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In order to discuss the problems of police interrogation, the restrictions, the rules, and the administrative directions by which it is governed, it is first necessary to know some of the fundamental principles of the English Criminal Law, and the relative functions of the police service.

It has been a well established proposition of the laws of evidence for over 100 years that a confession is admissible at a trial only if it was made voluntarily and without inducements, threats, tricks, or force. It is to this primary rule of the Common Law that what we know as the Judges' Rules owe their origin.

One of the primary functions of the police is to investigate all crimes which are brought to their notice and wherever possible to bring the perpetrators before the courts, together with all the relevant evidence. The methods used in the interrogation of suspected persons and the value of evidence thus obtained has long been the subject of comment, both judicial and otherwise, and perhaps it will ever remain so. It is difficult to achieve a correct balance between the need to ensure that the police have adequate means to investigate crime, and the desirability of protecting the innocent and the liberty of the subject.

Prior to 1912 the problems of investigation and interrogation were not so profound as they are today. No rules governed investigations by the police, and indeed, it was not until 1912 that some form of guidance was given to them when questioning persons suspected of or charged with crime. This is not to say that the police in the nineteenth century were allowed unlimited scope when carrying out their investigations. As far back as 1870 Lord Chief Justice Cockburn said at the Central Criminal Court:

> "You may ask a man a question with an honest intention to elicit the truth and ascertain whether there are grounds for apprehending him; but with a foregone intention of arresting him, to ask him questions for the main purpose of getting anything out of him that may afterwards be used against him, is very improper proceeding."

No doubt it is possible to go back still further. The point is, however, that there has been some form of guidance for many years, although it was not generally known to police officers and not enforced to any great extent.

This state of affairs was allowed to continue until the beginning of the twentieth century, and it was then, only after a number of objections in Courts had been made about police procedure, that senior police officers became alarmed at the criticisms levied at them. Finally, in 1906 matters came to a head when one Chief Constable wrote to the Lord Chief Justice asking him to give a ruling, clarifying the circumstances in which a caution should be used. One Judge, the Chief Constable complained, had criticised a constable for using it; and another Judge, in similar circumstances, had criticised a constable for omitting it. Following this, many similar requests were made until 1912 when the Judges formulated the first four Judges' Rules. In 1918 they prepared another five rules and in 1930, issued a statement clearing points of ambiguity in the nine rules they had made. These rules were not added to, but on two occasions in 1947 and 1948, the Home Secretary

issued circulars, after consultation with the then Lord Chief Justice, on the taking of statements.

It can be seen, therefore, that prior to 1912, no official guidance was given to the police on how far they should go when interrogating or taking statements from suspects or prisoners.

After 1918 there was in existence a set of rules laid down by His Majesty's Justices—"For the Guidance of Police Officers when Investigating Crime." It must be clearly understood that the Judges' Rules as formulated then, and the Rules which have been recently devised, are not rules of law. They are not governed by statute and are not to be found in any legal work as part of the English Criminal Law. They are merely rules for the guidance of the police. It therefore follows that whilst no one can be punished for a breach of these rules, they may be very severely criticised, and suffer the penalty of having valuable evidence rejected in a criminal trial.

Those not familiar with the British way of life or the English Law, may wonder why these rules were not made legal and not placed on the statute book and why they are so effective. The answer lies in the Englishman's tolerance and indeed affection for unwritten rules. He has a natural instinct to act according to what he believes to be right and not to be fettered with permitted or prohibited rules. The Judges have power to disallow, whether legally admissible or not, evidence that is of a prejudicial nature.[1] Finally, the British public expect at all times that the police will act fairly, and the general desire by the police is to live up to this expectation.

Initially, the rules were of great assistance to the police and the courts. It was generally accepted that statements taken in accordance with them were not challenged. Where a confession was obtained, the police officer concerned would have to prove to the court that the statement was taken in accordance with the procedure allowed by the rules.

The Rules Formulated in 1912 and 1918 read as follows:

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 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 a statement, the usual caution should be administered. It is advisable that the last two words (i.e. 'against you') of the usual caution should be omitted and end with the words "be given in evidence."

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."

6. A statement 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 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

[1] R. v. Cook, (1959) 2 All E.R. 97.

has been invited to make any corrections he may wish.

Since 1918 numerous cases involving an interpretation of these rules have been considered by the Court of Criminal Appeal. Points have arisen which could not possibly have been envisaged by the Learned Judges when the rules were first formulated.

Although, as will be shown, the rules have been superseded, it is desirable to consider various interpretations which were placed on the original set.

RULE 1 did not cause a great deal of difficulty, with the exception of the suspect's silence. Although the rule gives the police freedom to ask questions of anyone, the person being questioned has equal right not to answer. There was no obligation on anyone to answer questions put to them by the police, and it could not be made the cause of criticism by the Prosecutor, nor indeed, by the Judge, if a suspect refused to answer questions asked him by the police officer.[2]

RULE 2 was usually understood quite well, but often misinterpreted. When has an officer made up his mind to charge a person? This was always the burning question, because once he had made up his mind to charge, he must caution that person.

RULE 3 was the rule that generally caused the most comment. What does "in custody" mean? This was decided in one case to mean "in the custody of the police."[3] But what if the suspect is asked to go to the police station for questioning? Is he in custody? This again was decided by case law; that if a suspect was in a position to refuse to go the the police station, he was not in custody and therefore did not have to be cautioned.[4] On the other hand when a man was interrogated in a room at the police station for three quarters of an hour and the police admitted, at the trial, that if he had tried to leave they would have prevented him, it was held that he was in custody.[5]

It has often been said that this rule was not intended to encourage nor authorise the questioning of a person in custody. This does not mean to say however, that a statement cannot be admitted without a caution being administered. Consider, for instance, the famous case of *R. v. Voisin.*[6]

[2] R. v. Leckey, (1943) W All E.R. 665.
[3] R. v. Straffen (1952) 2 All E.R. 657.
[4] R. v. Wattam, 36 Crim. App. R. 72 (1952).
[5] R. v. Bass (1953) 1 All E.R. 1064.
[6] R. v. Voisin, 82, J.P. 96 (1918).

The body of the murder victim in the *Voisin* case was found in a parcel with a label bearing the words 'Bladie Belgiam'. Voisin when interrogated as a suspect, was asked to write down the words that were on the label. He consented and his writing was subsequently put in evidence. After his conviction he appealed on the grounds that the caution was not administered to him and therefore the writing was inadmissible. His appeal was dismissed, as it was decided that he had written the words voluntarily and that no inducements, threats, or trickery were used to make him write the words. The Court of Criminal Appeal emphasized that Judges have power to exclude or include evidence if they consider that the evidence was obtained freely. In this instance the Judge had exercised his discretion and included the evidence of the writing. This was a clear case of admitting evidence, even though a caution had not been administered. It can, however, happen and frequently does, that evidence is not admitted even when the suspect has been cautioned, as in the case of *R.v. Knight and Thayne.*[7] In this case a person was interrogated for nearly six hours, but only after he had been cautioned. For most of the time he denied the allegations made against him by the police, but later confessed. The trial Judge admitted into evidence the questions and answers to which no objection had been made, since they contained no admission of guilt, but he refused to admit the "confession" into evidence because the Police had implied, during the lengthy interrogation, that the suspect would not be allowed to leave until he admitted the offense.

These two cases clearly illustrate the power the Judges hold as to the admissibility of statements made by suspected persons. In the latter case particularly, even though the suspect was cautioned in accordance with the Judges' Rules, his subsequent statement was not admitted into evidence by the Judge.

Interesting comment on RULES 4 and 5 revolve around the caution which is to be administered. It does not present any difficulties to the interrogator, but is essential that it is given in the correct form and at the correct time. It has occurred in the past and will no doubt happen in the future, that officers whilst giving evidence will be asked to give to the Court the exact words they used when cautioning the suspect.

The meaning of RULE 6 was perfectly clear and

[7] R. v. Knight, 20 Cox Crim. Cas. 711 (1905).

very little comment can be made. It is sufficient to say that great care had to be taken by the interrogating officer to avoid any suspicion that he withheld the caution purposely to extract a confession of guilt.

The police have been criticised quite often with respect to RULE 7. One basis for this criticism is that they have resorted to the subterfuge of cross examining a person generally upon his statement rather than for the restricted purpose of removing an actual "ambiguity" in it. The police have also been criticised in some cases for not using in a written statement the actual words used by the prisoner, or for obtaining the statement by intimidation. In all instances of the latter type, however, the burden has always been upon the prosecution to prove that prisoner's statement was voluntary.

Very little difficulty was encountered with RULE 8, as long as the rule was obeyed. In *R. v. Mills and Lemon*,[8] the rule was disobeyed, but the evidence was admitted, although the police were censured.

In RULE 9 guidance was given in the supplementary Rules on Procedure contained in the Home Office Circulars. They refer to a cautioned statement which must not contain paragraphs and insuring that all corrections made in the statement are initialled by the person making it.

It will be noted from the context of the Rules that their purpose was to insure as far as possible that all statements admitted in evidence were obtained freely and voluntarily.

It was inevitable that various misinterpretations were to be placed on these Rules, mainly, perhaps because they were not so rigid as many eminent lawyers believed they should be. One is inclined to wonder if this was not intentional and that the Rules were purposely left open to allow for the use of a wide discretion. Be that as it may, as a result of comments and criticisms by Judges, representations by various organisations, and the general dissatisfaction expressed by the legal profession, new rules have been formulated and were introduced on the 27th January, 1964.

These Rules, to which I shall refer as the "1964 Rules", supersede those made in 1912 and 1918, but do not affect the following principles (as set forth in the *Introduction* to the new Rules):

(a) That citizens have a duty to help a police officer to discover and apprehend offenders;

(b) That police officers, otherwise than by arrest, cannot compel any person against his will to come to or remain in any police station;

(c) That every person at any stage of an investigation should be able to communicate and consult privately with a solicitor. This is so even if he is in custody, provided that in such a case no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice by his doing so;

(d) That when a police officer who is making inquiries of any person about an offense has enough evidence to prefer a charge against that person for the offense, he should without delay cause that person to be charged or informed that he may be prosecuted for the offense;

(e) That it is a fundamental condition to the admissibility in evidence against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, that it shall have been voluntary, in the sense that it has not been obtained from him by fear or prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression.

The principle set out in paragraph (e) above is overriding and applicable in all cases. Within that principle the following Rules are put forward as a guide to police officers conducting investigations. Non-conformity with these rules may render answers and statements liable to be excluded from evidence in subsequent criminal proceedings.

The 1964 Rules are as follows:

RULE 1. When a police officer is trying to discover whether, or by whom, an offense has been committed he is entitled to question any person, whether suspected or not, from whom he thinks that useful information may be obtained. This is so whether or not the person in question had been taken into custody so long as he has not been charged with the offense or informed that he may be prosecuted for it.

RULE 2. As soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offense, he shall caution that person or cause him to be cautioned before putting to him any questions, or further questions, relating to that offense. The caution shall be in the following terms:

> "You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence."

[8] R. v. Mills, (1946) 2 All E. R. 776.

When after being cautioned a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any such questioning or statement began and ended and of the persons present.

RULE 3. (a) Where a person is charged with or informed that he may be prosecuted for an offense he shall be cautioned in the following terms:

"Do you wish to say anything? 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."

(b) It is only in exceptional cases that questions relating to the offence should be put to the accused person after he has been charged or informed that he may be prosecuted. Such questions may be put where they are necessary for the purpose of preventing or minimising harm or loss to some other person or to the public or for clearing up an ambiguity in a previous answer or statement.

Before any such questions are put the accused should be cautioned in these terms:

"I wish to put some questions to you about the offense with which you have been charged (or about the offense for which you may be prosecuted). You are not obliged to answer any of these questions, but if you do the questions and answers will be taken down in writing and may be given in evidence.

Any questions put and answers given relating to the offense must be contemporaneously recorded in full and the record signed by that person or if he refuses by the interrogating officer.

(c) When such a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any questioning or statement began and ended and of the persons present.

RULE 4. All written statements made after caution shall be taken in the following manner:

(a) If a person says that he wants to make a statement he shall be told that it is intended to make a written record of what he says. He shall always be asked whether he wishes to write down himself what he wants to say; if he says that he cannot write or that he would like someone to write it for him, a police officer may offer to write the statement for him. If he accepts the offer the police officer shall, before starting, ask the person making the statement to sign, or make his mark, to the following:

"I——, wish to make a statement, I want someone to write down what I say. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence."

(b) Any person writing his own statement shall be allowed to do so without any prompting as distinct from indicating to him what matters are material.

(c) The person making the statement, if he is going to write it himself, shall be asked to write out and sign before writing what he wants to say, the following:

"I make this statement of my own free will. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence.

(d) Whenever a police officer writes the statement, he shall take down the exact words spoken by the person making the statement, without putting any questions other than such as may be needed to make the statement coherent, intelligible and relevant to the material matters: he shall not prompt him.

(e) When the writing of a statement by a police officer is finished the person making it shall be asked to read it and to make any corrections, alterations or additions he wishes. When he has finished reading it he shall be asked to write and sign or make his mark on the following Certificate at the end of the statement:

"I have read the above statement and I have been told that I can correct, alter or add anything I wish. This statement is true. I have made it of my own free will."

(f) If the person who has made a statement refuses to read it or to write the above mentioned certificate at the end of it or to sign it, the senior police officer present shall record on the statement itself and in the presence of the person making it, what has happened. If the person making the statement cannot read, or refuses to read it, the officer who has taken it down shall read it over to him and ask him whether he would like to correct, alter or add anything and to put his signature or make his mark at the end. The police officer shall then certify on the statement itself what he has done.

RULE 5. If at any time after a person has been charged with, or has been informed that he may be prosecuted for an offense a police officer

wishes to bring to the notice of that person any written statement made by another person who in respect of the same offense has also been charged or informed that he may be prosecuted; he shall hand to that person a true copy of such written statement, but nothing shall be said or done to invite any reply or comment. If that person says that he would like to make a statement in reply, or starts to say something, he shall at once be cautioned or further cautioned as prescribed by RULE 3 (a).

RULE 6. Persons other than police officers charged with the duty of investigating offenses or charging offenders shall, so far as may be practicable, comply with these Rules.

An investigation by the police is thus divided into distinct stages.

With the first rule it is still an inquiry and a police officer can ask questions without administering a caution. Indeed, no time limit is laid down as to how long he can continue questioning a suspect.

Rule 2, however, provides that as soon as an officer has evidence which would afford reasonable grounds to suspect that that person has committed an offense he must caution him; but the officer can still continue his questioning.

The third stage is reached when the person being interrogated is charged. He must again be cautioned and further questioning is forbidden except in exceptional circumstances, as defined in Rule 3.

Since the inauguration of the new Rules a case has held that under both the old and the 1964 Rules, it is permissible to question a person, who is in custody for one offense, regarding other offenses for which he is not in custody.[9]

It will be immediately apparent that under the old Rules a police officer was required to caution as soon as he "made up his mind" to charge a person with a crime, and that persons in custody should not be questioned without the usual caution being administered. Under the new Rules the question is somewhat different. Has the officer evidence which would afford reasonable grounds for suspecting the person being interrogated? If such "reasonable" grounds do exist he must administer a caution. When the person is later charged or informed that he may be prosecuted he must then be cautioned a second time.

There must be no delay in charging a person when the police officer has sufficient evidence. Any obvious and undue prolongment may cause the Judge in the exercise of his discretion to disallow the use in evidence of questions put by the officer to the person charged.

Rules 4 and 5 deal particularly with written statements made by the accused. The Home Office felt that these rules required some explanation and therefore issued a circular to all Police Forces. The guidance given is so important that it is here reproduced in full:

ADMINISTRATIVE DIRECTIONS ON INTERROGATION AND THE TAKING OF STATEMENTS

1. *Procedure generally*

(a) When possible statements of persons under caution should be written on the forms provided for the purpose. Police Officers' notebooks should be used for taking statements only when no forms are available.

(b) When a person is being questioned or elects to make a statement, a record should be kept of the time or times at which during the questioning or making of a statement there were intervals or refreshment was taken. The nature of the refreshment should be noted. In no circumstances should alcoholic drink be given.

(c) In writing down a statement, the words used should not be translated into "official" vocabulary; this may give a misleading impression of the genuineness of the statement.

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

2. *Record of Interrogation*

Rule 2 and Rule 3 (c) demand that a record should be kept of the following matters:

(a) when, after being cautioned in accordance with Rule 2, the person is being questioned or elects to make a statement—of the time and place at which any such questioning began and ended and of the persons present;

(b) when, after being cautioned in accordance with Rule III (a) or (b) a person is being questioned or elects to make a statement—of the time and place at which any questioning and statement began and ended and of the persons present.

In addition to the records required by these Rules full records of the following matters should additionally be kept:

[9] R. v. Buchan 48 Crim. App. R. 126 (1964).

(a) of the time or times at which cautions were taken, and

(b) of the time when a charge was made and/or the person was arrested, and

(c) of the matters referred to in paragraph 1 (b) above.

If two or more police officers are present when the questions are being put or the statement made, the records made should be countersigned by the other officers present.

3. *Comfort and Refreshment*

Reasonable arrangements, should be made for the comfort and refreshment of persons being questioned. Whenever practicable both the person being questioned or making a statement and the officers asking the questions or taking the statement should be seated.

4. *Interrogation of Children and Young Persons*

As far as practicable children (whether suspected of crime or not) should only be interviewed in the presence of a parent or guardian, or, in their absence, some person who is not a police officer and is of the same sex as the child. A child or young person should not be arrested, nor even interviewed, at school if such action can be avoided. Where it is found essential to conduct the interview at school, this should be done only with the consent, and in the presence, of the head teacher, or his nominee.

5. *Interrogation of Foreigners*

In the case of a foreigner making a statement in his native language:

(a) The interpreter should take down the statement in the language in which it is made.

(b) An official English translation should be made in due course and be proved as an exhibit with the original statement.

(c) The foreigner should sign the statement at (a).

Apart from the question of apparent unfairness, to obtain the signature of a suspect to an English translation of what he said in a foreign language can have little or no value as evidence if the suspect disputes the accuracy of this record of his statement.

6. *Supply to Accused Persons of Written Statement of Charges*

(a) The following procedure should be adopted whenever a charge is preferred against a person arrested without warrant for any offence:

As soon as a charge has been accepted by the appropriate police officer the accused person should be given a written notice containing a copy of the entry in the charge sheet or book giving particulars of the offense with which he is charged. So far as possible the particulars of the charge should be stated in simple language so that the accused person may understand it, but they should also show clearly the precise offense in law with which he is charged. Where the offense charged is a statutory one, it should be sufficient for the latter purpose to quote the section of the statute which created the offense.

The written notice should include some statement on the lines of the caution given orally to the accused person in accordance with the Judges' Rules after a charge has been preferred. It is suggested that the form of notice should begin with the following words:

> "You are charged with the offense(s) shown below. 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."

(b) Once the accused person has appeared before the Court it is not necessary to serve him with a written notice of any further charges which may be preferred. If, however, the police decide, before he has appeared before a court, to modify the charge or to prefer further charges, it is desirable that the person concerned should be formally charged with the further offense and given a written copy of the charge as soon as it is possible to do so, having regard to the particular circumstances of the case. If the accused person has then been released on bail, it may not always be practicable or reasonable to prefer the new charge at once, and in cases where he is due to surrender to his bail within forty-eight hours or in other cases of difficulty it will be sufficient for him to be formally charged with the further offence and served with a written notice of the charge after he has surrendered to his bail and before he appears before the court.

7. *Facilities for defence*

(a) A person in custody should be allowed to speak on the telephone to his solicitor or to his friends provided that no hindrance is reasonably likely to be caused to the processes of investigation, or the administration of justice by his doing so.

He should be supplied on request with writing materials and his letters should be sent by post or otherwise with the least possible delay. Ad-

ditionally, telegrams should be sent at once, at his own expense.

(b) Persons in custody should not only be informed orally of the rights and facilities available to them, but in addition notices describing them should be displayed at convenient and conspicuous places at police stations and the attention of persons in custody should be drawn to these notices.

These directions have so far not caused any difficulty to police officers. Included are some detailed provisions regarding the recording of statements, but again it will be noticed that there is no prohibition of lengthy interrogations. Facilities for the defense are referred to at No. 7. It refers to persons in custody and to those who are being questioned before an arrest is made. It would, however, be very improper and, no doubt, invoke criticism if a suspect under questioning asked for his solicitor and was refused one. Notices are displayed prominently in police stations informing persons in custody of their rights and the facilities available to them.

These then are the new Judges' Rules. One can see that although they differ in some respects to the old rules, the principles are the same. Probably they will from time to time, as the former rules were, be interpreted in different ways and indeed misinterpreted by the police and by the courts throughout the country. The cardinal principle remains that confessions must be obtained freely and voluntarily. Any attempt to the contrary will probably mean that vital evidence will be inadmissable.

Since the rules were introduced in January, 1964, the police have not experienced any more difficulty than they did with the old rules. The dice is still very much more loaded in favour of the suspect. He is still privileged against self-incrimination, a fact, believed by many, to be completely wrong. Many lawyers and law enforcement officers believe that suspects should be under an obligation to say something when questioned by the police; not cautioned to the effect that they need not say anything. It has been further suggested that if the suspect refused to answer questions and was reasonably expected to have done so, that factor could be considered by the jury when deciding the case.

When the accused is committed for trial the case for the prosecution is revealed to the defence, but not visa versa. It is believed that once a prima facie case is made out, the accused should be in the same position as the prosecution and that his defence should be revealed together with what witnesses if any, he proposed calling to support it.

Similarly, the suspect should be obliged to give evidence and be subjected to cross examination. These are controversial factors which are being discussed. It is not possible to foresee the outcome: time alone will reveal whether the new rules are too great a handicap for the police to carry in their day to day interviews with suspects.

I believe that crime investigators are already overburdened with rules and regulations. The time is rapidly approaching when there will have to be a re-appraisal of the system which is weighed down so heavily in favour of the suspect.