my~~ solicitor from what the magistrate had said to me.

Q. You must have thought, "good grief". A. I felt relief.

Q. "I wonder what is going to happen now I am back in these cells." A. Yes I did.

Q. Are you saying that man coolly - you happily had that man - at ten minutes past eight put your name to this document without asking and looking to see what it was you were signing? A. I put my name to the document before then as well, signing property, or handing some money out to my girlfriend.

Q. No, no. When your property was removed and money given to your girlfriend, you signed, you knew what you were signing for, what does it say above your signature? A. Above 20.10, "Faithful (reading to the words) interviewed". Underneath on the next line is my signature.

Q. You knew perfectly well what was written there from when you signed it. A. When I signed it there was nothing written there.

Q. Mr Faithful, were you in your state of mind signing a document with two blank lines above it in the presence of police officers you loathed and distrusted? A. It was not so much two blank lines, there was already things written there, I signed on an empty line.

Q. Let us just question this please, let us all have clear the nature of the man who is making these allegations. You took this document in your hand. (Addressing the Judge): My learned friend has said he does not require me to make an application to your Honour. That is the record of your

previous convictions, is it not? A. Shamefully, it is, yes sir.

Q. Never mind whether you think it is shameful or not.

A. It is sir.

Q. They start - let us see when you were born - 1966.

A. Yes sir.

Q. So you would have been, what? Sixteen by 1982.

A. About that, yes sir.

Q. Well, I think it adds up, sixty-six and sixteen is eighty-two. In February of 1982 you were a sixteen year old, missing before that any convictions before you were sixteen. Dealing with your first conviction. Convicted date on your sixteenth birthday and in July 1982 before the Juvenile court for taking a motor vehicle, interfering with a motor vehicle and being in breach of a conditional discharge for an offence of burglary and handling stolen goods. A. That is correct, sir, yes.

Q. You were placed under supervision, were you not?

A. Yes.

Q. Three months later, in October 1982, for taking another motor vehicle and a burglary you were sent to a detention centre. A. On what burglary? Yes, sir that is right.

Q. November 1983, before the magistrates court for theft of a motor car detention again. A. Yes sir.

Q. That was an appeal and on appeal varied to probation. October 1985 your first appearance before the Crown Court, this time at Warwick for attempted burglary, one hundred hours community service. A. Yes sir.

Q. If we can go down to November 1986 before the Crown Court at Birmingham for attempted burglary the court deferred sentence on you. A. Yes sir.

Q. By the time you appeared for sentence you had committed more offences had you not? A. Yes.

Q. So in September of that year you were dealt with for attempted burglary, burglary, handling stolen goods, making a false instrument and using a driving licence with intent to deceive. A. That is correct.

Q. And you were sent to youth custody for fifteen months.

A. Yes, fifteen months, yes.

Q. November 1986 before the Crown Court for theft, another twelve months youth custody. A. It ~~is to run concurrent~~ with the term I had served.

Q. With the term you were then serving? A. Yes.

Q. So you are the man who alleges that in this case it is the police who are lying and fabricating evidence. A. Sir, I

have been a man of dishonesty in the past, yes, I am not denying that. When I came out of prison I turned over a new leaf, I got myself a job, handling money, working with disabled people, I was making a go of things until I was arrested for these series of offences of armed robbery which I never done.

Q. Mr Faithful, Sharpe, who had his record put to him, got the same job handling money and helping old people, he was the man who had the gun. A. His job, sir, was more just riding on the bus, sir. My job was to take care of the patients, the money, help them in and out of their houses and drive them around.

Q. You, Mr Faithful, when the police told you on the 30th of November, late that night just before midnight, that Sharpe had been arrested, you never expressed any surprise at all, did you? A. I cannot remember exactly what my expression was, sir, then.

Q. Oh, I think you probably could. A. In all honesty, I cannot, sir.

Q. Just picture the situation, imagine, try and imagine, you are innocent and there you are in the cell, all these terrible things have happened to you and the police come in and they say the other man is Sharpe. What would your reaction have been? A. Quite surprising.

Q. But you never expressed any surprise. A. I did not express it, sir, because I had been put through enough over this. I was in the police station and that is why.

Q. Shall I tell you what you did do and you think about it and think whether you wonder if it is odd, now, looking back. You see, they told you they had arrested Sharpe, "nicked him" was the words they used, but Sharpe had told them untruthfully that you had got rid of the gun. A. Sir, I have never owned a firearm.

Q. Listen to your reaction. "Sharpe says that, 'Fuck me he got rid of that'". A. That is not true, sir, I did not make any admissions like that at all.

Q. Think about this, they did tell you that Sharpe was alleging you had got rid of the gun. A. They might have done, I cannot be precise about that.

Q. They asked you if you could help to recover the gun. A. In the presence of my solicitor I did answer this question.

Q. Just think about it, because we will look to see what happened. There you are, it is late at night. They are saying to you, can you help us get the gun back?

A. Is this before my solicitor is here, or afterwards?

Q. Yes, before he is there. A. They woke me up when I was asleep, about ten to twelve.

Q. What was the point of getting your solicitor over if you could not give them any help about the gun? A. The point was I wanted to be interviewed truthfully and when my solicitor was there, I know everything was taken down, all correctly signed and it was a truthful interview.

MR LINEMAN: Let us just look at that and see what it was you said, it is exhibit 24. May I just have the custody record from you for the moment. Just forgive me for a moment, would you. (Paused)

JUDGE SMYTHE: It is exhibit 24, members of the jury, if you are looking for it.

MR LINEMAN: Right, so we can set the scene, 30th November, the early hours. Can we get the gun back? You told the police -----

JUDGE SMYTHE: I am sorry, you are saying 30th November, this is dated the 1st.

MR LINEMAN: Late hours, 30th November, then the solicitor comes, the 1st December, thank you your Honour. This was getting to be a bit of a farce was it not? A. What do you mean, sir, a farce?

Q. Well you are an innocent man. A. I am sir.

Q. You know nothing about a gun, nothing about a robbery and here is Mr Eyres(?) and Mr Jones. A. Yes.

Q. It must have been very difficult, they are doing their best for you, to help the police about this recovery. A. I just wanted a true interview, sir, that is why I wanted my solicitor present.

Q. The odd thing is, the police know that you never admitted being on this robbery, they all know it, that you are taking it and saying you are innocent. A. I have never been on a robbery.

Q. I know this, think about it. Tell the jury. The plot must have been known to senior officers, "we will get him or we will forge the interviews." They must have known what was going on, they knew that you are protesting your innocent. A. Yes that is right.

Q. Well, Sergeant Robbins thinks it is worthwhile going to West Bromwich to say, "Can you help us get the gun back?" What on earth reason would the Sergeant have to think you would help get the gun back? A. Sir, I have never owned a firearm.

Q. Faithful, think about it. A. I am thinking about it sir.

Q. If what you said is true, there would be absolutely no point in coming to see you in West Bromwich to say "Can we get the gun back" because your reaction is that would need to be,

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"Do not be silly", you know I am ^{innocent} interested. A. I do not know the whereabouts of the gun sir.

Q. I do not think you are even ready to face up to the point of the question. A. I am facing up to it sir.

Q. Look what happened. We are in the interview in the presence of your solicitor. Do you take the opportunity of saying, "I am not guilty of that attempted robbery?"

A. They did not ask me if I was guilty of the robbery, they asked me if I knew the whereabouts of the gun.

Q. This was in the presence of your solicitor where you could take the opportunity, with relief of saying, "I want to say what has been happening to me, I am not guilty, they have been forging my statements." A. I told my solicitor what was happening to me.

Q. Look at this, "We have now arrested Lloyd Sharpe in connection with the (reading to the words) Listen to your solicitor, are you in a position or are you prepared to (reading to the words) Lloyd Sharpe". Those things were produced, you read them, you read and your solicitor said, "Do you want to read any more?" and then "Do you want to speak to me now?" A. This is my solicitor acting on my behalf.

Q. You said "Yes I do" and then when the police officer came along after you had spoken to him. A. I answered them the truth.

Q. But look at it. A. Answer

Q. Look at it. This is your carefully phrased answer. It does not say yes and it does not say no. A. It is just the way I said it.

Q. Oh, it is not, it has been very carefully thought out. A. I could not have thought it that much, it was within seconds, the police came into the room.

Q. Look at it, "If I could help you with assistance to the gun I would". A. That is right, yes.

Q. "But I have never touched a firearm, or never owned one and do not know where one is at the moment". A. Yes that is right.

Q. You have been very careful in that neither to admit being on the robbery nor do you deny it. A. They did not ask me if I had been on the robbery sir. I answered their questions about the gun, it was truthful.

Q. You kept your options open. A. I answered the question as truthfully as possible.

Q. Oh, Mr Faithful, just think about it, here is an innocent man in the police station and after three days with his solicitor present he has a chance to say, "How on earth could

I help you about the gun, I have been telling you for the last three days I am innocent." A. I answered the question as best I could.

Q. That was your best effort of protesting your innocence was it? A. I do not know the whereabouts of the gun.

Q. You see how devious it is? A. It is not devious sir.

Q. Is it not? A. It is a correct answer I gave.

Q. Look at it, can you not recognise the deviousness of it, you planned it. A. It was not planned sir, it was the truthful answer at the time.

Q. Really? A. Yes sir.

Q. That was your protest after all that had happened to you?

A. I told my solicitor what had been happening to me during those days in the police station.

Q. So you told us. A. No, not what I told my solicitor, not -----

Q. So you told us. Mr Faithful, you were and are a dishonest man, are you not? A. I am not, sir. I was a dishonest man -----

Q. You demonstrated that this morning over and over again.

A. I have committed petty crime in the past, I have never been a violent man, I never will be, I have not robbed anyone.

Q. The jury can see an example of, I suggest, your devious and cunning nature in the answers to the police. A. I answered the question to the best I could.

Q. I suggest that though you do not mind plotting to rob people ----- A. I did not rob anybody.

Q. Though you do not mind hanging about outside post offices, frightening people by your very appearance and although you do not mind going in with loaded shotguns, you have not got the guts to admit it, have you? A. If I committed the crime I would admit it, sir. As you can see from my petty crime in the past I have admitted my crimes, if committed. I did not rob anybody.

(The witness withdrew)