

Intentionality and *mens rea* in police interrogations: The production of actions as crimes

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Abstract

The relationship between intentions and actions is approached as a topic in and for the social practices of talk-in-interaction. The idea that actions may be based on prior intentional states, and have intended consequences, is considered not as a feature of actions themselves, but as a practical concern in how actions are reported. The article starts with examples from mundane conversation, in which overt mention of intentions is tied to circumstances in which the intended actions are in some way balked, unfulfilled, or a departure from expectation. The study then focuses on the special cultural setting of police interrogations, where vernacular descriptions of actions are oriented to the status of those actions as possible instances of some category of crime as defined in English law. The role of intentionality (in legal terms, mens rea) is an essential feature of this activity. In contrast to everyday conversation, the intentionality of criminal actions requires no “balked action” relevance for its topicalization but, rather, arises as part of the systematic practices of establishing intent regarding an action’s effects, relevantly to legal requirements of criminal evidence for the alleged offense.

1. Introduction

In this article, the term “intentionality” includes two senses. The first (sense 1) is the everyday sense of “intent” with regard to the causation of actions: the sense of doing something agentively, deliberately, or to some kind of end or purpose, rather than, say, by accident or happenstance. The second (sense 2) is the philosophical sense, following Brentano and Husserl, of an “intentional state,” in which a broad range of mental states such as believing, thinking, knowing, and wanting, are understood as “about,” and in distinction from, whatever thing or event in the world or mind may be the object of belief, thought, knowledge or

desire. So, “intentional states” include not only intent or purpose, but also thoughts, understandings, beliefs, feelings, and many other experiential and epistemic terms. The approach taken in this article is to examine invocations of intent (sense 1) and intentional states (sense 2) empirically, in the detailed practices of everyday accountability, rather than by philosophical discussion or semantic analysis. Indeed the approach taken here owes more to the linguistic philosophies of Ryle (1949), Austin (1975) and Wittgenstein (1958) than to phenomenology, in that it approaches the meanings of intentional terms through examining their practical uses (cf. Coulter 1985), albeit via the analysis of empirically recorded examples.

This article focuses primarily on the narrower “sense 1” of intent, as used in everyday narrative accountability, in the special cultural context of English law (Hart & Honoré 1985), and in many other legal systems (e.g., Dupret 2001; but see Duranti 1990). However, the second, broader “sense 2” of “intentional states” proves to be pervasively relevant to how people deal with sense 1, within the everyday practices of accounting for actions. This applies in particular to the ways in which causal intent for an action may be separated from causal intent for, and the foreseeability of, an action’s consequences. So, in many of the examples we shall consider, it is via sense 2 (mental and epistemic states in general), that various degrees of intent (sense 1) are dealt with in practice.

Studies of intentionality in discourse have generally focused on proposals for, or arguments against, explaining what a person says as the product of an intent or intentional state. Discussions of the “folk psychology” of intentions and actions (e.g., Greenwood 1991; Searle 1983) focus on the adequacy or otherwise of vernacular concepts and explanations of human actions. Cognitive and social psychology have generally adopted a folk-psychological “intentionalist” explanation of action as an initial basis for improving upon it, by proposing explicit cognitive models that predict actions (e.g., Miller, Galanter & Pribram 1960; Ajzen 1985). Anthropologists have warned against the presumption of intentionality in the analysis of the language and actions of non-Western cultures (e.g., Duranti 1990; Rosaldo 1982). There has also been some discussion of the relevance of intention attribution in and for the analysis of recorded talk-in-interaction (e.g., Heritage [1990] 1991; Pomerantz [1990] 1991). The approach taken here is also an attributional one, except that the attribution of intent at issue here is that of the participants in accounting for their actions, rather than of the analyst in assigning intent to speakers. Another contrast to the approach taken here, is the notion of “causal attribution” in experimental social psychology (e.g., Heider 1958; Kelley 1967), which purports to model the cognitive decision procedures by which individuals compute the causes (including sense 1, “intent”) of everyday actions.

Instead, the aim here is to examine how and when people deploy and manage notions of intent in the description of actions, and what such formulations accomplish, on and for the occasions of their deployment.

The notion that psychological states can (and should) be studied as concepts used, and as matters managed and oriented-to, in talk and text, is a basic precept of discursive psychology (Edwards 2005; Edwards & Potter 2005). Intent, mental states, and their relevance to actions, are a particular domain of that enterprise. In a study compatible with discursive psychology, Jayyusi (1993) draws on linguistic philosophy and ethnomethodology for a detailed examination of the common sense links between intent and action.

The issue of what actions are attributed to whom, how actions are to be described and what features of them are significant for their description, assessment or ascription is settled by members (or left unresolved) in the actual contexts of ongoing social interaction. (Jayyusi 1993: 435)

As the present study does (see also Stokoe & Edwards 2008), Jayyusi focuses on the attribution of intent and the description of actions in legal contexts, where there is a strong, programmatic concern with the description of action and causality.

In collecting examples of participants' invocations of intent for actions, an initial criterion was required, for identifying what would count as a collectable item. Using the broadest possible definition, almost anything that people say might be an example. This is because there is a kind of implicit intentionality, often defined in linguistics (e.g., Chafe 1970; Fillmore 1968; Halliday 1985), characterizing the "agency" of action verbs such as *kick*, *punch*, *push*, *jump*, etc., as distinct from stative verbs such as *fall*, *slide*, *slip*, *break*, etc. Grammatically, or in phrasal combinations, agency can also be added, re-assigned, or cancelled out; examples include "it made me jump" (denoting an involuntary reaction), or the difference between falling and diving in competitive sports. Indeed intent is commonly the sense of the infinitive: "I did come round *to see* you"¹ where "come round" is a presumptively intended/agentive kind of action, but "to see you" encodes intent more explicitly, by providing a reason for the visit. Yet even that example does not foreground intent *per se* as topic or focus; there is no description of a mental state (thinking, wanting, hoping, intending, etc.) with regard to the action. Similarly, talk of future actions (e.g., "I'm gonna take it in Brighton"), even though implying intent, needs not, and generally does not, topicalize intentionality *per se*. For example, taking "it" (a driving test) in Brighton might be formulated as a matter of necessity, or circumstances, and so on. The way in which examples of talk about intentional actions were selected for this study, was by

choosing instances where the intentionality of some action was specifically *topicalized* by reference to mental states, and not merely when some semantically or presumptively intentional action was talked about.

2. Examples from everyday conversation

The ways in which intentionality figures as a concern in everyday conversation, is the topic of another study (Edwards forthcoming). However, police interrogation is necessarily built upon the foundation of everyday conversational competence, and there are some similarities and differences that may be briefly noted here. It turns out that, in everyday talk, intentionality is not explicitly attended to except in circumstances where the action in question faces, or has faced, some kind of difficulty, postponement, or obstacle to its performance, or some other departure from normal expectations. Here is an example, transcribed using the conventions of conversation analysis.²

(1) (Holt:1:4:2)

- 1 Les: → What time did you inten' getting here Keith.
 2 (0.3)
 3 Kei: Uh:: (1.4) pr'obly about uh::: ten o'clock.
 4 h's [train co]mes[in
 5 Les: [Well the-] [the trouble is you see uhm (1.1)
 6 uhh! (0.2) You better haa- (0.3) There's a- uh- (.)
 7 a ga:p,h (0.2) when: I'm out'n she's out but if you're
 8 early enough you c'n go with her I thi:nk, (...)

Lesley's inquiry about Keith's intended time of arrival (line 1) turns out to be prompted by potential "trouble" with it (line 5). The projection of possible trouble is signaled partly by the notion of intention itself; Lesley might otherwise have simply asked Keith what time he was arriving. The very notion of an *intention* to do something, as something worth formulating, makes relevant a potential a gap between thought and action. Lesley also projects possible problems by her use of the past tense; what time *did*, not *do*, you intend getting here. Keith's response to the inquiry (lines 3–4) is delayed and hedged, invoking uncertainty and circumstance.

Examples 2–4 are further illustrations of the trouble-oriented basis on which speakers ordinarily invoke intentionality.

(2) (Holt:X(C)2:1:4:4)

- 1 Les: → Anyway when d'you think you'd like t'come home ↓love.
 2 (.)

- 3 Kat: Uh:m (.) we:ll Brad's goin' down on Monday.
 4 (0.7)
 5 Les: Monday we:ll ah-:hh .hh w:↑Monday we can't manage
 becuz
 6 (.) Granny's ↓coming Monday.↓
 7 (0.4)
 8 Kat: Oh;
- (3) (Holt:1:1:12)
 1 Les: A:nd uh so on an:d (0.3) an' I: got her dinner ready:?
 2 (1.1)
 3 Les: → But uhm (0.2) .hh she said oh I did think'v getting up
 4 t'da:y .hh b't- (0.3) i-the o:ld lady nex'door said (.)
 5 do:n't get up you're t:oo:: wea:-:-:k.h (.) hh huh
 6 ↑huh .u
 7 (.)
 8 Les: ↑SO[SHE STAYED in BED again all day. ((smile voice))
- (4) (Holt:88U:2:4(1):25)
 1 Car: → And he also said he would very much've liked to've
 2 come to the ch:rch. .hh But he had a memorial
 3 service for a very old friend in Essex the following
 4 da:y.
 5 Ski: Oh[:.
 6 Car: [an'ee couldn't come

Example 2 is another question about an intended journey, addressed this time by Lesley to her daughter Katherine. Lesley's formulation of Katherine's future action in terms of intentional states (*think* and *like*)³ again elaborates what might otherwise be a simple inquiry about when Katherine is coming home. Indeed, it transpires that there are problematic contingencies; Katherine's arrival home (from her university, several hundred miles away) generally requires assistance in the form of a lift, and/or someone such as her father to pick her up from somewhere in his car. Lesley's inquiry (line 1), therefore, orients to those contingencies by formulating the homecoming in intentional terms. As we noted with Keith in example 1, Katherine's response is delayed and problem-oriented; the word "we:ll", enunciated here in an emphatic and drawn-out manner, typically prefaces a non-straightforward response (Schegloff 2007). The relevant contingencies are that Katherine's friend Brad is able to provide a lift most of the way but only if she comes home Monday, which would require Katherine's father to pick her up from Brad's house, which he is unable to do because of a prior commitment to picking up

Katherine's grandmother (lines 5–6) from another location (in fact, a bus station).⁴ The design of Lesley's turn at line 1, with its formulation in terms of intentional states, anticipates just these kinds of possible contingencies, if not those actual ones in detail.

Examples 3 and 4 show further invocations of balked intentionality for actions. Both are accounts of past actions that were intended but unrealized. In example 3, Lesley makes fun of a person she characterizes (here and elsewhere) as a malingerer, whose unrealized intention to get out of bed while others wait upon her, is treated ironically. In example 4, inability to attend a funeral is accounted for in terms of reportedly balked intentions; the person in question "would very much've liked" to attend, but was prevented from doing so by another commitment. Indeed, this kind of formulation, of balked preferences and intentions, is a standard, normative feature of how invitations and offers are routinely declined in conversation (Drew 1984). The accountability of intentionality, then, with regard to failed or unrealized actions, whether actually or prospectively unrealized, is a resource that people use for the performance of conversational actions done in the telling.

3. Examples from police interrogation

In contrast to everyday talk, police interrogations display a pervasive concern with the intentionality of reported actions, generally pursuing intentionality well beyond initial descriptions of actions, and without requiring the kinds of failed, balked, unexpected or unrealized contingencies that we see in examples 1–4. Such contingencies may and do arise in the police interrogations, but need not, and mostly do not. Instead, police interrogations are systematically oriented to eliciting testimony about actions relevantly to their possible status as instances of some category of crime, typically the crime for which the suspect has been arrested, and for which some degree of intentionality may be a key criterion. This requirement for establishing intent is not merely a normative characterization of interrogations based on what we know or presume about police work. Rather, it is a feature of how intentionality is broached and handled in detail, in the interrogations themselves, as a sustained concern over and above establishing whatever criminal action was in fact done. With regard to the police interrogations, then, we are dealing with a specific cultural setting for the invocation and establishment of criminal intent, within a broader context of cultural competence in the use of vernacular language in the everyday accountability of actions.

An important backdrop to these data is the technical distinction pervasive in English law between *actus reus*, which is the illegal action allegedly

committed, and *mens rea*, which is the criminal intent imputed to the act (Richardson 2006). Both elements need to be in place, and in the case of *mens rea* to varying degrees from full premeditation to “recklessness” with regard to consequences, in order for suspects’ actions to be established as instances of specific categories of crime. The inclusion of recklessness here is especially interesting because it would not feature under a semantic or philosophical definition of intent. Yet it figures as a category of intent in legal practices because it is part of a set of related formulations that define degrees of criminal culpability in terms of degrees of intent. Further, empirical examination of cases shows that recklessness is raised and negotiated alongside, and *in terms of*, intent and intentional states.

It is part of police officers’ training that they should be aware of what it takes, as evidence, to establish *mens rea* for each type of offense (Calligan 2000). Of course, that is no guarantee that individual officers possess such knowledge. In the absence of direct evidence such as a confession, as a basis for assigning criminal intent, the law empowers legal practitioners (police officers, lawyers, judges) to appeal to what a “reasonable man” (sic) would understand to be the basis of the actions in question. The analysis presented here, however, does not interpret talk by coding it directly into legal categories of that kind; indeed, the police officers seldom make direct reference to legal definitions. Rather, the legal concept of *mens rea* is useful in helping to identify how the practices that we discover constitute “police work” rather than just “conversation.” The analytic focus is on the practices of interrogation as talk-in-interaction, in which vernacular descriptions of actions and their intentionality are handled.

In example 5, ‘S’ is a 16-year-old accused of damaging a car in the street outside his home, following an angry row between S and his mother. S has admitted, two turns earlier, that he “smashed the car up”, which the interviewing police officer P puts back to him here at line 1 for confirmation.

(5) (PN:2:2)

- 1 P: You said, (.) smashed the car up.
- 2 S: Well. (.) smashed the back window.
- 3 P: What’d (y’hit.)
- 4 (1.3)
- 5 S: I [punched the window.]
- 6 P: [(To get into)] the car.
- 7 (0.3)
- 8 P: Punched the back window.=
- 9 S: =Yeh.

- 10 (3.7)
 11 P: Hh okhə:yh h
 12 (2.0)
 13 P: → What was y'r pur:pose when y'punched the window,hhh
 14 (0.6)
 15 S: Take th'temper outa me.
 16 (0.2)
 17 S: (°Th*at's *all°)
 18 (1.9)
 19 P: *R:*ight
 20 (0.7)
 21 P: → Did you inte:nd to cause any damage to the
 22 window of the car,
 23 (0.4)
 24 S: *No not really,*
 25 (0.3)
 26 P: No,

S and P first negotiate how S's action should be described; both of them have just used the term "smashed," but by line 6 S revises this to "punched," which P then takes up. An important semantic difference between *punch* and *smash* is that *punch* formulates an action without including its effect, whereas *smash* does the opposite, specifying effect but not action. The criminal offense of which S is accused is "criminal damage," which also specifies effect rather than action. As we see in the rest of the extract, P works to establish not only what S actually did, in S's own terms (punching the window), but also what its effects were (breaking the window), and what degree of intent S may have had with regard to those effects. This entails parsing events into the components *action*, *effect*, and *intent*. Note how painstaking this parsing is, compared to the narrative fragments of ordinary talk in examples 1–4. At line 8, P formulates S's preferred action description, S immediately confirms that at line 9 (the equals sign "=" denotes immediacy), and P acknowledges it for the record (line 11).⁵

Having established an action description, P then moves at line 13 to the question of intent. P's question *presupposes* that S's punching the window was done for a purpose, with some end in mind. Rather than answering in terms of the punch's intended effects on the car window, however, S provides an explanation in terms of his emotional state, that it was done to quell his anger, to "take th'temper out of me". The addition of a softly spoken "That's all" (line 17)⁶ signals S's sense that P may be wanting something more from him. In any case, after acknowledging receipt of

S's explanation, P pursues intentional effects on the car window explicitly at line 22, "Did you inte:nd to cause any damage to the window of the car," to which S replies that he did not.

There are several features of example 5 that recur regularly across the corpus of police interrogations. One of these is the separation of actions from effects, sometimes initiated by S as here, and achieved in this case by the selection of different kinds of verbs, the action verb *punch*, in preference to the stative, "effects" verb *smash* (cf. Fillmore 1970, on "surface contact" versus "change-of-state" verbs). Another feature is P's initial use, when pursuing intent, of the (relatively) open-ended WH-question "What was y'r pur:pose when you punched the window" followed subsequently, when the required answer was not forthcoming, by the more pointed, closed-option Yes/No question, "Did you inte:nd to cause any damage to the window of the car". The use of those differently framed questions, and in that order, displays P's orientation to obtaining intentional state reports from S, and if possible, in S's own words prior to the use of prompts. We pursue those features in further examples later in this section, along with a third robust feature, which is the use of normative and hypothetical reasoning that we find in the continuation of the same sequence, given here as example 6.

(6) (continued from 5)

- 27 (0.4)
 28 P: Ri*:ght*
 29 (2.1) ((papers rustling))
 30 P: → What d'you think the likely outcome is if you punch
 31 a window of a carhh.
 32 (0.5)
 33 S: °Could sma:sh,°
 34 (0.3)
 35 P: It could sma:sh
 36 (1.7) ((papers rustling))
 37 P: → °Kay.° Did you think about that risk before you-
 38 punched it,
 39 S: *Didn't think about anythin:*
 40 (0.5)
 41 S: (*Punched it.*)
 42 (0.3)
 43 P: Righ'.
 44 (1.1)
 45 P: But you're aWA:RE that by punching something
 46 there's a risk.

- 47 (.)
 48 P: By punchin' a window there's a risk of it breakin'.
 49 S: °*>Ye:h<*°

One resource open to P, in the case of resistance by S to the suggestion of intentionally causing damage, is to resort to hypothetical reasoning based on normative scenarios, generally using modals such as *would*, *could*, *may*, *might*, *will*, and *going to* (see Edwards 2006a). In example 6, P's question at line 30, following S's denial of intentionally causing damage, poses just such a normative event. Note that it is cast in terms of a cognitive state, "what d'you think," rather than a straightforwardly factual question such as "what would be (the likely outcome)". Having obtained from S a softly-spoken formulation of possible effects (line 33, "could sma:sh"), P first records that as S's judgment (line 35), and builds upon it (following a short "okay") with a direct factual (not normative) question about S's actual intent at the time of punching the window (line 37). Again, note P's movement from an initial, open-answer WH-question "What d'you think . . ." to the closed-option Yes/No question, "Did you think . . .". The sequential use of the open-ended, normative-hypothetical WH-question is that, dependent on a positive answer, it provides some scope for a direct question about an action's *actually* intended consequences. In this case, S again resists that question by not answering Yes or No (see also Raymond 2003; Stokoe & Edwards 2008), but denying any kind of intention at all (line 39).

S's denial of having *any* intention at the time of the offense is a way of resisting the answerability of specific questions about intent. A related move is to claim such a state of confusion, emotion, or drunkenness at the time, that it prevented S from formulating clear intentions then, and/or recalling them now in interview.⁷ In example 6, P's response is to resort again to the normative scenario, framed now even more restrictively as a candidate answer (requiring a Yes/No confirmation or denial) to the proposal that "by punching something there's a risk" (line 45) and specifically, "by punchin' a window there's a risk of it breakin'" (line 48). The second formulation retains both hypothetical generality ("*a* window", not "*the* window"), and also specific details of the actual damage that S is accused of.

Note again the framing of these questions not merely in terms of likely effects, but in terms of S's intentional states: "you're *aware* that . . ." (line 45). The sense of these normative-hypothetical scenarios, as reasonable and somewhat difficult to deny (who could say that punching a window *might not* risk breaking it?), reflects the legal requirement for a "reasonable man" to be able to *foresee the consequences* of some action, in the

event that a suspect under interrogation, or a defendant in court, denies *intending* it. In this case P goes further than establishing merely that S possesses that kind of normative understanding. At line 37, he poses the question in terms of S's state of mind prior to the act—“Did you think about that risk before you- punched it”—formulating not only S's general knowledge of how things get broken, but S's intentional state with regard to his specific actions and their consequences at the time. Indeed, this is just the kind of descriptive practice that renders what the law terms “recklessness” a matter of intent and intentional states, or *mens rea*.

Many of the features we have identified in examples 5 and 6 can be seen also in example 7, in which the same suspect is shortly afterwards questioned about the further action, which again he admits, of kicking the car's door, which allegedly caused a dent in it.

(7) (PN:2:2)

- 1 P: → Um:: what was your intention:: when you kicked
 2 the car:
 3 (0.6)
 4 S: To take my temper out
 5 P: Jus' temper a[gain.
 6 S: [(Yeh.)
 7 (1.9)
 8 P: °Kay°
 9 (1.0)
 10 P: → What d'you think's the possibilities:: that
 11 could 'appen when you kick a- (0.9) car door.
 12 (0.5)
 13 S: >Pu' a dent in it.<
 14 (0.5)
 15 P: Put a dent in it.
 16 (0.8)
 17 P: → Did you consider that before y'kicked it,
 18 (0.3)
 19 S: No:.
 20 (0.3)
 21 S: I din't.
 22 (0.4)
 23 P: °Din't.°
 24 (1.3)
 25 P: °Okay°
 26 (1.9)
 27 S: So you're tellin' me you kicked the car door:

- 28 (0.6)
 29 P: Um: (0.3) you didn't intend to cause damage:
 30 (0.8)
 31 P: Bu'- you're aware that- (0.3) by kickin'
 32 something you can dent it.
 33 S: °Mm°

Having already elicited S's confession that he "kicked the side door" of the car, P pursues S's intentionality with regard to consequences (lines 1–2). Again, it is not the deliberateness of the kicking that is in question (cf. the *punching* in examples 5 and 6), but the intentionality (that is, awareness prior to the action) of its effects. S again explains his action in terms of his "temper" (line 4), which P acknowledges, adding "jus(t)" (line 5) to S's account. The modifier "jus(t)" conveys the sense (ratified at line 6) that S is denying whatever *further* intention P may be pursuing over and above the action of punching the door (cf. S's "That's all" in example 5).

P's next question (line 10) poses a normative-hypothetical WH-question about possible effects, to which S obligingly answers (line 13) and P acknowledges receipt of that answer by repeating it (line 15; cf. example 6, line 35). Again, P now puts to S a direct, closed-answer, factual Yes/No question about his actual kicking of the car door, at the time he kicked it (line 17)—indeed, intentionally, "before" he kicked it. Again, as in example 6, P's question explicitly places the intentional state "consider" prior to the act and its effects; as we have seen, an intentional state (in this case, "consider") is used in context to establish culpable intent with regard to a subsequent action. S denies intentionally denting the door, which P also acknowledges (lines 23–25), and proceeds to formulate S's testimony (lines 27–32). Note how P's formulation is cast as *S's own account* ("you're tellin' me," line 27), as an admission of the act of kicking the door, a denial of intentional damage, and an admission of the normative understanding that "by kickin' something you can dent it." So the upshot of this interrogative sequence is the elicitation of testimony, attributed to S, in which actions are partialled out from their effects, and intent is partialled out between actions, effects, and what anybody should reasonably know and expect. Relevantly, the latter is a sufficient *mens rea* condition for S to be charged under the law prohibiting "criminal damage" (Calligan 2000).

Example 8 comes from an interrogation involving a different suspect and police officer, in which we may note for comparison how actions, effects, intentions, and normative expectations are formulated and put to work. This is another case involving criminal damage, this time to a neighbor's roof tiles upon which S is accused of having walked, an

activity that S admits he may have done, but was too drunk at the time to now clearly remember.

(8) (PN:51:8)

- 1 P: An::d (0.2) by you walkin' on ti:les (0.3) which
2 you say you might've done,
3 (0.2)
4 S: [Mmm.
5 P: [Yeh?
6 (0.8)
7 S: That's gonna snap 'em.
8 (0.6)
9 P: You think it would;
10 (2.2)
11 P: Could.
12 (0.4)
13 S: *It* could do *y:eh hh*
14 P: >What I'm gettin' at< is: (1.5) .pt an' I'll ask
15 → the question (1.0) did you inte::nd to break
16 the tiles on- the neighbors' roof.
17 (0.3)
18 S: You know I didn't (*uh um) (aim) for it.=I
19 didn't intend to.=cos I- (0.2) get on with Bill,
20 (0.9)
21 P: Not intended,
22 (2.0)
23 P: So you've >not intended to< cause damage.
24 (1.0)
25 S: No::: ()=
26 P: → =By climbin' on it d'you think it was reckless:
27 (0.2) as to whether damage could be caused.=<In
28 other words: by climbin' on it,
29 (0.5)
30 S: U:ye:h that's what it is yeh.
31 (0.3)
32 P: It's likely that damage >woulda been< caused.
33 S: *Yeh.*

In example 8, P puts a question to S (lines 1–2 and 5) in the form of a sentence that S collaboratively completes (cf. Lerner 2004), and thereby answers (line 7). Despite having obtained that clear reply, P pursues and unpacks S's testimony in detail, regarding the facts of what he did (actions), his normative understanding both now and relevantly at the time,

of the possible effects of those actions, and his actual intentions at the time, regarding those effects (i.e., damaging the roof tiles). In pursuing S's agreement to those normatively predictable effects, and in spite of S's answer at line 7, P downgrades his formulation of S's understanding, repairing "would" to the less certain modal "could" (lines 9–11), before S eventually grants it in the precise modality proposed by P (line 13).

Note again, as in previous examples, P's specific formulation of expectable effects, in this case between walking on tiles and breaking them, in terms of S's intentional state: "*You think* it would" (line 9). In line with that same concern with what S thinks and understands, P then pursues the intentionality of the damage that S (allegedly) caused with a direct, closed-answer Yes/No question (lines 14–16). Interestingly, note that P's preface to the question (">What I'm gettin' at< is: (1.5) .pt an' I'll ask the question," lines 14–15) orients both to its directness as a question, and also its status as the point that P has been pursuing hitherto, via the normative questions in prior turns. S denies intent to cause damage (lines 18–19), and offers an account for that answer in terms of his good relationship with his neighbor (line 19).

As we noted in other examples, P *formulates* (Heritage & Watson 1979) S's essential account-for-the-record (lines 21–23) regarding intent to cause damage, in this case waiting each time for S's eventual confirmation (line 25). P then puts to S a formulation of S's account using a legally relevant category of intentionality-regarding-consequences that was not specifically used by S, "reckless: (0.2) as to whether damage would be caused" (lines 26–27), to which S twice acquiesces (lines 30–33). What example 8's interrogation sequence accomplishes, then, is a descriptive parsing out of action (climbing on the roof), its consequences (damage to the tiles), S's normative understanding of the link between those actions and effects, and S's intentionality with regard to those effects. The package is eventually formulated using terms for effects (*damage*) and their intentionality (*reckless*), which are also the legal terms used in defining the offense "criminal damage," for which S was arrested.

Example 9 is another in which the special intent category "reckless" features overtly in police questioning. S is a 15-year-old boy accused of "causing actual bodily harm" (the criminal offense in question) to a 90-year-old man, by throwing a stone that hit him. S's case is that he was simply throwing stones in the air, and the victim was accidentally hit.

(9) (PN:92:4)

- 1 P: D'you know what- d'you know wharramean by the term
- 2 reckless,
- 3 (1.5)

- 4 S: Uh:: not ca:rin' when you're doin' summat?
 5 (2.1)
- 6 P: .hh .pt not as much as tha:t, .hh it means uh: (1.7)
 7 if you- (0.4) (indis-) for instance throwin' sto:nes,
 8 S: *Ye:ah,*=
 9 P: =If you indiscriminately jus' throw stones abo:ut,
 10 (1.3)
- 11 P: What's the chances you know. Someone might be abo:ut.
 12 (0.4)
- 13 P: An' if it hit the:m,
 14 (1.9)
- 15 S: *Don't know:* what [(happens then)]
 16 P: → [>Whaddy think happens< to] that
 17 sto:ne when you throw it?
 18 (0.5)
- 19 S: You wha:t,
 20 P: → What d'you think happens to the sto:ne, (.) when you
 21 throw it,
 22 (0.8)
- 23 S: U:h: (0.7) dunno::=y'jus' throw it an' it goes >an'
 24 then it< la:nds. ((rhythmically)) dunnit.
 25 P: °Yeh.°
 26 (1.5)
- 27 P: But if someone got in the wa:y,
 28 (0.3)
- 29 S: Uh- it's gonna 'ur:t 'em innit.
 30 P: Yeh,
 31 (0.9)
- 32 P: → W'll if that ha:ppened then that would be reckless on
 33 your part.
 34 (0.3)
- 35 P: Of throwin' stone,
 36 (0.4)
- 37 S: O:h ri:ght.

In example 9, P explains to S, partly via questioning and elicitation, the meaning of the term “reckless” with particular regard to the offense of which S is accused. Having denied specific intent to hit and injure the victim, S is now faced with recklessness as a lesser, but still legally potent, intentional element. Note again how P pursues the matter in terms of S’s normative intentional states; throwing stones is now an “instance” (line 7) of recklessness in general, and even that action is generalized and

normative-hypothetical, rather than specifically what S did. At line 13 P offers a sentence for possible completion by S, “An’ if it hit the:m,” (cf. example 8 lines 1–2), but S does not cooperate at this point by formulating the likely consequences. P then takes another run at the normative-hypothetical scenario, now framed in terms of S’s intentional state on the matter: “What *do you think* happens”, lines 16 and 20. S again fails to articulate anything about possible effects (lines 23–24), orienting to the “what do you think” frame with his “dunno:” (cf. his “Don’t know:” at line 15). S is hearably resisting, here, S’s efforts to get him to speculate about causing possible damage; he has, relevantly, been arrested for “causing actual bodily harm” to the person his stone hit. P then makes the damaging consequences more clearly the point of his questioning, by inviting S to consider the possibility of “if someone got in the way” (line 27). As soon as S admits to the likely consequences (line 29, “it’s gonna ‘ur:t ‘em innit”), P agrees and formulates that effect as “reckless on your part” (lines 32–3). In this way, S’s actual actions, in spite of his denials of intent to cause damage, are categorized as “reckless” in the light of normative expectations of likely consequences, and to that extent culpable under the law.

The pursuit of action, effect and intention in police interrogations is not always as explicit as in the cases we have examined. Example 10, another case of alleged “criminal damage” to a car window, shows how it may be done more subtly.

(10) (PN:6:3)

- 1 P: So a- as y’punched the window, (.) have y’wanted t’put
 2 the window throu:gh?
 3 (0.9)
 4 S: I dunno:. I didn’ think o’ tha:t. I [jus’ punched it
 5 P: [No.
 6 (0.3)
 7 P: A’right okay.=S’y’jus’ punched it. So (0.4) if it
 8 went through it went through. If it [didn’t [it didn’t=
 9 S: [Yeh [it didn’t=
 10 P: =it’s (.) just a couple of punches.
 11 (0.4)
 12 P: Okay.

Example 10 is a case similar to examples 5, 6 and 7, where a different suspect S (in this case following a drunken row with his girlfriend) has admitted to having “punched” the window of a car, “causing it to smash”. Those descriptive details are clearly in some way insufficient for P, who now pursues specific intent with regard to the smashed window (lines 1–

2), at the time that S punched it. Intent regarding the *effect* of S's action is isolated by the grammatical attachment of the intentional state "wanted" to "t'put the window through," rather than to the action "punched the window". S then denies any such intent, using the intentional verb *think*: "I didn' think o' tha:t. I jus' punched it." P acknowledges ("A'right okay." line 7) S's account, and echoes S's own words ("S'y'jus' punched it"), limiting what S knowingly did, to the action but not its effects.

The subtle part of this sequence then follows (see also Edwards 2006b, where the same extract is discussed). P says, "So (0.4) if it went through it went through. If it didn't it didn't". Note that this is provided as an extended gloss on, or formulation of, *what S himself is saying* (cf. Heritage and Watson 1979). The details supporting that analysis are that the item comes straight after "S(o) y'jus' punched it," uses the same formulation-introductory particle "So," and also the same falling, declarative intonation contour over the sentence.⁸ In those ways, it is offered by P as a further formulation of what S's account amounts to, and indeed S relevantly concurs with it, and collaboratively completes it (line 9). All of those details mark the utterance "if it went through it went through. If it didn't it didn't" not merely as P's version, but as a ratified formulation of S's own account.

A further point to note, is the location of the formulation relevantly to what S was doing and thinking, or understanding, about cause and effect—not merely now in interview and on reflection, but at the time he punched the window. To the extent that S punched the window *on the basis that* "if it went through it went through . . .," this is a step towards an accusation of something like recklessness, which, as we have noted, is a legally acceptable level of intentionality with regard to being charged with "criminal damage." Again, note some details in the design of P's formulations. The utterance "S'y'jus' punched it" (line 7) echoes S's own words about his actions (line 4), but crucially omits S's statement about his intentions, "I didn' think o' tha:t." What that does is leave S's intentional state open and available to be glossed by P's additional element, "So if it went through it went through . . ." (lines 7–8). That additional element is formulated not as a candidate action description, but as *an if-then bit of reasoning*, which is to say, a candidate gloss on S's understanding at the time of his actions.

The ways in which intentionality is invoked in the police interrogations contrasts with everyday conversation in various ways, most notably the careful pursuit and partialing out of intentionality with regard to actions and, separately, their effects. Yet it is precisely the mundane practices of intentionality avowal and attribution, in everyday social interaction, that

participants must draw upon to take part in police interrogations—in particular, of course, the untrained members of the public who take part as witnesses and suspects. On the other hand, everyday talk is much richer in its practices with regard to intentionality than we have been able to explore here (see Edwards forthcoming). There are occasions, such as in disputes between family members and friends, or at work, or in counseling, or in questioning and admonishing one’s children, when accounts of actions and intentions may be subject to a mundane version of forensic examination (cf. Bonaiuto & Fasulo 1997).

As a brief example of mundane forensics, in example 11 Lesley speculates normatively about the intentionality of a burglar who recently broke into her house, after having burgled the “Harvester” pub next door.

(11) (Holt:X(C)2:1:9:4)

- 1 Moi: How did he get ↑in ↓Les.
 2 Les: ee-We:ll: I’d (.) uh-hadn’t quite k-s:shut the small
 3 window. .hh An’ he wz ↑doin::g the um .t Harvester
 4 nex’ ↓do::r, (0.6) an’ I suppose he must’ve (0.4) saw
 5 → u-seen this, (0.9) and uh th::ought well eed do us at
 6 the hh! s(h)ame ti:(h)me.

In speculating about the burglar’s actions, Lesley imagines, on a normative basis, what “he” (she presumes the burglar to be male) must have thought. What she offers is a formulation of opportunistic criminal intent, of what he must have thought at the time—a lay version of *mens rea*. A major difference between what Lesley is doing here, and what the various crime suspects that we have examined were doing, is that she is imagining the thoughts and intentions of a third party, whereas suspects are dealing with their own direct involvement, their own accountable actions, and sometimes the bases on which hostile witnesses may produce false testimony against them (see Edwards 2006a).

4. Conclusion

“Intent” and “intentional states” are different concepts; intentional states such as knowing, thinking and wanting do not, semantically, entail intentions to act. What brings intent together with the general range of intentional states are the practices through which intent and other mental states are interwoven in the production of accountability for actions. In the case of the practices of criminal law (in our particular case, police interrogations), “accountability” is largely criminal culpability, where the law defines and distinguishes a large range of crimes in terms of intent

with regard to both the act and its consequences. Legal interrogations also bring into play, as part of establishing culpability in intentional terms, the concept “recklessness,” in which the predictability of consequences, whether consciously entertained prior to the act or just normatively knowable by any reasonable person, is relevant to establishing a lesser degree of *mens rea*.

Intent, where it features as an overt conversational concern, does not arise merely on the basis that people happen to understand actions that way, as intended or not. Rather, it is invoked to *handle the defeasibility* of intention, action and consequence, where these considerations arise as part of the (inter)actions being done in and through talk. In ordinary conversation, for intent to be invoked there is generally some sense of expectations being thwarted, or obstacles intervening between intention and action, foiling the intention’s realization. In the police interrogations, and probably in other special cultural settings, that need not be the case. There is, in police interrogation, a concerted effort after establishing intent, specifically with regard to putatively criminal actions, and specifically with regard to the separate attribution of intent to an action’s effects. Indeed, concerted efforts to establish intentional states, despite clear admissions of criminal actions having already been obtained, may lead to an oriented-to “silliness” (or obviousness) in P’s continued pursuit of the topic (Stokoe & Edwards 2008).

It is not simply that police interrogations are different, or handle intentionality differently, from everyday conversation. Rather, it is that intentionality is handled, in any context where it is mentioned, as part of the accomplishment of the practices done in talk. It is the practices that matter, rather than the setting *per se*. Everyday talk may adopt features generically typical of forensic inquiry into actions, effects and intentions; for example, one would expect some special attention to reported actions, intentional states, and intended effects, in the course of interpersonal disputes and family socialization. What we find in police interrogation, as in institutional talk generally (Drew & Heritage 1992), is a selective, enhanced, systematic use of particular kinds of questioning and answering about acts, effects, and intent, precisely in ways oriented to the performance and accomplishment of the major business of that setting—in this case, the establishment of testimony with regard to putatively criminal actions and their consequences.

The painstaking separation of actions, intentions and effects found in the police interrogations echoes Jayyusi’s (1993) observations, initially based on Austin (1975), about the ways that descriptions are capable of characterizing actions either grossly or in behavioral detail, and either as action descriptions or as consequences (cf. in example 1, *punch* and

smash). Thus, an event describable as “he shot the donkey” might also be described, equally truthfully (Austin 1975: 107–108), in terms such as “he fired a gun,” or “he pulled the trigger,” or “he moved his trigger finger,” or perhaps “he killed the donkey,” each of which, as Jayyusi notes, lends itself to a different practical action and interactional trajectory in saying it. For example, detailed description of “scenic” (potentially witnessable) actions permits a separation of intent with regard to actions and their intended or unintended effects. Drawing also on data from police interrogations, Jayyusi remarks: “What outcome was intended in any outcome-as-described, what outcome eventuated, and whether a named outcome had actually been intended as such, are all matters which may be routinely displayed or hearably avoided” (Jayyusi 1993: 444).

Another recurrent feature of the police interrogations was P’s movement from relatively open-answer WH questions into Yes/No questions, where a specific proposition was put to S for confirmation or denial. The use of those different kinds of questions, and in that order, displayed P’s initial orientation to obtaining intentional state reports from S in S’s own words, prior to P formulating it for confirmation. In contrast, “lawyers cross-examining witnesses overwhelmingly use YNIs [Yes/No Interrogatives]” (Raymond 2003: 940). The interactional value of YNIs in that context is precisely that they formulate the terms of the required answer (hence also their preponderance in survey questionnaires), restricting the interviewee’s scope for saying things differently or in their own terms. The overwhelming use of YNIs in courtroom cross-examination enacts a normative difference between a partisan lawyer’s practices for establishing or countering the truth of a witness’s report (where having to answer merely Yes or No can also be legally enforced: Atkinson and Drew 1979), and a police officer’s practices in which WH questions are useful in eliciting witnesses’ (including suspects’) own initial accounts, in their own terms. Such differential patterns of use are clearly worthy of further, more systematic examination.

Another use of P’s shift from WH to Yes/No questions was in moving between generalized, normative scenarios for an action, and the specific case in question. The use of normative scenarios was itself a key feature of P’s pursuit of S’s testimony on the intentionality of criminal actions. The posing of normative scenarios is not a feature of talk that is restricted to interrogations, nor to legal settings in general. Rather, it is a recognizable practice of everyday accountability that finds a special relevance and use in police interrogation (see also Edwards 2006a). The practice involved P asking S to consider a hypothetical case whose features retained significant details of the actual offense of which S was accused. In addition to providing for legal relevance, in terms of what a ‘reasonable

man' might conclude, these scenarios, and S's responses to them, provided a basis for P to return to the specifics of what S actually may have understood or intended when committing the specific actions in question, having previously denied such an intention. Indeed, a notable feature of P's positing of such a scenario was the framing of it in terms of P's intentional states: "what do you think ... (etc.)," rather than merely "what would happen if. . . ."

In contrast to everyday conversation, then, the intentionality of criminal actions requires no "balked action" pretext for being introduced. Rather, intentionality arises as an overt concern, as an integral part of the systematic practices of establishing intent regarding an already admitted action's *effects*, relevantly to legal requirements of criminal evidence for establishing the offense. Notably, in the examples studied, the crimes at issue are themselves defined in terms of effects rather than actions ("criminal damage," "actual bodily harm"), in contrast to the much smaller set of "strict liability" offenses in English law (Richardson 2006) including speeding and parking violations that require no evidence of *mens rea*, but merely of the commission of an action.

Notes

1. This and other examples are taken from corpuses of recorded conversation; this is from Holt:O88:1:8:9—see also note 2.
2. Data extracts are numbered consecutively and labelled according to their location within a data corpus. The examples from everyday conversation come from the "Holt" corpus collected by Elizabeth Holt and transcribed by Gail Jefferson. The police examples are from research project #RES-148-25-0010, funded by the UK's Economic and Social Research Council, conducted by Elizabeth Stokoe and Derek Edwards. These data are audiotapes made by the police as a legal requirement for possible later use in court. The transcription conventions display aspects of vocal delivery and intonation relevant to studying talk as social interaction. The main conventions include: square brackets showing the start and end of speaker overlap, underlining for emphasis, pauses timed to tenths of seconds in round brackets, vertical arrows denoting rising and falling intonation, colons denoting elongated sounds, and hyphens where speech is abruptly cut off. Other intonational features are coded by punctuation marks. For further information see Jefferson (2004), or Emanuel Schegloff's website tutorial at <http://www.sscnet.ucla.edu/soc/faculty/schegloff/TranscriptionProject/index.html>. In the data extracts used here, speakers are identified in the Holt corpus by the first three letters of their pseudonyms, and in the police examples by their role in the interrogation, as police officer (P) or suspect (S).
3. Note that these *particular* uses of "think of" and "(would) like to" invoke intent with regard to actions; there are, of course many uses of "think" and "like" that do not, such as in assessments ("she thinks highly of him;" "I don't like him much").
4. The contextual information provided here comes from the conversation itself, but from outside of the data extracts quoted.

5. The long delays at lines 10 and 12 (and in other data extracts) may be taken up by P making a written note of S's testimony; the data are audio, not video recordings (see also note 2).
6. Transcription details: the degree signs enclose quieter speech; the asterisks mark it as croaky—i.e., with hearable glottal sounds; and the round brackets show that the transcription of these words is a little uncertain.
7. Cf. example 5, line 15; also example 7, line 4, and S's account prior to extract 8. There are many further examples in data not included here.
8. I am using the grammatical term "sentence" here, for "So you just punched it" and "So if it went through it went through." In conversation analytic terms, these are also distinct, bounded "turn constructional units" (TCUs), the basic building blocks of turns at talk, and the actions that turns perform.

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