

1948

The Legal Limitation of the Interrogation of Suspects and Prisoners in England and Wales

T. E. St. Johnston

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

T. E. St. Johnston, The Legal Limitation of the Interrogation of Suspects and Prisoners in England and Wales, 39 J. Crim. L. & Criminology 89 (1948-1949)

This Criminology is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

AMERICAN JOURNAL of POLICE SCIENCE

THE LEGAL LIMITATION OF THE INTERROGATION OF SUSPECTS AND PRISONERS IN ENGLAND AND WALES

T. E. St. Johnston

Colonel T. E. St. Johnston, O. B. E., is Chief Constable of County Durham, England. He is recognized as one of the leading British police officials and was Head of the Public Safety Division of Supreme Headquarters, Allied Expeditionary Force, 1944-45. At the invitation of the Journal Colonel St. Johnston has prepared an interesting and instructive paper on the law of interrogation under which the police of his country work. This includes a thorough and clear discussion of the Judges' rules which definitely establish how police shall interrogate witnesses and suspects.—
EDITOR.

The modern police officer, whether he is American or British, when carrying out his primary duty of the prevention and detection of crime has today many technical methods to assist him in his work. Identification by means of fingerprints, the analysis of stains, the microscopic examination of material connected with crime, and the study of records, photographic or otherwise, are all at his disposal to help him ascertain the perpetrator of a crime and to bring him to justice.

Success, however, in the greater number of his cases still lies, as it has done since police forces were first formed, in the proper interrogation of witnesses and suspects.

It is perhaps strange, therefore, that in the United Kingdom, where many books have been written on the scientific and technical methods of investigation of crime, there is little or no literature upon the British Police methods of interrogation, and the only work which sets out really fully the police responsibilities, duties, and limitations is the Report of the Royal Commission on Police Powers and Procedure which was published in 1929.

This Report was the work of a learned committee of public citizens in this country appointed to enquire into "the general powers and duties of the police in England and Wales in the investigation of crimes and offences . . . and into the practice followed in the interrogating and taking statements from persons interviewed in the course of the investigation of crime . . ."

In this article much use has been made of this Report and many quotations are taken from it. The reader who is interested

in examining the British procedure in greater detail than is here outlined would be well advised to read the Report itself.¹

The principal feature of the initial investigation into any crime is usually a widespread search for information involving enquiries of any persons who may have knowledge which will assist the police, and it is, perhaps, necessary to point out in the first place that the British police have no power, save in a few exceptional cases such as when dealing with offences against the Official Secrets Act, to compel any person to disclose any facts within his knowledge or even to answer any questions put to him. The position of the constable collecting information about any crime is no different from that of any ordinary member of the public.

In the initial stages of an enquiry it is the duty of the Police to seek information from all persons who may have knowledge

¹ Following is an extract from the Royal Commission Report, the typically quaint language of which may be of incidental interest to readers in the United States: "GEORGE THE FIFTH, by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas King, Defender of the Faith, to

Our Right Trusty and Well-beloved:—

A.B., C.D. E.F. (The full names and titles of the members of the Commission.)

Whereas We have deemed it expedient that a Commission should forthwith issue to consider the general powers and duties of police in England and Wales in the investigation of crimes and offences, including the functions of the Director of Public Prosecutions and the police respectively; to inquire into the practice followed in interrogating or taking statements from persons interviewed in the course of the investigation of crime; and to report whether, in their opinion, such powers and duties are properly exercised and discharged, with due regard to the rights and liberties of the subject, the interests of justice, and the observance of the Judges' Rules both in the letter and the spirit; and to make any recommendations necessary in respect of such powers and duties and their proper exercise and discharge:

Now know ye that We, reposing great trust and confidence in your knowledge and ability, have authorized and appointed, and do by these Presents authorize and appoint you the said A.B. (Chairman), C.D., etc., to be Our Commissioners for the purposes of the said enquiry:

And for the better effecting the purposes of this Our Commission, We do by these Presents give and grant unto you or any four or more of you, full power to call before you such persons as you shall judge likely to afford you any information upon the subject of this Our Commission.....:

And We do by these Presents will and ordain that this Our Commission shall continue in full force and virtue, and that you, Our said Commissioners, or any four or more of you, may from time to time proceed in the execution thereof, and of every matter and thing therein contained, although the same be not continued from time to time by adjournment:

And We do further ordain that you, or any four or more of you, have liberty to report your proceedings under this Our Commission from time to time if you shall judge it expedient so to do:

And Our further will and pleasure is that you do, with as little delay as possible, report to Us under your hands and seals, or under the hands and seals of any four or more of you, your opinion upon the matters herein submitted for your consideration.

Given at Our Court at Balmoral the twenty-second day of August, one thousand nine hundred and twenty-eight; in the Nineteenth Year of Our Reign.

By His Majesty's Command."

of facts relevant to the crime, including persons whom they may have some reason to suspect as possible culprits. Indeed, at this early stage the Police may have formed no theory as to who committed the crime. But, from the point of view of subsequent proceedings in Court, there is an essential difference between statements taken from a potential witness and from the person ultimately charged with a crime.

Since, as a general rule, hearsay evidence is not allowed, statements made to the Police by witnesses cannot be given in evidence, and the persons making them must appear as witnesses in Court and give evidence themselves. Statements made by potential witnesses thus serve two main purposes; first, to point the way to further lines of enquiry, and secondly, to enable the police to decide who can testify to the guilt of the person ultimately charged with the crime. The statements made are in effect "proofs" of evidence, indicating the information which a witness is in a position to give if called upon in Court.

On the other hand, statements made by a person who is charged with an offence may be given in evidence by the persons to whom those statements are made, provided that the circumstances in which they were taken do not render them inadmissible.

It follows that it is of greater importance to secure an accurate record of a statement made by a person who is later charged with an offence than of a statement made by a witness.

When obtaining statements from persons who may be able to assist the police in solving any crime, the police have no limitations about the way in which they can conduct their enquiries. It is usual for an officer to record any information given to him, and which can assist him in his enquiry, either in his official pocket book, or to take a written statement on a Statement Form. If the person has a great deal of information to give the police, it is general to talk the matter over with him first, in order that the police officer may be fully aware of all the information that can be given. This is then written down in a connected form, care being taken that the officer does not lead the witness to alter or add to his story.

When, however, they are dealing with a person who, they suspect, may have been responsible for the crime they are investigating, the police are under very great limitations in taking statements if they think that they may later require to use the statement as part of their case against the accused.

Any statement previously made by an accused person is potentially admissible, at his trial, as evidence against him, but

there are important conditions to be observed if such a statement is to be allowed to be given in evidence in an English Court, for a statement of an accused person to be allowed in evidence against him must be shown to have been a voluntary one.

The underlying principle is that if a person making the statement is subject to any form of threat or inducement or promise prior to making the statement, it is presumed that there is so great a risk of it being unreliable that it is in the better interests of justice that such a statement should not be heard as part of the evidence. To quote from Stephen's *Digest of the Law of Evidence*: "No confession is deemed to be voluntary if it appear to the Judge to have been caused by an inducement, threat, or promise, proceeding from a person in authority."

A policeman for this purpose is considered to be a "person in authority" and it is therefore necessary when he approaches the culprit (and it must be remembered that he may not then even suspect him of being the culprit) that he should studiously avoid holding out any threat or inducement which would render any resulting statement inadmissible in evidence.

As a result, the practice of the police is to question any person who is or may be suspected of a crime in such a way that any statement he may make will not be rendered inadmissible in evidence by reason of the circumstances in which it was taken.

In order to ensure that, in accordance with this long-standing principle of the British law that a prisoner's statement, to be admissible in evidence, should be a voluntary one, the Courts for over two hundred years have required that any statement made by a person, who has been charged with an offence, should be made only after he has been cautioned: That is to say after he has been warned that he need not make a statement unless he so desires. The general wording of the caution used by police officers is "You are not obliged to say anything in answer to the charge, but anything you say will be taken down in writing and may be given in evidence."

At one time the two words "against you" were added at the end of the caution, but on the specific advice of the judges, when drawing up the Judges' Rules, which are described later, these two words were dropped.

There was, however, for a long time, a difference of opinion as to when the caution should be given, and the police have often found themselves in difficulty on this particular point—one judge would accept a statement in evidence, although it had not been taken under caution, while another judge, on almost exactly the same facts, would refuse to accept such a statement.

The uncertainty of the law in this respect and the diverse rulings of different Courts in different cases were often a source of great embarrassment to the police whose business it was to obtain evidence which would be admissible against the prisoner at his trial.

As a consequence of two particularly conflicting decisions at one Assizes, the Chief Constable concerned asked the Lord Chief Justice if he would lay down certain principles for the guidance of his officers.

The Lord Chief Justice consulted his brother judges, and their considered reply, issued in 1912, though amplified at a later date, sets out the principles which have today come to be known as the Judges' Rules.

Although in theory the Judges' Rules are merely administrative directions issued for the guidance of the police and the courts, they have, in practice, with the passing of time come to have the force of law. Judges and counsel alike refuse to accept as evidence any statement made by an accused person unless it has been taken in accordance with these rules, while the police themselves besides appreciating that their observance is essential for the fair administration of justice, know that unless they obey the rules when taking a statement they will not be allowed to produce it in Court.

Before setting out the rules in detail, it should perhaps be explained that the British police procedure on arresting a person is to tell him why he is being arrested. He is then cautioned, and any reply he may make is recorded by the arresting officer in his note book. The arrested person is then taken to the police station where the facts leading up to the arrest are outlined to the Station Officer. Provided the latter is satisfied that a *prima facie* reason for the arrest has been made out, he enters the particulars of the prisoner and of the offence he is alleged to have committed on a Charge Sheet. This is read over to the prisoner and is known as the formal charge. He is then formally cautioned, and any reply he makes is again noted. When later he appears before a magistrate, the statements he made when first arrested and when formally charged are given by the arresting officer as part of his evidence.

If the prisoner at any time either before or after arrest or after being formally charged makes a written statement, it is also read by the arresting officer when he gives evidence, provided the court is satisfied that the statement was taken in accordance with the Judges' Rules.

The nine rules are:

1. When a police officer is endeavouring to discover the author of a crime, there is no objection to his putting questions in respect thereof to any person or persons, whether suspected or not, from whom he thinks that useful information can be obtained.

2. Whenever a police officer has made up his mind to charge a person with a crime, he should first caution such person before asking any questions or any further questions, as the case may be.

3. Persons in custody should not be questioned without the usual caution being first administered.

4. If the prisoner wishes to volunteer any statement, the usual caution should be administered.

5. The caution to be administered to a prisoner, when he is *formally* charged, should be in the following words: "Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence."

Care should be taken to avoid any suggestion that his answers can only be used in evidence against him, as this may prevent an innocent person making a statement which might assist to clear him of the charge.

6. A statement made by a prisoner before there is time to caution him is not rendered inadmissible in evidence merely by reason of no caution having been given, but in such a case he should be cautioned as soon as possible.

7. A prisoner making a voluntary statement must not be cross-examined, and no questions should be put to him about it except for the purpose of removing ambiguity in what he has actually said. For instance, if he has mentioned an hour without saying whether it was morning or evening, or has given a day of the week and day of the month which do not agree, or has not made it clear to what individual or what place he intended to refer in some part of his statement, he may be questioned sufficiently to clear up the point.

8. When two or more persons are charged with the same offence and statements are taken separately from the persons charged, the police should not read these statements to the other persons charged, but each of such persons should be furnished by the police with a copy of such statements, and nothing should be said or done by the police to invite a reply. If the person charged desires to make a statement in reply, the usual caution should be administered.

9. Any statement made in accordance with the above rules should, whenever possible, be taken down in writing and signed by the person making it after it has been read to him and he has been invited to make any corrections he may wish.

For the most part the rules speak for themselves. The first rule makes it quite clear that a police officer, when investigating a crime, can ask any question of anybody. When, however, he reaches the point where he is satisfied that the person whom he is questioning is the criminal and is satisfied that he has sufficient evidence on which to arrest him, he must, at that point, caution him. (Rules 1 and 2.)

In many cases this raises a nice point for the police officer. From the outset he may have his suspicions that the person to whom he is talking is the criminal, but he may have no evidence to support his suspicions. It is only when he has talked to the person for some time and the person has told him something which he knows to be a lie, or, alternatively, makes an admission, that the police officer feels he has sufficient evidence to arrest the suspect. At that stage he must issue the caution.

The Judges' Rules are explicit on this point, but any police officer can see that in practice it is often most difficult to decide at what precise moment the caution should be administered. What a temptation it is for an officer who knows he has the right man, and who knows the evidence he has against him is not strong, to delay giving the caution in the hope that the suspect will incriminate himself still further. It says much for the training of the British police officer that the courts very rarely refuse to admit a confession in evidence, though defending counsel often attempt to show that the Judges' Rules have not been obeyed.

In some circumstances it may not, of course, be possible for a police officer to give the complete caution before the suspect incriminates himself, and by Rule 6, such an admission will be admissible provided that the caution is given as soon as possible. In such cases the courts will fully examine whether it was reasonable for the officer to have given the full caution or not. Provided the officer can show that he did convey to the man at the earliest possible moment that there was no need for him to incriminate himself, then the courts will allow evidence to be given of the statement that the accused person has made. For instance, if an officer hears a cry of "Stop thief" and sees a man running, and immediately runs after him catching hold of him, should the man then make any admission immediately on being stopped such as "I am sorry, governor, I don't know why I did it," the courts would almost certainly accept the evidence as admissible, provided the officer cautioned him immediately afterwards.

If, on the other hand, the man had been in police custody for some time before he made such a remark, the courts would not accept that as an admission of guilt, unless the police were able to show that they had cautioned him before the remark was made.

If the arrested person indicates that he would like to make a written statement, the full wording of the caution² is written out

² The caution in this case is usually worded "I have been cautioned that I need not say anything unless I so desire, but that anything I do say will be written down and may be given in evidence."

by the police officer on a Statement Form. It is then read over to the accused and he is invited to sign it. The police officer then asks the accused whether he would like to write out the statement himself or whether he would like the police officer to do it for him. The statement that the accused wishes to make is then written out on the Statement Form immediately below the written caution. The police officer must bear in mind Rule 7, and must not ask any questions of the prisoner save as stated in the Rule for the purpose of clearing up any ambiguity in what is actually said.

In accordance with Rule 9, as soon as the statement has been completed, it is read over to the person making it, and after he has made any corrections he desires, he is asked to sign it. As a further precaution he is generally asked to initial any alterations that have been made so that it cannot afterwards be alleged that the police have altered the statement.

To avoid any subsequent allegation that the statement was taken in circumstances prejudicial to the prisoner, police officers usually enter on the form the time the statement was started and the time it was finished.

While the Judges' Rules permit the police to question any person up to the moment of his arrest, it is clearly laid down that there should not be any questioning of a person in custody to ascertain his guilt, though at first sight it might be thought that Rule 3 permitted this. Though there has been much discussion on this point, it is now generally accepted that this Rule was never intended to encourage or authorize the questioning or cross-examination of any person in custody on the subject of the crime for which he is in custody, other than in the circumstances set out in Rule 7.

It is important to note that a written statement may well be admitted in court although after making it the accused person has refused to sign it. Before accepting such a statement, however, the court will enquire very closely of the reasons why the accused person refused to sign it, and if they suspect that it was, in fact, taken in any improper manner, they will refuse to admit it.

It is the duty of the prosecution to show that any statement made by the accused was made voluntarily, and moreover, if a prisoner complains in court of the manner in which any statement has been taken from him, the Judge or magistrate will at once investigate the matter, whether or not the statement has been tendered in evidence by the prosecution.

Any argument that there may be in the court as to whether a

statement made by the accused is or is not admissible is heard in the absence of the jury, who withdraw while that point is discussed.

The cross-examination of police witnesses in the court of the detrimental circumstances in which a written statement has been taken, is often an important factor of any serious trial especially where the main evidence against the accused is a confession that he has made to the police; and knowing this, the police must at all times be meticulously careful to obey the spirit as well as the letter of the Judges' Rules.

The Royal Commission on Police Powers spent a great deal of time enquiring into the manner in which the police take statements from accused persons. After considering all the evidence, they recommended that cautioning should be retained and "that the moment at which the caution is administered should not be capable of being used or varied for tactical reasons." They felt that in this respect, the police should be relieved of a responsibility which it is peculiarly difficult to exercise with impartiality, and which tends to expose them to allegations of unfairness towards suspected persons. They, therefore, recommended that at the outset of any formal questioning, whether of a potential witness or of a suspected person with regard to any crime or any circumstance connected therewith, the following caution should be administered:

"I am a police officer. I am making enquiries (into so-and-so) and I want to know anything you can tell me about it. It is a serious matter and I must warn you to be careful what you say."

Unfortunately, this recommendation of the Royal Commission has never been accepted, though there are many who wish that it had been, and the fact remains that the police are still, today, often placed in a very difficult position, and are likely at any time to be accused of unfairness.

If the Royal Commission's recommendations in this respect had been accepted, it would, for all time, have removed any suspicion that the police varied the timing of the caution for tactical reasons, in order to catch out a suspect before cautioning him. There are some who say that cautioning at the outset might prevent the police obtaining the information they desire, but it is doubtful if this would be the case, for the suspect, if, in fact, he has a guilty conscience, knows from the moment the policeman comes to see him that he must be careful what he says, and therefore, whether or not a caution is given, he is on his guard.

There are some who think that the caution should be abolished,

but, apart from the legal considerations involved, there is a general feeling that although the criminal does not obey any rules, it is better in the long run for the interests of justice as a whole that the police should have some rules and that they should stick to them.

The Royal Commission published its report nineteen years ago. At that time, they expressed their opinion that "generally speaking the spirit of the Judges' Rules is faithfully observed, but the 'letter' is productive of frequent misunderstandings." The author takes that to be a polite way of saying that the Rules might have been better expressed when first enunciated, and many a British police officer will agree with that view.

However, like so many British things, though it might be better, it works . . . ! And not only is justice done, but, equally important, it is seen to be done.