

**YOUR RIGHTS IF ARRESTED**  
**IN ENGLAND**

by

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Perhaps your Civics teacher taught you that the United States of America has the only excellent system of justice in the world. Let us examine for comparison, however, certain aspects of the system of criminal justice in England and Wales.

Before embarking on such a voyage, we first must ask, "Why even bother to learn English criminal law in the United States?" There are many good reasons to bother, including broadening our minds and fields of view and better enabling America to modify aspects of its criminal justice system that could use overhauling.

From a Comparative Law standpoint, it is a good thing for lawyers and future lawyers to master the principle that Judge Cardozo articulated so eloquently in *Loucks v.*

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*Standard Oil Company*: "We are not so provincial as to say that every solution of a problem is wrong because we deal with it otherwise at home."<sup>1</sup> One can ignite the reader's yearning for betterment at home by showing, for example, that there are places on earth where the rights of citizens when arrested are protected in many cases far better than in the United States, and yet where the crime rate has not suffered an increase and in fact is markedly lower than in the United States.

Before proceeding further, some understanding of the British legal profession is in order. There are two kinds of lawyers in England and Wales<sup>2</sup>: solicitors and barristers. A solicitor is a lawyer "who consults with clients and prepares legal documents but is not generally heard in High Court . . . unless specially licensed."<sup>3</sup> It is the solicitor who pleads and prepares cases. If the case is pending in Crown Court, it must be tried by a barrister or a solicitor advocate. If the case is pending in Magistrate's Court, it may be tried by either a solicitor or a barrister. Solicitors may appear and try cases in the lower courts without having to call in a barrister, though the solicitor may do so if the client wishes. Some solicitors have received qualification as "advocate solicitors." They may do anything a barrister may do.

A barrister is "a lawyer who is admitted to plead at the bar and who may argue cases in superior courts."<sup>4</sup> Barristers until recently could only be called into a case by a solicitor. Traditionally, the client chose the solicitor. The solicitor filed any necessary pleadings. It was the solicitor who then selected a barrister for the trial of the case, of course with the client's approval. The barrister still generally appears in court and conducts the trial as instructed by the solicitor who, of course, is the one who prepared and filed most of the pleadings in the first place.

Solicitors typically practice in law firms and may advertise. It is also the solicitors who prepare contracts, deeds, and wills, and otherwise engage in “office” practice . Barristers are generally sole practitioners who only try cases. Barristers typically obtain their clients only as called in by a solicitor. Most barristers, therefore, maintain close working relationships with one or more law firms.

In recent years, there has been some friction, as solicitors were gradually given more and more rights analogous to those of a barrister. Barristers have only recently been given the right to advertise and deal directly with clients. The ultimate answer must be to give both professions comparable rights across the board, so that ultimately the two professions will be indistinguishable. At some point in the future, the two professions may merge.

At present, one cannot be both a practicing barrister and a practicing solicitor. One may change one's profession, by making application, undergoing a background check, and taking a short examination. Before actually being admitted to the other profession, however, the lawyer must surrender his right to practice actively in the profession he is leaving.

This article concerns itself mainly with stationhouse procedures, and those are almost invariably handled by solicitors.

### **At the Time of Arrest**

The police in England do not ordinarily carry firearms. They may sign out firearms from the police station if they will be making what their superiors view as a potentially dangerous arrest. For most arrests, however, guns are not carried.

Handcuffs usually are not used. Europe generally views the use of handcuffs and

manacles as barbaric and utterly unnecessary in the vast majority of arrests. Observe please various newspaper and television news pictures showing persons being arrested in England and Europe. The accused usually is simply told he or she is under arrest and is directed to enter the police car.

At the time of arrest, the police may not interview or interrogate the arrestee except at the police station.<sup>5</sup> They must “caution” the arrestee, either immediately before or immediately after the arrest, and must do so even without any arrest being made if they suspect the defendant may have committed a crime.<sup>6</sup> Whenever a person not under arrest is cautioned, he must at the same time be told that he is not under arrest and is not obliged to remain with the officer.<sup>7</sup>

A person when arrested, "shall be taken to a police station by a constable as soon as practicable after the arrest."<sup>8</sup> The police may not do or say anything with the intention of dissuading a person in detention from obtaining legal advice.<sup>9</sup> The arrestee must also be informed of his right to independent legal advice free of charge.<sup>10</sup>

### **The “caution”**

The exact wording of the caution is specified by law:

You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence.<sup>11</sup>

The very first stop on arrival at the police station must be the "custody officer."<sup>12</sup>

The custody officer is a designated officer holding at least the rank of sergeant,<sup>13</sup> who must make an immediate determination whether the arresting officer has sufficient information to charge the person.<sup>14</sup> If the custody officer determines he does not have such evidence before him, the person arrested must be released.<sup>15</sup> The custody officer is also responsible for opening a "custody record," which both the arrestee and the defence solicitor may inspect and have copied, to ascertain whether the rights of the person arrested have been respected and the grounds for detention reviewed periodically within the strict rules for governing review of grounds for detention.<sup>16</sup>

If the custody officer determines that he does not have such evidence [sufficient evidence to charge that person] before him, the person arrested shall be released either on bail or without bail, unless the custody officer has reasonable grounds for believing that his detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him.<sup>17</sup>

The suspect must once again be reminded of his right to free legal advice, whether under arrest or voluntarily present at the police station.<sup>18</sup> The custody officer must specifically "tell him clearly of the following rights and of the fact that they are continuing rights which may be exercised at any stage during the period in custody . . . to have someone informed of his arrest . . . [and] to consult privately with a solicitor" and also to consult the codes of practice governing

detention.<sup>19</sup> Additionally, a poster advertising the right to have legal advice must be prominently displayed in the charging area of every police station.<sup>20</sup> The caution must be repeated every time there is a break in questioning.<sup>21</sup>

The Police and Criminal Evidence Act provides that:

[A]ll people in police detention must be informed that they may at any time consult and communicate, privately, whether in person, in writing or by telephone with a solicitor, and that independent legal advice is available free of charge from the duty solicitor.<sup>22</sup>

### **Enter the “duty solicitor”**

This is the moment when the accused meets the "duty solicitor." He or she is a solicitor in private practice who has contracted with the Legal Services Commission to be present or on call at the police station. At larger police stations such as London's Charing Cross police station, one or more duty solicitors will be present at all times. At smaller stations in the suburbs or rural areas, the duty solicitor will be on call.

Police cannot interrogate until they have informed the arrestee of his right to consult the duty solicitor at no charge.<sup>23</sup> If an arrestee declines to consult the duty solicitor, the custody officer notifies the duty solicitor, who then tenders to the arrestee a form letter as more fully set out in the footnote.<sup>24</sup>

First stop on arrival at the police station after the custody officer must be the duty solicitor.

The duty solicitor typically tells the arrestee:

1. My role is to defend you.
2. I am totally independent and have nothing to do with the police.
3. My services are free to all at this stage, regardless of means.
4. If you want a different solicitor, I will try to get him or her here for you.
5. I can advise you in any police interrogation.
6. And I will help you get out on written promise to appear (or bail if required).<sup>25</sup>

The duty solicitor then: (a) interviews the arresting officer to learn the facts of the matter from the police viewpoint; (b) interviews the client to learn the client's position; and (c) advises the client of his right to remain silent in any police interview.<sup>26</sup>

### **What the Police May Do**

The police may not fingerprint without the arrestee's written consent until charges are filed.<sup>27</sup> There is an exception if fingerprint evidence is evidence in the case. In that situation, the police may fingerprint the arrestee.<sup>28</sup> However, the determination may only be made by a Superintendent.<sup>29</sup> If the fingerprints do not match, they (together with all copies and computer data on those prints) must be destroyed.<sup>30</sup> If the person is acquitted or charges dismissed, the prints likewise must be destroyed unless the person has had prior criminal convictions.<sup>31</sup>

Similarly, the police may not photograph the arrestee without his written consent until charges have been filed.<sup>32</sup> There are exceptions, most notably where a group of persons is

arrested and it is necessary to establish who was arrested, at what time and at what place.<sup>33</sup>

While reasonable force may be used to take fingerprints,<sup>34</sup> force may not be used to take a photograph.<sup>35</sup> If the person is acquitted or charges dismissed, the photographs must be destroyed unless the person has had prior criminal convictions.<sup>36</sup>

Any specimens taken from the arrestee, such as blood or urine or hair, or any suspected narcotic substances, must be split into two equal samples, one for police forensic laboratories, the other for defence counsel to have evaluated independently.<sup>37</sup> Failure of the police to do so justifies dismissal of the case.<sup>38</sup>

### **Before charges are filed**

Prior to the filing of formal charges, the police may interview the defendant.<sup>39</sup> The duty solicitor must be allowed to be present, and no interview may be conducted once legal advice has been requested.<sup>40</sup> The interview must be taped.<sup>41</sup> "Tape recording of interviews shall be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview."<sup>42</sup> Two tapes are usually made on separate recording heads to guard against failure of one of the recorders to record properly.<sup>43</sup> The tapes are then sealed.<sup>44</sup> The defence must have access to a copy of the tape,<sup>45</sup> and the defence attorney must be informed and given a reasonable opportunity to be present along with the Crown Prosecution Service when the seal is broken and the tape is first heard.<sup>46</sup>

The defendant has the right to remain silent.<sup>47</sup> No person who is unfit through drink or drugs may even be questioned.<sup>48</sup> If the suspect is a juvenile, a parent must be present in addition to the solicitor.<sup>49</sup>

Interview rooms must be adequately heated, lit and ventilated.<sup>50</sup> No person may be required to stand while being interviewed.<sup>51</sup> The suspect must be allowed: (a) eight hours' sleep per night; (b) meals at normal hours; (c) breaks every two hours.<sup>52</sup>

While the suspect has the right to remain silent, remaining silent may not be wise. Under certain circumstances, "inferences" may be drawn from the suspect's silence. This means that the prosecutor may comment on the accused's silence, but only in three situations as specified the Criminal Justice and Public Order Act of 1994.

Section 34 of that act provides: If the suspect fails to mention a fact that he later relies upon in his defence (*e.g.*, self defence), the prosecutor may comment only where defendant later raises the defence.

Section 36 of the act provides that if the suspect fails to account for any object in his possession or any mark or other incriminating evidence on his person or clothing or footwear, the prosecution may comment. The prosecution may comment whether the defendant testifies or not.

Section 37 of the act provides that if the suspect fails to account for his presence at the time and place of the crime, the prosecution may comment. The prosecution may comment whether the defendant testifies or not.

There are exceptions to the trier of fact's right to draw inferences from the accused's silence during police interrogation.

If the police fail to disclose sufficient evidence in the interview process to enable the suspect to assess the strength of the case against him, the court will rule that no inferences may be drawn and no prosecutorial comment made on the accused's silence.<sup>53</sup>

If the events are too remote in time to remember, the court likewise will rule that no inferences may be drawn and no prosecutorial comment made on the accused's silence. One may be expected to remember his whereabouts last night, for example, but not five weeks ago on Thursday.<sup>54</sup>

If the suspect is "emotional," no adverse inferences may be drawn and no prosecutorial comment made on the accused's silence.

If the suspect is not fluent in English, no adverse inferences may be drawn and no prosecutorial comment made on the accused's silence.<sup>55</sup>

In *Regina v. Argent*,<sup>56</sup> the Court of appeal held that if the suspect's alibi would be embarrassing, no adverse inferences may be drawn and no prosecutorial comment made on the accused's silence.<sup>57</sup> This would excuse an accused from having to disclose during police interrogation, for example, that he was with a prostitute at the time of the burglary. He could use the alibi at trial and the prosecution could make no comment on the accused's failure to disclose the alibi at the stationhouse.

The court must likewise hold that any other good reason for remaining silent excuses the accused from stationhouse disclosure of matter covered by Sections 34, 36 and 37.<sup>58</sup>

Then the trial court will rule that no inferences may be drawn from failure to explain, and the Crown Prosecutor will be told not to mention the defendant's failure to explain.<sup>59</sup>

In the case of *Regina v. Argent*,<sup>60</sup> the Court of Appeal held that before a jury could draw inferences under Section 34, six conditions must be met:

1. There must be proceedings against a person for an

- offence.
2. The alleged failure had to occur before defendant was charged.
  3. The failure had to occur during questioning under caution.
  4. The questioning had to be directed to discovering by whom the offence was committed.
  5. The failure to mention had to be of a fact relied upon in his defence.
  6. It must have been a fact which in the circumstances he could reasonably have been expected to mention.<sup>61</sup>

Lastly, the defendant may avoid inferences being drawn at trial if, either at the time of the interview or later after charges have been filed, he hands the police a written statement (prepared by his solicitor, of course) giving his version of the events! Then, although he refused to answer any questions, no adverse inferences may be drawn.<sup>62</sup>

It should be emphasized that the accused at trial may rely on defences that should have been disclosed at the stationhouse. Note that the accused does not lose his right to remain silent. The sole consequence is that the Crown Prosecutor may comment on the failure of the defendant to account for the matter when he was questioned. He may, for example, comment in summation, "If he was at his grandmother's house at the time of the burglary, why didn't he tell the police when they asked him?" The accused and his alibi witnesses may still testify that he

was indeed at grandmother's house.

### **The “identification parade”**

Any "identification parade" – we call it a lineup – must be conducted at a different police station. Investigating officers may not participate.<sup>63</sup> The duty solicitor (or a private solicitor) must be present. At least eight other persons must be in the parade.<sup>64</sup> The suspect must be given a chance to “freshen up.”

The suspect gets to choose his position in the lineup.<sup>65</sup> He suspect must be told that he does not have to participate, but any refusal may result in other methods of identification (such as in-court identification) being used at trial.<sup>66</sup>

The eight others in the lineup must be of the same:

1. Age<sup>67</sup>
2. Height<sup>68</sup>
3. General appearance<sup>69</sup>
4. Position in life<sup>70</sup>

The officer conducting the parade must explain to the suspect that he does not have to participate in the parade, that he is entitled to free legal advice, and that he may have a solicitor or friend present.<sup>71</sup> The officer conducting the identification parade must not discuss the composition of the parade in the presence of the witnesses.<sup>72</sup> The officer must not disclose whether a previous witness has made any identification.<sup>73</sup> Witnesses must be segregated from one another both before and after the parade.<sup>74</sup>

Witnesses must not have been shown photographs of suspects, as that would prejudice any subsequent identification parade.<sup>75</sup> "[T]here are very strict rules which govern the conduct of identification parades and those rules have to be followed."<sup>76</sup> Irregularities at the identification parade, such as an officer indicating to the witness that an identification was "correct," justifies reversal of any conviction based on that or any subsequent identification by the same witness.<sup>77</sup>

However, if the suspect refuses to cooperate in an identification parade, other methods of identification may be used. These methods include showing witnesses photographs<sup>78</sup> or video tapes of the suspect and others.<sup>79</sup> At least twelve photographs<sup>80</sup> or videos featuring eight other persons<sup>81</sup> must be shown to the witness under tightly controlled and recorded circumstances including the one-witness-at-a-time rule<sup>82</sup> and the right of the defence solicitor to be present.<sup>83</sup>

If the suspect cooperates in the "identification parade," that is the only identification permitted to be used in court! In-court identifications ("look about the courtroom and see if you can spot the person sitting at the counsel table, the one who robbed you") are otherwise strictly prohibited in England and Wales.<sup>84</sup>

Yet an identification by parade alone is not sufficient to convict. At trial, the trial judge must apply the *Turnbull* guidelines. It is for the court to determine whether the witness had a sufficient opportunity to make an observation of the perpetrator at the time of the crime to enable him to pick the perpetrator out of a lineup. In the case of *Regina v. Turnbull*,<sup>85</sup> the Court of Appeal held that the trial judge "must assess the quality of the identification evidence, that is to say, he should look at the circumstances of the original sighting of the offender by the witness."<sup>86</sup>

Factors to be taken into account must include:

1. the length of observation;
2. distance;
3. lighting;
4. conditions;
5. whether the person identified was someone already known to the witness;
6. how closely the description given to the police matches the appearance of the defendant.<sup>87</sup>

If the original observation is of poor quality and uncorroborated, the judge must direct an acquittal.<sup>88</sup> If the quality of the original observation is good, the court must still instruct the jury on the dangers of relying on identification evidence, including the danger of honest mistake. The jury then gets to hear the *Turnbull* factors and is instructed to take them into account.<sup>89</sup>

In *Turnbull*, Chief Justice Widgery of the Court of Appeal showed a level of concern for possible miscarriages of justice that American jurists would do well to emulate. He wrote:

Each of these appeals raises problems relating to evidence of visual identification in criminal cases. Such evidence can bring about miscarriages of justice and has done so in a few cases in recent years. The number of such cases, although small compared with the number

in which evidence of visual identification is known to be satisfactory, necessitates steps being taken by the courts, including this court, to reduce that number as far as is possible. In our judgment the danger of miscarriages of justice occurring can be much reduced if trial judges sum up to juries in the way indicated in this judgment.

First, whenever the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused which the defence alleges to be mistaken, the judge should warn the jury of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications. In addition he should instruct them as to the reason for the need for such a warning and should make some reference to the possibility that a mistaken witness can be a convincing one and that a number of such witnesses can all be mistaken. Provided this is done in clear terms the judge need not use any particular form of words.

Secondly, the judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. How long did the witness have the accused under observation? At what distance? In what light? Was the observation impeded in any way, as for example by passing traffic or a press of people? Had the witness ever seen the accused before? How often?

If only occasionally, had he any special reason for remembering the accused? How long elapsed between the original observation and the subsequent identification to the police? Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance? If in any case, whether it is being dealt with summarily or on indictment, the prosecution have reason to believe that there is such a material discrepancy they should supply the accused or his legal advisers with particulars of the description the police were first given. In all cases if the accused asks to be given particulars of such descriptions, the prosecution should supply them. Finally, he should remind the jury of any specific weaknesses which had appeared in the identification evidence. Recognition may be more reliable than identification of a stranger; but, even when the witness is purporting to recognise someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made.

All these matters go to the quality of the identification evidence. If the quality is good and remains good at the close of the accused's case, the danger of a mistaken identification is lessened; but the poorer the quality, the greater the danger. In our judgment, when the quality is good, as for example when the identification is made after a long period of observation, or in satisfactory conditions by a

relative, a neighbour, a close friend, a workmate and the like, the jury can safely be left to assess the value of the identifying evidence even though there is no other evidence to support it; provided always, however, that an adequate warning has been given about the special need for caution. Were the courts to adjudge otherwise, affronts to justice would frequently occur. . . .

When, in the judgment of the trial judge, the quality of the identifying evidence is poor, as for example when it depends solely on a fleeting glance or on a longer observation made in difficult conditions, the situation is very different. The judge should then withdraw the case from the jury and direct an acquittal unless there is other evidence which goes to support the correctness of the identification. This may be corroboration in the sense lawyers use that word; but it need not be so if its effect is to make the jury sure that there has been no mistaken identification.<sup>90</sup>

### **How long the police may detain**

The basic maximum period of detention without charges being filed is twenty-four hours.<sup>91</sup> This runs from arrival at the police station.<sup>92</sup> If the person came to the station voluntarily, it runs from time of arrest.<sup>93</sup> A further thirty-six hours of detention may be authorized by a Superintendent in serious cases.<sup>94</sup> These time limits are strictly enforced.

While in detention, a designated “detention officer” holding at least the rank of

Inspector must: (a) review every detention within six hours of the commencement of detention,<sup>95</sup> again nine hours later,<sup>96</sup> and every nine hours thereafter,<sup>97</sup> to ensure that the initial grounds for detention still exist.

Once charges are filed, the police may fingerprint and photograph the defendant.<sup>98</sup> The defence solicitor may also bring a camera to photograph the defendant, either to show his condition or to challenge identifications.<sup>99</sup>

The duty solicitor remains on the case to arrange bail or recognizance.<sup>100</sup>

The charges will be

*A Summary Offence* triable without a jury in

Magistrate's Court;

*An Indictable Offence* that must be tried by a jury in

Crown Court;

*An Either Way Offence* that commences in

Magistrate's Court, but that the defendant may remove to

Crown Court for jury trial.<sup>101</sup>

### **Enter Legal Aid**

Legal Aid in England works much like Blue Cross. The accused chooses his attorney, and the Legal Services Commission pays. The attorney or law firm must be registered with the Legal Services Commission.<sup>102</sup>

If the defendant works at McDonald's, he or she can still qualify for legal aid. Holtam reports that "There is no means test."<sup>103</sup> The present writer's experience in England,

however, is that the Legal Services Commission requires those gainfully employed to contribute a small part to the cost of their defence.

No, the accused is not presumed guilty until proven innocent. Throughout *all* of Europe (including France), the European Convention for the Protection of Human Rights and Fundamental Freedoms guarantees what the United Kingdom has long recognized: the presumption of innocence.<sup>104</sup>

If the accused is acquitted, the U.K. normally pays all legal fees or, if the defendant is on partial legal aid, that portion of his fees that he was required to contribute.<sup>105</sup>

But if there is a miscarriage of justice, the accused can always obtain DNA tests free for the asking.

If a person is wrongfully convicted, the state pays compensation for the time he was incarcerated.<sup>106</sup> In *Lunt v. Liverpool City Justices*,<sup>107</sup> £ 25,000 (\$ 44,000) was awarded in respect of 42 days' imprisonment for non-payment of local taxes. In *Regina on application of Evans v. Governor of Brockhill Prison*,<sup>108</sup> £ 5000 (\$8,800) was awarded for 59 days unlawfully added to lawful sentence.

An innocent person wrongfully sent to prison for a crime he didn't commit can emerge from prison a millionaire. The view throughout Europe is that society should pay for its mistakes and compensate those who are either acquitted at trial or shown to be innocent at a later time. Perhaps this, and the award of attorney fees to successful defendants, has a salutary effect on the willingness of prosecutors to go forward with doubtful cases.

There is no capital punishment in the UK or anywhere else in Europe. Capital Punishment is forbidden by the Charter of Fundamental Rights of the European Union.<sup>109</sup>

Japan is the only other industrialized country to have capital punishment.<sup>110</sup> Only Third-World countries (and Japan and the USA) have the death penalty.

America's "Tough on Crime" approach simply does not work.<sup>111</sup>

Must we still believe what our Civics teacher taught us?

### FOOTNOTES

1. 224 N.Y. 99, 111, 120 N.E. 198, 201 (1918).
2. England and Wales are considered one jurisdiction. Together with the separate jurisdiction of Scotland, they constitute Great Britain. Add in yet another jurisdiction, Northern Ireland, and the result is the United Kingdom of Great Britain and Northern Ireland.
3. Black's Law Dictionary 1399 (7th ed. 1999).
4. *Loucks*, 224 N.Y. at 145.
5. Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers (Code C), ¶ 11 (a)(11.1) [hereinafter Code of Practice].
6. Code C, ¶ 10 (a)(10.1).
7. Code C, ¶ 10 (a)(10.2).
8. Police and Criminal Evidence Act 1984 [hereinafter PACE] UK ST 1984 c 60 Pt V § 30 (1).
9. Code of Practice, *supra* note 5, Code C, ¶ 6 (a)(6.4).
10. *Id.*, Code C, ¶ 3 (a)(3.1).
11. *Id.*, Code C, ¶ 10.4.
12. PACE § 37 (1).

13. PACE § 36 (c).
14. PACE § 37 (1)(b).
15. PACE § 37.
16. Code of Practice, *supra* note 5, Code C ¶¶ 2 (2.1), (2.2), (2.3), (2.4), (2.5).
17. PACE § 37 (2).
18. Code C, ¶ 6 (a)(6.1).
19. Code C, ¶ 3(a)(3.1).
20. Code C, ¶ 6 (a)(6.3)
21. Code C, ¶¶ 10.1, 10.5.
22. Code C, ¶ 6 (a)(6.1)
23. *Id.*
24. Eric Shepherd, *Police Station Skills for Legal Advisers*, rev. 2d ed. (London: The Law Society, 1997), at 34-35. The suggested text of the form letter is as follows:

"The custody sergeant has told me that you have made a decision. You decided you do not want a solicitor at the moment.

"I need to tell you a few things.

"1. The law says you can receive FREE advice from a solicitor at any time.

"2. I am at the police station. I can give you legal advice *now*.

"3. I can advise you on the law. I can act for you if you want me to.

"4. If you want advice from me the police must stop questioning you.

This is to let me give you advice. . . .

"If you want me to advise you then . . . sign the bottom of this letter to say you want me to advise you; *do not answer* any more police questions; give this letter back to the custody officer.

"I must also advise you that even if you do not want me to advise you . . . you do not have to answer police questions if you do not want to. The law calls this your right to silence; all you have to do is tell the police that you are exercising your right to silence."

The form then offers the arrestee two signature lines, one marked, "I wish to see you as soon as possible," the other marked, "I do not wish to see you."

25. *See generally* Eric Shepherd, *Police Station Skills for Legal Advisers*, rev. 2d ed., (London: The Law Society, 1997).
26. *Id.*
27. PACE § 61 (1).
28. PACE § 61 (4).
29. Code of Practice for the Identification of Persons by Police Officers (Code D), ¶ 3 (a)(3.2)(a). According to J. Holtam, *Criminal Litigation* (London: Jordan Publishing, 2002), at 184, the police ranks in England are constable, sergeant, inspector, chief inspector, and superintendent.
30. PACE § 64 (3).
31. Code D, ¶ 3 (a)(3.4).
32. Code D, ¶ 4 (a) 4.1.
33. Code D, ¶ 4 (a)(4.2)(i).
34. Code D, ¶ 3 (a)(3.2 )(c).
35. Code D, ¶ 4 (a)(4.3).
36. Code D, ¶ 4 (a)(4.4).
37. See, e.g., *Slasor v. Director of Public Prosecutions*, [1999] RTR 432 (Queen’s Bench, 1999); *Regina v. Governor of Her Majesty’s Prison Swaleside, ex parte Wynter*, *The Times*, 2 June 1998, CO/845/98 (Q.B., 1998).
38. *Thomas Frederick Aitchison (Procurator Fiscal, Inverness) v. Richard Bell Johnstone*, 1987 SCCR 225 (Sheriff’s Court, 1987).
39. *See generally* Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers (Code C).
40. Code C, ¶ ¶ 6 (6.5), (6.6).
41. PACE § 60 (1)(A); Code of Practice on Tape Recording of Interviews With Suspects (Code E), ¶ 3 (3.1).
42. Code E, ¶ 2 (2.1).
43. Code E, ¶ 2 (2.2).

44. *Id.*
45. J. Holtam, *Criminal Litigation* (London: Jordan Publishing Limited, 2002), at 25.
46. Code E, ¶ 6 (6.2).
47. *Regina v. Cowan*, [1995] 4 All E.R. 939 (Ct. App.), *Regina v. McCartney*, [2003] EWCA Crim 1372 (Ct. App. 2003).
48. Code C, ¶ 12 (a)(12.3) and Code C, Annex C.
49. Code C, ¶ 11 (c)(11.4).
50. Code C, ¶ 12 (a)(12.4).
51. Code C, ¶ 12 (a)(12.5).
52. Code C, ¶ 12 (a)(12.7).
53. *Regina v. Roble*, [1997] Crim. L.R. 449 (Ct. App.).
54. *Id.*
55. Code C, Annex C.
56. *Regina v. Argent*, [1997] 2 Cr. App. R. 27.
57. *Id.*
58. *Id.*
59. *Id.*
60. *Id.*
61. *Id.*
62. *Regina v. Ali*, [2001] EWCA Crim. 863, [2001] All E.R. (D) 16 (Apr.).
63. Code D, ¶ 2 (a)(2.2).
64. Code D, Annex A (c)(8).
65. Code D, Annex A (c)(11).
66. Code D, ¶ 2 (2.15)(vi).

67. *Id.*
68. *Id.*
69. *Id.*
70. *Id.*
71. Code D, ¶ 2.15.
72. Code D, Annex A (c)(13).
73. Code D, Annex A (c)(13).
74. Code D, Annex A (c)(12)(i).
75. *Connolly v. Dale*, [1996] Q.B. 120.
76. *Regina v. Petty*, 200100063/Y1 (Ct. App. 24 Oct. 2001).
77. *Regina v. Thompson*, [1982] Q.B. 647.
78. Code D, Annex D.
79. Code D, 2 (2.4).
80. Code D, Annex D (a)(3).
81. Code D, Annex B (a)(3).
82. Code D, Annex B (b)(10).
83. Code D, Annex B (a)(8).
84. *Regina v. Gaynor*, [1988] Crim. L. R. 242.
85. *Regina v. Turnbull*, [1977] Q.B. 224 (Ct. App).
86. J. Holtam, *supra* note 45, at 121.
87. *Id.*
88. *Id.*
89. *Id.*
90. *Regina v. Turnbull*, *supra* note 85.

91. PACE § 41 (1).
92. PACE § 41 (2)(a)(i).
93. PACE § 41 (2)(a)(ii).
94. PACE § 42 (1).
95. PACE § 40 (3)(a).
96. PACE § 40 (3)(b).
78. PACE § 40 (3)(a).
98. PACE § 61 (3), Code D, ¶ 4 (a)(4.2)(ii).
99. E. Shepherd, *supra* note 25, at 72.
100. J. Holtam, *supra* note 45, at 52.
101. *Id.* at 1.
102. *Id.* at 47.
103. *Id.* at 48.
104. ECHR, Art. 6.
105. Access to Justice Act 1999, § 17, and Criminal Defence Service (Recovery of Defence Costs Orders) Regulations 2001, SI 2001/856.
106. The Criminal Justice Act 1988, § 133, is headed "Compensation for miscarriages of justice." That section as amended provides:

[W]hen a person has been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice, the Secretary of State shall pay compensation for the miscarriage of justice to the person who has suffered punishment as a result of such conviction or, if he is dead, to his personal representatives, unless the non-disclosure of the unknown fact was wholly or partly attributable to the person convicted.
107. Unreported (Ct. App., 5 March 1991).
108. [1998] 4 All ER 993, [1999] 2 WLR 103 (Ct. App.).

109. Charter of Fundamental Rights of the European Union, Art. 2, § 2.
110. See Amnesty International, *The Death Penalty: List of Abolitionist and Retentionist Countries* (1 January 2003), available online at <http://web.amnesty.org/library/index/ENGACTION500032003>

111.

<b>UNITED STATES</b>	<b>ENGLAND AND WALES</b>
Population 290,342,554	Population 52,041,916
Persons incarcerated: 1,962,220	Persons incarcerated: 72,669
Incarceration rate: 686 per 100,000	Incarceration rate: 139 per 100,000
Murders per year: 19,650	Murders per year: 681
Murder rate: 6.77 per 100,000 per year	Murder rate: 1.31 per 100,000 per year

U.S. Population figures are from the Central Intelligence Agency’s *World Factbook 2003*, available online at <http://www.cia.gov/cia/publications/factbook/geos/us.html>. British population figures are from National Statistics (U.K.), available online at [http://www.nationalstatistics.gov.uk/census2001/pop2001/england\\_wales.asp](http://www.nationalstatistics.gov.uk/census2001/pop2001/england_wales.asp) Prison populations and incarceration rates are from the (*British*) *Home Office Statistical Bulletin, World Prison Population List* (4th ed.), 2003. Murder rates for 1996 are from U. S. Department of Justice, Bureau of Justice Statistics, *Crime and Justice in the United States and in England and Wales (1998)*, available online at <http://www.ojp.usdoj.gov/bjs/pub/html/cjusew96/crpr.htm> Differences in dates of figures account for the small discrepancies between raw numbers and rates reported.