Hate Crime Guidance RH 2011 onwards posted 25 5 2108
Robert Henderson anywhere156@yahoo.co.uk

"All that prompts me to offer guidance in dealing with such accusations."

You will find below two documents. The first is entitled *What to do if you are accused of racism*. This gives specific advice in dealing with accusations of racism. The second longer piece entitled *What to do if you become involved with the criminal law* offers general guidance.

Understand one thing above all, t**he police are not your friends.** Don't imagine that if you cooperate with them this will make things easier for you. In cases such as these it will almost certainly make things worse. At best you will be chivied into making statements which can be used against you, for example, you might innocently or otherwise contradict yourself. At worst you will allow yourself to confess to something which you would not in normal circumstances think of as a crime, for example agreeing that something you have said or written was racist, homophobic or sexist.

If the police want to question you under caution but have not arrested you, they will have to tell that you are free to go. Always go immediately. If they have arrested you state immediately that you wish to exercise your right to silence. If they continue to try to question you say after any question "I have told you I wish to exercise my right to silence. Why are you not acting on that advice? The police will soon get tired of this because under the Police and Criminal Evidence Act of the 1984 (PACE) all interviews have to be recorded. The

police know that judges do not take kindly to suspects being bullied.

Always get a solicitor ASAP if that is possible. If not say nothing until one can be obtained.

I wrote the general guide a few years ago but it is still essentially sound. The guide obviously applies to English law but it also has a broad general utility for any Common Law jurisdiction.

Robert Henderson

Want your politics with the cant taken out? Then try Robert Henderson blogs:

http://www.livinginamadhouse.wordpress.com/
http://www.englandcalling.wordpress.com/
http://www.ukcmri.wordpress.com/

Twitter RH156 and Facebook

-- What to do if you are accused of inciting racial hatred

Robert Henderson

There is a growing enthusiasm by the authorities in Britain to prosecute people who are judged to have broken the law by being racist in speech or writing. This enthusiasm is fuelled by the adoption of political

correctness as the elite ideology of the day. Anyone in a position of power and influence is forced on pain of being cast from such circles to at least pay lip service to the creed and the fear of being called racist has those without power or influence in a vice-like grip as they see people who have been accused of racism having their lives turned upside down by the media engaging in hate campaigns against them, their jobs taken from them and, in an increasing number of cases, criminal records put upon them for simply saying what they think.
The police have become frantically keen on showing their politically correct credentials. Recently the Home Secretary Amber Rudd found the police recording a complaint of racism against her after she made a speech dealing with immigrants as a "non-crime hate incident, a category without any statutory basis that the police have invented. In cases such as this the police cease to act as police and become political commissars. The "non-crime hate incident" will be logged on a police computer, quite possibly the central computer the police have. It is unlikely to affect the likes of Rudd but anyone without power or influence could well find the police bringing such a record into play if they end up, for whatever reason, being questioned by the police. Even if it never happens it will hang heavy in the minds of the person to whom such a record refers because they will have become "a person known to the police" despite ever having been charged with an offence. It might well come up on a criminal records check undertaken because of the nature of a job someone is applying for. Even if that never happens to you imagine how your employer or your family might react if becomes public knowledge in some other way such as

a newspaper report that you are a person deemed to have been the perpetrator of a “hate non-crime incident”.

The police are rather less enthusiastic about one class of complaint of racism. Any complaint of a “non-crime hate incident ” to the police which falls outside what the politically correct deem to be a worthy case – basically any complaint involving racial incitement against whites – will not be recorded. I have in the past tried out the police’s willingness to record such complaints, for example, I made a complaint of racial incitement against Greg Dyke when he was Chairman of the BBC following his “hideously white” description of the Corporation. The police refused to record the complaint let alone investigate it.

The great advantage you have

All that will seem daunting to anyone accused of racism which reaches the police . Do not despair. People accused of this type of offence has one great advantage : those with power and influence in the UK have a dread of the issue of free expression being the subject of public debate in the courts. This is so for two reasons. First, they know that prosecuting people for simply saying something goes against the idea of a free society, something which the British elite invariably claim to believe in in the abstract. Second, the free speech that is being suppressed is that which goes against the politically correct version of what is permissible. The politically correct know in their heart of hearts that political incorrectness is the natural order of things and that only by censoring can the pretence that political correctness reflects reality be maintained.

As a consequence of these fears the police and those

in the justice system do everything possible to persuade those charged with such offences to plead guilty. This was graphically shown in the case of Emma West who maintained her innocence for many months even though initially she was held on remand in the highest security women's prison in the UK . Her crime? To make what was really no more than a public protest about the consequences of mass immigration. Eventually, she pleaded guilty to lesser charges after the stress got to her, not least the fear that her young son would be taken from her. The extraordinary efforts to made to get the woman to change her plea strongly suggests that had she stuck by her original Not Guilty plea there was a very good chance the case would never have come to court.

The lesson of all this is always get on the front foot if you are threatened by those with power and influence. Show that you are afraid and intimidated and the powers-that-be will simply ride all over you. Let those who are harrying you know that you are coming out fighting. That is not only your best chance of neutralising the accusation of racism it is probably your only chance. Try googling cases of people accused of pc "crimes" who tamely pleaded guilty. Despite assiduous researching I cannot find one case which ended with a person pleading guilty being left in their original position, either in their work or socially. At best, the common outcome is for people to lose their job and to find getting another one very difficult; at worst they can end up in prison. Pleading guilty to such charges is never a soft option.

Subject access requests

If the complaint which has led to criminal charges being

brought has been made by someone representing an organisation rather than just acting as an individual you may be able to get useful information from your accusers by using the Data Protection Act to make a subject access request . This places the data holder (the organisation to whom you are directing the subject access request) under a legal obligation to supply the person making the request with copies of any information they hold about them.
It is also worthwhile to put in a subject access request to other organisations, for example

1. the police force which is dealing with the complaint against you.
2. Any media organisation such as a the BBC or a national newspaper if it has shown an interest in your case.

Such organisations may hold data which will be at embarrassing at best and at worst damaging to their accusation against you. For example, there may be data showing that there were arguments against making a complaint by some members of the organisation making or supporting the complaint; details of the surveillance of you before any alleged crime has been acted upon by the police or attempts to entrap you which depending on circumstances could be illegal.
There is an exemption in the Act for legal documents and information held for journalistic purposes, but often the recipient of a subject access request will have data which is not covered by the exceptions.
Apart from possibly gaining useful information, the effect of making a subject access request will be to reinforce the fact that you are coming out fighting for even if no

useful data is forthcoming the sending of a subject access request will signal that you mean business.
How do you do make a subject access request? Use the wording below for the request, enclose £10 for the fee and ask for the data they hold in paper form. The reason for asking for the material in paper form is that often paper documents have manuscript notes written on them. These may carry important information.
Dear Sirs,
I am making a subject access request to the Campaign Against Anti-Semitism under section 7 of the Data Protection Act 1998 (DPA). This data will include any qualifying information held on any type of media.
Please send to me copies of any data relating to me which your organisation holds within the 40 calendar days allowed by the Act.
I want any qualifying information you hold to be supplied to me in paper form.
A cheque for £10 is enclosed to pay the fee.
Yours faithfully,

If the matter does go a trial
Base your defence on free expression and the fact that political correctness requires the denial of the reality of homo sapiens' biology and evolved social nature.
For free expression make these arguments:

1. When it comes to censorship there is a simple binary choice: there is either free expression or a range of permitted opinion which may be altered at any time. In present day Britain there is only a range of permitted opinion, the scope of which narrowing by the day.

2. Free expression is an integral part of democracy. If people are not allowed to put forward their views there is no democracy.

3. By definition any totalitarian ideology is incompatible with democracy because it excludes any viewpoint apart from its own.

Political correctness is a totalitarian ideology. It both potentially covers every aspect of life because the non-discrimination test can be applied to any aspect of life and insists that the only correct and permissible view of anything where political correctness applies is the politically correct view. The defining of antisemitism , especially in its present very broad sense, is part of political correctness.

4. Many in the West who want to censor also wish to also pretend quite absurdly that they support free expression. It is important to ensure that their hypocrisy is made clear at every opportunity . The notes below provide a potent way of driving those adopting this position into a corner.

5. For a detailed examination of the issue of free expression *see* *Free Expression or a range of permitted opinion .* Use the details in that essay to give chapter and verse on the vast constraints on free expression in England today. Simply reciting in court the long list of ways in which free speech is discouraged today should have the effect of knocking on the head any claim that free speech exists.

For the denial of the reality of homo sapiens' biology and evolved social nature use these arguments:

Humans are social animals. Social animals only become social (what biologists call the development of sociality) by setting limits to those within their group. This is because sociality can only develop where there is trust and trust comes from triggers ranging from scent and chemical triggers to, in the case of humans, a recognition of those who belong to a group through a mixture of biology – basically does this person look like me? – and acquired knowledge that an individual belongs to the group through their cultural behaviour, for example, speaking the same language or having the same accent. That is the basis of group or tribal belonging . Tribal feeling is not an optional extra. It is an essential evolved behaviour which protects the group.

Political correctness denies that humans have an evolved social nature and insists against all the evidence that everything is down to cultural imprinting. When presented with this argument simply point out (1) that wherever a society is racially/culturally mixed there is always serious friction and (2) that the universality of racial and ethnic tension in mixed societies can only be plausibly explained by tribal feeling being innate .

Dealing with accusations of racism generally

Always get those accusing you of racism to define the word. This will simply stump most people because they are rarely if ever called upon to explain what is meant by racism. That is particularly true of the politically correct who rely on their control of the positions of power and influence, including the media, to censor out challenges to political correctness. That this is done and accepted as legitimate by the politically correct tells us one thing: at some level they realise, as the religious do, that their

beliefs cannot stand up to argument.
Asking for a definition of what is meant by racism is a tool which can be used to fluster and unsettle everyone involved in bringing and prosecuting a case against you. If they are unable give a satisfactory definition you are halfway to winning the case. If they give a definition to which you can answer “I do not meet that definition” so much the better. Indeed, there is a good chance that asked for a definition of racism people are likely to say something along the lines of “Well, it means you think some people are inferior to you because of their colour”. To that you can say, no, that does not apply to me. I merely, like all human beings, naturally seek the company of those who resemble me because of my evolved nature.
The person to whom the question of a definition has been addressed may well be unable to meaningfully expand on their original offering. If they do it will probably be by saying something like “It’s discriminating against people”. This allows the defence to then bring out the fact that all humans have to discriminate all the time between people because we have to make choices.
That is just a few examples of how even in a court the prosecution and their witnesses can be exposed as having no firm grasp of what they mean by racism and that in turn will make it difficult in principle to say whether what you are accused of inciting actually exists.
The effect of this type of defence is to keep the prosecution on the back foot.
The special case of Antisemitism
These contrary arguments will cover most of the

accusations of anti-Semitism:

1. It is not anti-Semitic to apply the same test to Jews as should rationally be applied to any minority group, namely, is the group or members of the group attempting to gain an advantage for their group which is achieved at the cost of disadvantaging the rest of the society in which they live. That is simply rational self-preservation by the majority population. The most potent example of unacceptable behaviour by a minority group is one which advocates free immigration to the country in which the group lives and whose members are either immigrants themselves or the descendants of immigrants.

2. It is not anti-Semitic to be concerned if there are a disproportionately large number of Jews in positions of power and influence such as politics and the mainstream media. The prime example of this is the Jewish lobby in the USA. Such positions are gained most commonly not because the best person gets the job but because those occupying them are either born into a privileged position or the position is an appointment made by patronage. For example, a significant percentage of those employed in the media have relations who worked in the media before them.

3. It is not anti-Semitic to refuse to treat the Holocaust as an event which is uniquely abominable and consequently something that must be placed before the world to be

condemned ceaselessly. It is now 71 years since the ending of the Second World War . Even the youngest of the surviving death camp survivors will be old. Most will be dead or in their eighties and nineties. Time has reduced to the Holocaust to what everything eventually becomes, an historical event which can be viewed objectively.

4. It is not anti-Semitic to point out that huge numbers of non-Jewish people died in the Camps and that the frequent portrayal of the mass killings as an essentially Jewish event is wrong. That is not to deny that huge numbers of Jews died or to belittle their suffering. Rather, it is to provide an accurate account of what the death camps were and to rebalance the emotional response to what occurred.

5. It is not anti-Semitic to treat the six million figure for Jews killed as uncertain. That does not mean six million did not die. Indeed, many more may well have done so. What matters here is that the six million figure is not an historical fact. To give just a couple of examples of the difficulty in calculating the numbers killed. Estimates of the number of Jews in Europe before 1933 run into two primary problems: the definition of who is a Jew (which covers a wide span of circumstances) and the reliability and lack of uniformity of methodology of census records compiled in different jurisdictions. Piled on top of that is the post-Holocaust dispersal of

European Jews outside of Europe which makes comparison of the pre-1933 Jewish European population with the post-1945 population of Jews in Europe very difficult even if the definition of who is Jew is ignored.

6. It is not anti-Semitic to view the modern state of Israel as illegitimate in foundation and support for it to be against Western interests because it puts the West perpetually at odds with the Arab world in particular and the Muslim world in general.

How to deal with the police

Do not be aggressive to or try to ingratiate yourself with the police. Be formally polite but reserved. Make it clear by your behaviour that you are not to be intimidated. I realise that is difficult for people who have no experience of the police but adopting a reserved manner will go a long way to achieving this. Always have at the front of your mind that the police and the justice system are not geared up to deal with people who will not plead guilty to charges relating to racism.

If you have been arrested get your lawyer to ask the police to justify the arrest – they must have reasonable grounds for suspecting that you have committed a crime or intend to commit a crime.

Always remain silent until you have a lawyer present. The police must caution you if they are attempting to get evidence from you about a crime that you have committed or are intending to commit or are otherwise involved with, for example, fencing stolen goods.

If you have been cautioned without being arrested you must be told that you are free to leave at any time.

Be aware that if you accept the offer of a formal police

caution (this can be with or without conditions) to avoid going to trial that can be as damaging as having a criminal record particularly if you work in jobs requiring a criminal records check. These cautions have nothing to do with the caution previously described
Be aware that if you accept an offer to plead guilty to a lesser charge in the long run this can be as damaging to your life as fighting a more serious charge.
For my detailed advice on dealing with the police see https://englandcalling.wordpress.com/what-to-do-if-you-become-involved-with-the-criminal-law/

What to do if you become involved with the criminal law
Robert Henderson (27 April 2011)

Paras

What this guide is for

1. Over the past twenty-five years fundamental safeguards have been removed or are in danger of being removed from our legal system through measures such as the Serious Crime and Disorder Act, various anti-terrorism laws, the retention of the fingerprints and DNA of those not found guilty of a crime and the breach of the convention that no one is placed in “double jeopardy” by being tried twice for the same offence. At

the same time, the whole thrust of government policy and behaviour is ever more authoritarian, vide the neutering of Parliament, the series of gratuitous and aggressive wars and the increasingly intolerant treatment of protestors. In such circumstances the chances of becoming involved with the criminal law are increasing even for the law abiding. That being so it pays to be prepared to deal with the police, lawyers and the courts. This what the guide is designed to do.

2. The guide does not tell you what the law is with regard to a particular crime. Rather, it tells the reader what to expect from the police, lawyers and courts, what can and cannot be legally done by the police and associated agencies such as the security services and how you can best defend yourself whilst keeping within the law. The law most useful to know in this context is that related to these Acts:

Police and Criminal Evidence Act 1984

Public Order Act 1986

Criminal Justice Act 1987

Criminal Justice and Public Order Act 1994

The Regulation of Investigatory Powers Act 2000

Terrorism Act 2000

The Police Reform Act 2002

Serious and Organised Crime Act 2005

The full text of these acts can be found http://www.legislation.gov.uk/ Just put the title of the Act you want into the search facility. Bear in the law is an ever

moving feast, this guide should be read in the context of its date of publication, although the general advice about how to behave such as forcing the police to caution you and your manner when dealing with them will remain applicable. The laws I refer to may apply to only England and Wales, but the situation in Northern Ireland Scotland is broadly similar.

General Tactics

3. Your general tactics should be three. First, give the authorities particularly the police) as little cooperation as possible within the law, whilst remaining formally polite and reasonable. Second, lay down markers all the way along the line if official misconduct occurs. This covers everything from complaints by you about the failure to observe legal procedures, such as advising a suspect that he is under arrest, to complaints about physical violence. Such markers will provide you with powerful weapons to dissuade the police and the Crown Prosecution Service from mounting a prosecution against you (from embarrassment if nothing else), provide you at your trial with ammunition to taint the prosecution evidence and conceivably give grounds for appeal. Third, ensure that those in authority know that you will fight to the limit any attempt to prosecute. Such behaviour will both give the police or the prosecuting authority (The Crown Prosecution Service) little to go on and be quietly intimidating to both.

4. Whenever you are abused, whenever you feel that your legal rights have not been observed, whenever you believe that police procedures have not been followed, do the following: (1) make it clear immediately to the

nearest police officer that you will be making a formal complaint and (2) make a written note, as soon as possible, of what has happened and sign and date that note. If you have a solicitor, pass the note to them as soon as you physically can so that he or she may certify the date that they received it. Ensure that a copy of your notes exists.

5. If you have a means of recording conversations, use this to record any conversations relating to you by police officers after you are arrested. These may be conversations in which you are a participant or conversations about you but not involving you, by police officers. Make it clear on the recording who you are, when and where the recording was made and the people recorded. Hand this recording to your solicitor as soon as possible. Ensure a copy of any recordings is made. Nothing but nothing is as effective a check on official misbehaviour as their knowledge that they are being recorded.

6. If you have one on you, use your mobile phone to tell others about your arrest if you can. If you have the means of connecting to the Internet putout details of your plight through the Internet.

7. If the police stops you from doing (6) and (7), ask the reason why, the rank of the officer and the name of the officer. Make a written note of it as soon as you can. Include the time the refusal was made, where it was made, the time and date of when the note was made and your signature.

8. If you threaten to make a complaint, always do so.

Never cry wolf.

Choosing a lawyer

9. You will need a solicitor experienced in criminal law. Solicitors often appear in the magistrates courts, although they may also instruct a barrister to act for you. The solicitor will normally instruct a barrister if you get as far as the higher court. Specially licensed solicitors can also appear in the place of barristers in the higher courts(Crown Court, High Court, Court of Appeal and Supreme Court), but I would not recommend trusting your fortunes to one, especially if it is a very serious charge.

10. If a barrister is instructed, make sure that he is experienced in the area of criminal law with which you are involved. Make certain that the person who turns up to represent you if you are taken to a police station is a qualified solicitor and not a legal executive. Refuse to say anything if a solicitor is not available.

11. Wherever possible give your instructions to your solicitor and barrister in writing. Keep a copy. This will prevent them going their own sweet way. Barristers in particular always believe that they know best and often disregard or bend their clients' instructions out of all recognition.

12. Written instructions can be useful if your lawyers let you down. If you feel your solicitor or barrister is incompetent or dishonest, you can sue them and/or make a complaint to their governing bodies, the Law Society (solicitors) and Bar Council (Barristers).
Moreover, if your barrister or solicitor does not follow

your instructions, that could be grounds for appeal under the more liberal appeal rules which now apply. Written instructions are also useful if you want to dismiss your barrister during a trial. The court will look on your request more kindly if you can show that your instructions have not been carried out. They could also provide grounds for an appeal or retrial.

13. The quality of lawyers you will get is largely governed by the amount of money you have. If you are on legal aid, you will probably have to take what you are given by way of a barrister. Your choice of solicitor will also be restricted to those willing to take legal aid work. The already unfair situation is about to become worse. New rules governing legal aid are shortly to come into force. These will restrict legal aid to lawyers licensed by the government and in many parts of the country it will be difficult to find a lawyer able and willing to take a case. In addition, legal Aid is no longer automatically available for criminal cases (since 2010) and you may have to pay all or part of the defence costs (http://www.legalservices.gov.uk/criminal/criminal_legal_aid_eligibility.asp). However, if you are arrested you will get free legal advice at a police station. If you are charged with a really serious offence, you should end up with competent lawyers and most probably get your full costs met from public funds.

The Arrest

14. An arrest can be made with or without a warrant being issued. Until the Serious and Organised Crime Act 2005 (SOCA) there were significant restrictions on the power of arrest without a warrant, most notably the

restriction of an automatic right arrest to an arrestable offence. An arrestable offence was any offence which has a fixed mandatory penalty (e.g. murder) or which carries a sentence of at least five years' imprisonment. Inciting, attempting, or conspiring to commit, or being an accessory to, an arrestable offence was also an arrestable offence. There were also a few other offences, such as taking and driving, which are arrestable offences even though they carry a sentence of less than five years.

15. Prior to SOCA a police officer could also make an arrest for a non-arrestable offence if he reasonably suspected that a non-arrestable offence has been or is being committed and (1) he thought that "a general arrest condition" is satisfied (for example, he reasonably believed that an arrest was necessary to prevent a suspect causing injury) or (2) he had the statutory power to make the arrest (for example, for drunken driving) or the common-law power to arrest (e.g. for a breach of the peace). SOCA has made the power of arrest so broad that it in practice an arrest can be made for any suspected offence. Here is the relevant section from the Act:

(1)For section 24 of PACE (arrest without warrant for arrestable offences) substitute—

24 Arrest without warrant: constables

A constable may arrest without a warrant—

(a)anyone who is about to commit an offence;

(b)anyone who is in the act of committing an offence;

(c)anyone whom he has reasonable grounds for suspecting to be about to commit an offence;

(d)anyone whom he has reasonable grounds for suspecting to be committing an offence.

(2)If a constable has reasonable grounds for suspecting that an offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds to suspect of being guilty of it.

(3)If an offence has been committed, a constable may arrest without a warrant—

(a)anyone who is guilty of the offence;

(b)anyone whom he has reasonable grounds for suspecting to be guilty of it.

(4)But the power of summary arrest conferred by subsection (1), (2) or (3) is exercisable only if the constable has reasonable grounds for believing that for any of the reasons mentioned in subsection (5) it is necessary to arrest the person in question.

(5)The reasons are—

(a)to enable the name of the person in question to be ascertained (in the case where the constable does not know, and cannot readily ascertain, the person's name, or has reasonable grounds for doubting whether a name given by the person as his name is his real name);

(b)correspondingly as regards the person's address;

(c)to prevent the person in question—

(i)causing physical injury to himself or any other

person;

(ii)suffering physical injury;

(iii)causing loss of or damage to property;

(iv)committing an offence against public decency (subject to subsection (6)); or

(v)causing an unlawful obstruction of the highway;

(d)to protect a child or other vulnerable person from the person in question;

(e)to allow the prompt and effective investigation of the offence or of the conduct of the person in question;

(f)to prevent any prosecution for the offence from being hindered by the disappearance of the person in question.

(6)Subsection (5)(c)(iv) applies only where members of the public going about their normal business cannot reasonably be expected to avoid the person in question. (http://www.legislation.gov.uk/ukpga/2005/15/part/3/crossheading/powers-of-arrest)

16. There is one great exception to this arrest regime. The Terrorism Act 2000 (sections 40-43 http://www.legislation.gov.uk/ukpga/2000/11/section/40) allows an arrest without reasonable suspicion for any suspected breach of the Act. In all other circumstances to make an arrest without a warrant the arresting officer must have a reasonable suspicion that a crime has been committed, is being committed or is about to be committed. Offences include not leaving a designated area when ordered to do so or holding a demonstration without a licence in a designated area – an area

designated by the government (http://www.legislation.gov.uk/ukpga/2005/15/section/128). If an officer cannot show that he had such reasonable suspicion, he has prima facie wrongfully arrested and falsely imprisoned. The officer might also be guilty of an assault if force was used.

17. In principle anyone may make an arrest, the popularly called "citizen's arrest". Such arrests are in practice fraught with difficulty for the arrester, because of the potential for disputes over the circumstances of the arrest and what constitutes reasonable force. Someone effecting what they thought to be a "citizen's arrest" might well end up on charges of assault, the use of an offensive weapon and false imprisonment. If you wish to chance your arm here are the situations which justify such an arrest:

24 Arrest without warrant: other persons

(1)A person other than a constable may arrest without a warrant—

(a)anyone who is in the act of committing an indictable offence;

(b)anyone whom he has reasonable grounds for suspecting to be committing an indictable offence.

(2)Where an indictable offence has been committed, a person other than a constable may arrest without a warrant—

(a)anyone who is guilty of the offence;

(b)anyone whom he has reasonable grounds for

suspecting to be guilty of it.

(3)But the power of summary arrest conferred by subsection (1) or (2) is exercisable only if—

(a)the person making the arrest has reasonable grounds for believing that for any of the reasons mentioned in subsection (4) it is necessary to arrest the person in question; and

(b)it appears to the person making the arrest that it is not reasonably practicable for a constable to make it instead.

(4)The reasons are to prevent the person in question—

(a)causing physical injury to himself or any other person;

(b)suffering physical injury;

(c)causing loss of or damage to property; or

(d)making off before a constable can assume responsibility for him."

(http://www.legislation.gov.uk/ukpga/2005/15/part/3/crossheading/powers-of-arrest)

18. For most practical purposes only the various police forces and Customs and Excise (now amalgamated with the Inland Revenue as Her Majesty's Revenue and Customs) have an exercisable power of arrest. Members of the security forces (M15 and M16) have no powers of arrest beyond those of the ordinary citizen. However, a "citizen's arrest" by the security services would almost certainly carry fewer dangers for the arrester than it would for the ordinary citizen. This is because the state

authorities will generally protect the arrester through their de facto control of prosecutions. (Politicians and the Director of Public Prosecutions (DPP) will deny vehemently that such control is exercised. The facts are heavily against them. Our justice system is controlled by law officers who are part of the government. The DPP is appointed by the government. One of the reasons the DPP may give for a failure to prosecute is that "prosecution is not in the public interest," which can easily cover security service illegality. It is also doubtful whether any security officer, that is, an officer formally employed by the security services, has ever been prosecuted for offences committed during the course of his or her work.) It should be borne in mind that Special Branch – which is often mistakenly thought of as part of the security forces – is part of the Police and its members consequently can effect an arrest as easily and safely as any other police officer.

19. If a warrant is sought for someone's arrest, the officer applying to the magistrate (or judge) must satisfy the granting authority that there are sufficient grounds for an arrest, that is, there are grounds for a reasonable suspicion that an offence has been committed.

20. When making an arrest with a warrant the arresting officer must show the person arrested the warrant, but he need not do so at the time of the arrest. Always attempt to obtain a copy of the warrant, the name of the person who has granted it and the reasons given by the applying officer for its granting. If possible ask to photostat or photograph the warrant. If this is not possible, ask for time to make notes about the detail of the warrant. If this is denied, note the officer who denies

the request and the words in which the denial is given. Make a written note as soon as possible. Ask the person(s) engaged in the denial to sign the note you have made certifying it to be a true record. As soon as possible either you or your solicitor should write to the magistrates (or judge) who granted the warrant asking them to confirm the reasons for granting the warrant. If necessary, call the magistrate (or judge) to your trial to justify the granting of a warrant.

21. When an arrest is made, the officer must tell the suspect why he or she is being arrested and give the grounds for the arrest. The officer will probably do the former but may well omit to do the latter. If you are arrested, and the officer fails to give the grounds for your arrest, always ask immediately what his reasonable grounds are and the crime of which he suspects you. Note any failure to give the grounds. Never resist arrest. That in itself constitutes a criminal offence if the arrest is deemed legitimate. Moreover, it is very easy to end up on a charge alleging some form of assault.

22. The police's favourite time to arrest is in the early hours of the morning. They do this because they believe – quite rightly – that the suspect will be at their most susceptible at that time. However, such arrests tend to be for serious crimes and more often than not crimes involving career criminals. Most arrests are made on the spur of the moment.

Your mental state if under arrest or seemingly under arrest

23 The bad news is that you will almost certainly panic if you have no previous experience of such circumstances.

That is nothing to be ashamed of, it is just the way human beings are made. The good news is that panic can be controlled. Visualise now the circumstances under which you will be arrested before you are arrested. Do this regularly. When you are arrested, use deep breathing to control the panic, preferably with your eyes closed. It should calm you down. Then cling on tightly to the idea that if you follow my instructions, you have a very good chance of never being convicted of anything provided the evidence against you is not overwhelming.

How will you be treated after arrest?

24. The physical circumstances you will experience after arrest will vary greatly. At the police station, you will probably be held either in an interview room or a cell. The cell experience may be simply a question of being locked in a small room or, particularly in the inner cities, resemble something rather more demonic, with a rich stew of the mentally ill, the drugged and the drunk either in your cell or ensconced nearby. Ignore them as best you can. Even if you have someone seemingly threatening in your cell, it is unlikely they will be violent without provocation.

25. If you are unlucky enough to be remanded in custody, obey the golden rule of giving no provocation. If you do not go looking for trouble there is a fair chance you will not find it. If you are educated, offer your help to other prisoners with letter writing and such forth. Try to get yourself remanded to the hospital wing. If all else fails, ask to be put in solitary confinement for your own safety – you have legal right to this. Time served in

custody counts as time served if you receive a prison sentence.

26. With the restrictions created by the Police and Criminal Evidence Act (PACE), especially the requirement to record interviews, it is unlikely that you will be physically assaulted by the police. However, it is just possible that you may be. Your chances of being assaulted – other than in a resisted arrest – are virtually nil if you are a woman, although you might be subjected to some form of indecent assault. If you are old, it is unlikely you will be assaulted. If you are a middle class man they are small, unless you are extremely provocative or unlucky. If you are working class the odds of assault improve somewhat. If you are a career criminal they go up sharply. You also have to bear in mind the crime which is being investigated. If it is (1) serious, 2) causing public outrage and (3) intrinsically sick making, such as the rape and murder of a young child, your chances of being assaulted to gain a conviction will decidedly improve.

27. If you are physically assaulted your best means of resistance is to go inside yourself mentally. Exclude the outside world, make everything seems far off and unimportant. Remember also that the human body can take an immense amount of physical abuse without you dying or being permanently crippled. If you are young, you are practically indestructible if you receive a routine beating. Moreover, the type of physical abuse you are likely to be subjected to is unlikely to be more than beating on non-vital parts. If you are attacked and free to move, go down on the floor and roll yourself into the foetal position. Just try to hang in there. Unless you are

arrested under the Terrorism Act 2000, They can only keep you in custody without charge for 24 hours normally and 36 hours at most unless there are exceptional circumstances. If you are charged, you must go before a magistrate's court as soon as possible. Make any complaint you have to the court. The Terrorism Act 2000 as amended allows a person to held for 14 days without charge.

28. The police have the right to take from someone under arrest for a recordable offence fingerprints, DNA samples, blood samples from drivers who are incapable of giving consent (The Police Reform Act 2002 section 56 – http://www.legislation.gov.uk/ukpga/2002/30/contents) and non-intimate samples of such things as hair and saliva and shoeprints. Intimate samples, for example, taking pubic hair or semen, require the agreement of the person (http://www.inbrief.co.uk/police/police-taking-fingerprints.htm) . Recordable offences cover the overwhelming majority of arrests being any offence carrying a possible prison sentence and many others which do not, for example, section 13(8) of the Public Order Act 1986 creates a recordable offence for attending a prohibited march (http://gizmonaut.net/blog/uk/recordable_offences.html). At present a person arrested for a recordable offence has their details kept permanently on the police database in England and Wales (only convicted offenders samples are kept in Scotland) even if no charge is brought or if a charge is brought but the defendant is found not guilty. The European Court of Human Rights ruled in 2009 that this was a breach of the Convention on Human Rights and any records held of those not convicted of a

crime should be deleted. The UK Government promised to bring forward a scheme but has not done so to date. (http://www.parliament.uk/briefingpapers/commons/lib/research/briefings/snha-04049.pdf).

29. Being arrested is no longer a small matter. The retention of details of an arrest, especially your DNA, on a searchable database means that you are a potential object of suspicion even if you have never been charged with a crime. It would increase your chances of being investigated for other crimes significantly, not least because with a database contained thousands of DNA samples there is a reasonable chance of false positives, that is, another person's DNA being identified as yours or vice versa. There is also a growing tendency of the police to go after close matches whereby the DNA of a close relative may lead to you being drawn into an investigation. Finally, planting another person's DNA at a scene is easily done, a fag-end or used tissue will do the trick.

How to behave after arrest

30. Use a polite but firm manner. Many people imagine that they can gain an advantage by showing the police that they are subordinate, normally by being ingratiating. This is an unqualified mistake. The police will interpret such behaviour as weakness. On the other side, aggressive or abusive behaviour merely alienates those in authority and those who will judge you, magistrates, judges or juries. Avoid it.

31. It is important that you maintain a psychological distance between the police and yourself at all times. You may think that by becoming on ostensibly friendly

terms with the police you will get better treatment. The reverse is the case. The police will identify your wanting to be liked as weakness and will use a surface amiability to lull you into a false sense of security. You are then more likely to volunteer information. This may either be directly incriminating or prompt a line of questioning which either incriminates you or leads to a situation where you have to suddenly refuse to answer. That will not look good in court.

32. If you encounter behaviour from the police which you judge to be unacceptable, for example physical threats or serious verbal abuse, make it clear instantly that you will be making a formal complaint. Having issued the threat, you must always carry it out. Ask to see the most senior officer present to make the complaint. Such complaints can of themselves be useful in discrediting in court police evidence or defusing any suggestion that by keeping quiet you had something to hide. They can also ward off any further attempts at abuse.

Stop and Search Laws

33. There is no general power of stop and search but there are a number of laws which allows it in specific circumstances. Most of these can only be exercised where the officer has 'reasonable suspicion' that a particular crime has been committed, for example, the power to search a person for illegal drugs under the Misuse of Drugs Act 1971 and the power to search for stolen or prohibited items under the Police and Criminal Evidence Act (PACE). Two Acts provide for stop and search without reasonable suspicion, Section 44 of the

Terrorism Act 2000 and Section 60 of the Criminal Justice and Public Order Act 1994.

33. Section 44 of the Terrorism Act 2000 allows a Chief Constable or the Metropolitan Police Commissioner to designate an area as stop and search areas. Within these the police can use stop and search powers without the need for any reasonable suspicion. In the past section 44 has been used within peaceful public protests. At the moment the whole of London is a designated area for stop and search under section 44. (http://www.legislation.gov.uk/ukpga/2000/11/section/44)

34. Section 60 of the Criminal Justice and Public Order Act 1994, empowers a police officer of the rank of inspector or above to issue a written authorisation for additional search powers on the basis of a reasonable belief that incidents involving serious violence may take place or that people are carrying dangerous instruments or offensive weapons in the area without good reason. The powers relate to pedestrians and vehicles in a specified locality, for a specified period, not exceeding 48 hours at a time. (http://www.legislation.gov.uk/ukpga/1994/33/section/60)

35. Where an authorisation has been issued, any constable in uniform may stop and search any pedestrian or anything carried by the pedestrian, or any vehicle or anyone in it, for offensive weapons and dangerous instruments and may seize any such items which are found. In addition, the police may require you to remove any item which they reasonably believe you are wearing wholly or mainly for the purpose of concealing your identity.

Searches with warrants

36. Search warrants are authorised by magistrates or occasionally judges. When the police come knocking on your door you will not have time to scrutinise the document closely but check the warrant for the address and the magistrate or a judge's signature. If the first is wrong or the second missing, point this out to the police and make it clear you consider the warrant to be invalid. The police may well ignore what you say, but you have laid down a marker for the future. If the warrant was not valid the police will be unable to claim they did not know it was invalid and acted in good faith. If the police do ignore your complaint and search, record or make a written note of their response. If you can make a video or audio recording from the moment you realise what they have come for. If you refuse to let the police in, be prepared for them to make a forced entry. As with the arrest, it is better to allow the police to do what they will then argue the toss afterwards.

37. If it is an all premises warrant "no premises which are not specified in it may be entered or searched unless a police officer of at least the rank of inspector has in writing authorised them to be entered." http://www.legislation.gov.uk/ukpga/2005/15/section/113

38. To obtain a warrant for offences under the Terrorism Act 2000, all the applying officer is required to do is show that the person falls within the very broad definitions offered in section 1 of the Act (http://www.legislation.gov.uk/ukpga/2000/11/section/1)

Searches without warrants

39. Under section 18 of the Police and Criminal Evidence Act 1984, where a person is under arrest because of a reasonable belief that an offence has been committed, a police officer of the rank of inspector or above may authorise a search of premises which they have reasonable grounds for believing contain evidence of the suspected offence. Such a search should be restricted to looking for such evidence, but in the nature of things if other evidence of unrelated offences is uncovered the police will act on it.

40. A search can also be made of premises without authorisation by an inspector or more senior officer if "the presence of the person at a place (other than a police station) is necessary for the effective investigation of the offence.]" (http://www.legislation.gov.uk/ukpga/1984/60/section/180. This would apply if someone is arrested and the arresting officer has reasonable grounds for believing that a search of premises before taking a suspect to a police station will provide evidence of a suspected offence. If such a search is made, the officer conducting the search must advise an inspector or more senior officer of the search at the first opportunity.

41. Whether a search is made with or without a warrant, there is a reasonable chance that the police will leave the place searched in a mess and/or with damage. If this happens, make a complaint at the time, take photographs and follow it up with a formal letter of complaint to the Chief Constable or in London the Commissioner of the Metropolitan Police. Depending on the circumstances, there may be grounds for either

criminal charges or civil action against the police.

The caution

42. The present caution is this syntactical abortion:

“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”

43. The police, Customs and Excise and certain Inland Revenue officers (Customs and Excise and the Revenue are now amalgamated with Her Majesty’s Revenue and Customs or HMRC for short) can administer the caution, question under the caution and take statements under the caution.

44. The caution must be administered in accordance with a code of practice issued under the Police and Criminal Evidence Act 1984 (PACE). It can only be administered where there are reasonable grounds for suspecting that a criminal offence has been committed. It must be administered as soon as is practically possible after the officer reaches the conclusion that such reasonable grounds exists. For example, if you are being questioned without caution, the questioning officer cannot continue questioning you without administering the caution if it becomes apparent from your answers that a reasonable ground for suspecting that you have committed an offence exists. An example of when a caution could not be immediately administered would be during an arrest involving violent resistance where the person being arrested was saying things which indicated guilt, for example, “Take your hands off me or

I'll do you like I did X", X being someone injured in a brawl.

45. Anything you say after the caution is administered is admissible in evidence unless you can show that the statements were obtained incorrectly. Anything you say before the caution is given is not normally admissible in evidence. However, there are exceptions where pertinent statements are made in circumstances where the officer cannot reasonably be expected to issue a caution. Such circumstances are most commonly found where a resisted arrest occurs – see above. These statements, even though not after a caution, may or may not be admitted in evidence depending on the court's judgement of the circumstances. However, in any circumstances, the officer must, as previously mentioned, administer the caution at the earliest possible opportunity. It is unlikely but not impossible, that words uttered before the caution was given to a person peaceably under arrest would be admitted as evidence. However, bear in mind that statements you make to anyone else other than the police could be given in evidence. For example, if you are on remand, a cell mate might decide to give evidence against you based on conversations you have had.

46. When the caution is given, the officer must make clear whether or not the person to whom it was administered is under arrest. If he is not under arrest, the officer must make it clear that the person is free to go about his business. In any circumstances, the officer administering the caution must remind the suspect of his right to legal representation.

47. The officer administering the caution must note the fact in his notebook or interview record as appropriate.

48. After a caution has been administered, an officer continuing an interrogation after an interval or an officer beginning a new interrogation must remind a previously cautioned suspect that he or she is still under caution.

What to do when cautioned

49. If the officer giving the caution states that you are not under arrest you may leave immediately. Do so after asking what his reasonable grounds are for suspecting that you have committed a crime. Say nothing in response to any further questions.

50. If the officer fails to advise you whether or not you are under arrest, ask whether you are under arrest. If you are not, make a note of the officer's name and the failure to advise you of your arrestable status. Then ask what his reasonable grounds are for suspecting you of a crime. Then leave without saying anything further. The police cannot detain

51. If you are under arrest, try to obtain the officer's identification whether it be a name, number or office or station from which he or she works. Make a formal complaint about any failure to advise you whether you are under arrest. This is important because it may give grounds for invalidating the caution and thus affect the admissibility of evidence, in this cased your failure to respond. Ask what his reasonable grounds are for suspecting that you have committed a criminal offence.

The Right to Silence

52. Contrary to popular opinion, the Right to Silence has not been abolished by the Criminal Justice and Public Order Act 1994 (http://www.legislation.gov.uk/ukpga/1994/33/contents). In all but a few cases, all that sections 34-39 of the Act do is to provide an opportunity for the court to draw to the attention of the jury (or magistrates), the fact that the accused refused or failed to give information, at some pre-trial moment, on which they base their defence partly or wholly. The exceptions to a right to silence come from The Regulation of Investigatory Powers Act 2000 sections 49 and 53(http://www.legislation.gov.uk/ukpga/2000/23/contents)which make it a criminal offence (with a penalty of two years in prison) to fail to disclose when requested the key to any protected information held on a computer or like machine, the Terrorism Act (2000) section 19 (http://www.legislation.gov.uk/ukpga/2000/11/contents) which provides for a maximum 5 year sentence and The Criminal Justice Act (1987) sections 13/14 which carries a possible six month sentence for a failure to answer questions or provide documents or other information when requested to do so by the Serious Fraud Office. (http://www.legislation.gov.uk/ukpga/1987/38/section/2). The change in the law of the right to silence has not resulted in a significant change in the overall conviction rate which suggests that it makes little if any difference in the vast majority of cases.

53. Does the right not to incriminate yourself really still exist? It is a moot point. The enforced provision of material such as DNA and fingerprints is in a sense self-

incrimination. Moreover, the exceptions to the right to silence described in the preceding paragraph are serious breaches of the right. Nonetheless, in most circumstances such requirements will either not apply or be irrelevant to a finding of guilt or innocence, for example, a DNA sample in a fraud case would be unlikely to have any bearing on a verdict.

54. If I had to give one piece of advice to anyone cautioned, arrested or charged with an offence it would be this: “Say absolutely nothing”. That advice would apply whether or not the person had a solicitor in attendance during police questioning. Those who doubt that it is good advice should ask themselves two questions: (1) why do smart career criminals do it as a matter of course? and (2) why did the last government circumscribe the right to silence? The answer is that it is generally the most successful tactic in both avoiding prosecution and if brought to court, conviction. Always go with the professionals – in this case smart career criminals – is a good piece of advice in any circumstances. The reason for the tactic’s success is that many criminal prosecutions involve some self-incrimination from the accused. This does not necessarily mean that the accused has admitted to anything which directly implicates them in a crime. It may often simply mean that they have told a lie which is discovered or have inadvertently contradicted themselves when speaking of circumstances not directly linked to a crime. The trouble with that is that it casts doubt about their general truthfulness, which is an important consideration, particularly in a jury trial.

55. Information given in writing is a different matter. A

letter to the police is obviously controlled by the writer. A formal statement is also controlled by the suspect. The police will almost always try to write statements for you. They will say it will be better because they know what the courts want. Resist these blandishments. Always write your own statement.

56. But written information should only be given where there is (1) a pressing reason such as the provision of an alibi and (2) where you are absolutely certain that the story you tell is not merely true but the whole truth. Where possible avoid giving any written information.

57. If you do refuse to answer questions, one question only needs to be addressed by the jury or magistrate: was it reasonable for the accused not to have given information at an earlier time. Obviously there are particular reasons for a failure or refusal particular to a case, such as the information not having been available to the accused at an earlier time. However, there are also general reasons.

58. It would be reasonable to refuse to speak without a legal advisor being present. It would be reasonable to refuse to speak if recording facilities were unavailable. It would be reasonable to refuse to speak if you had just been arrested in an unexpected and/or violent manner. It would be reasonable to refuse to speak if you had been abused by the police. It would be reasonable for you to refuse to speak if you believed that police procedures had not been observed. It would be reasonable to refuse to speak if you feel ill. It would be reasonable to refuse to speak if you have been kept in circumstances in which you might reasonably be judged to be exhausted. It is

always reasonable to refuse to speak if your legal adviser tells you not to.

Interrogation

59. The good old bad old days when people could be simply “verballed” by the police into prison or onto the gallows are happily gone, although many an old copper doubtless still sheds a tear for their passing and old, unreconstructed members of the Met’s Sweeney doubtless moisten their pillows nightly. The Police and Criminal Evidence Act (PACE) 1984 changed all that. The onus is now on the police to video record – interviews wherever possible. The police must show that recording was not possible.

60. Once you have been cautioned, a simple statement that you do not wish to say anything should be enough to prevent further questioning. However, the police will most likely keep pressing you to say something. The best tactic is simply to refuse to say anything.

61. If you do decide to be interviewed, insist that your legal representative is present. Insist also that the interview is videoed. Insist further that a copy of the tape is given to the legal representative immediately the interview is completed. Get your legal representative to record the interview. Apart from obvious reason of ensuring the police do not doctor the interviews, such behaviour will be intimidating for the police.

62. Once the interview begins, refuse to answer any questions until the interviewing officer has answered some questions of your own. Ask first, do you have reasonable grounds for suspecting that I have

committed an offence? If he answers no, get up and walk out. The police have no right to detain you and you have a prima facie case of wrongful arrest and false imprisonment. If the officer answers yes, ask: what are your reasonable grounds for suspecting that I have committed an offence? Let your legal representative judge whether the answer he gives meets the criteria for arrest. If it does not, seek to leave immediately. If prevented, do not answer any questions.

63. Doing interrogation, the police must make it clear within the recorded and written records when breaks are taken. Do not relax your guard if a break is taken. Reasonable refreshment must be provided to the suspect. The suspect must be given reasonable opportunity for rest. Bullying, in the form of a question being frequently repeated might well disqualify the interview from being admitted in evidence.

64. The police may still try to play their age old tricks on you – “tough cop, soft cop”, “You play ball with us son, and we’ll make sure the judge goes easy on you”, “Your mate’s coughed” etc. (Yes, policemen do actually speak like this. I blame this on them watching too many TV police series). Do not believe a word they say. The police have no interest in you beyond obtaining a conviction. They will lie to their hearts content in pursuit of that end.

65. If you are unlucky enough to be the subject of physical violence in an attempt to obtain a confession, what should you do? Resist signing if you can. If you cannot, I suggest that you pretend to agree to sign a statement, but then write on it “I have been physically

abused in an attempt to get me to sign this statement." Then initial your words. Remember, initial not sign. Your action will present the police with a straight choice: do they leave the document intact (in which case it is evidence of sundry criminal behaviour on their part) or do they destroy it and commit the criminal act of perverting the course of justice? Alternatively, sign your name in a way it would not normally be signed. If your normal signature is John Smith, sign J.Smith. If you are right handed, sign left handed. This abnormal behaviour would provide evidence that you signed under duress.

The planting of evidence

66. Although "verballing",is now a largely past black art, the police can still plant evidence. This can be extremely difficult to disprove. The main means of disproving it are circumstantial. If, for example, you have no history of drug abuse, it might seem implausible to a jury if the police claim that they have found a gramme of heroin in your possession. In your favour is the fact that modern juries are far less trusting of the police than they were even twenty years ago.

If you are charged

67. Being charged does not necessarily mean that you will be prosecuted. However it is a formal accusation of a crime. It indicates that the police (or other authority such as the Customs and Excise branch of Her Majesty's Revenue and Customs)think that there is evidence which may lead to a prosecution. The charge should be entered in the charge sheet at the relevant station and a copy should be supplied to the accused.

Detention

68. You may be detained by an authorised officer, normally the police, only after arrest, You may be detained without charge. However, such detention may only occur when it is necessary to secure or preserve evidence or to obtain it by questioning. If detained without charge, always ask the detaining officer for justification of your detention. Normally such detention should cease after 24 hours unless it is in connection with a serious charge such as rape, kidnapping, causing death by dangerous driving etc. Then a superintendent or more senior officer – chief superintendent, assistant chief constable, deputy chief constable and chief constable in all cases except the Metropolitan Police – may authorise an extension to 36 hours. Magistrate's courts may authorise a extension of detention without charge for a further 36 hours. With exception of those held under terrorist laws who made be held for 28 days, a suspect held without charge may thus be kept for 72 hours at most.

69. If a suspect is charged with an offence, he or she must be granted police bail or brought before a court as soon as is reasonable. If the delay in bringing a suspect before court seems unreasonable, a writ of habeas corpus may be sought by the person detained. This will force the police to bring you before a court.

70. An arrested person held in custody may have one person told of this, although if a serious offence is concerned and a senior police officer reasonably believes that this would interfere with an investigation, this advice to the person can be delayed for up to 36 hours. If

you are refused a chance to tell one person that you have been arrested, ask for the reason, the name of the person making the decision and the name and rank of the person making the decision.

The police

71. The police do not decide whether a prosecution is to be undertaken. Their responsibility is to gather evidence and then prepare the evidence (with a covering submission) for forwarding to the Crown Prosecution Service.

72. The police may seek the advice of the Crown Prosecution Service at any point in an investigation, whether or not charges have been brought.

73. Many policemen are neither very bright nor well-educated. The minimum educational qualifications for most forces are still dire: 4 GCSE's is par for the course. This means that they are not too hot on the paperwork side, either in its actual preparation or in their desire to undertake it. This natural reluctance has been built on in recent years by an immense increase in the paperwork required for a submission to the Crown Prosecution Service. Thus it is in your interest to make a case as unattractive to them as possible. Keeping silent does this. Occasionally, it may be expedient to flood the police with entirely legitimate paperwork, for example in the case of company fraud.

74. Bear in mind that policemen are only too human. If they make a serious mistake, they will wish to cover it up even if it means killing a strong case against a subject. It is in your interest to see they make mistakes if you

possibly can.

The Crown Prosecution Service (CPS)

75. The CPS is headed by the Director of Public Prosecutions (DPP). The DPP is appointed by the government. The present DPP is Keir Starmer QC who was appointed in 2008. The DPP reports to the attorney-general, who is a member of the Government.

76. The CPS is the public body which determines whether most criminal prosecutions are to be brought – the DPP has the formal responsibility for these decisions.

77. At the decision making level, the CPS is staffed by qualified lawyers. Apart from the st senior, these tend to come in two sizes: the young and inexperienced and the older and incompetent. This is because it is rare for competent, experienced lawyer to work for the CPS as a case worker because(1) they can earn far more in private practice and (2) he is not his own master.

78. The incompetence of the CPS lawyers can be exploited. As with the police, they do not like either difficult or complicated cases. The action you take to dissuade police officers from submitting a case to the CPS will also work at the level of the CPS lawyer. In addition, as with policemen, bear in mind that CPS lawyers are human. If they make a serious mistake, they will also wish to cover it up even if it means illegally dropping a strong case.

The government law officers

79. These are the Justice Secretary/Lord Chancellor

(the two offices are held by the same person), the attorney general and the solicitor general. They are all politicians of the ruling party. The formal position is that they act only as impartial law officers when concerned with legal matters. This is of course utter tosh. Their existence is the main means by which government of the day manipulates the justice system.

80. The few criminal prosecutions not left to the DPP to decide are matters such as treason, offences under the Corruption Acts and offences under the Race Relations Act. The decision on such prosecutions is made by a member of the government, the Attorney-General, the second most senior political law officer after the Lord Chancellor. In the Attorney-General's absence, the decision is made by the Solicitor-General, the third most senior law officer.

81. The Attorney-General (or the Solicitor-General) also has the right to intervene in criminal prosecutions. He or she may enter a plea of nolle prosequi (Latin: to be unwilling to prosecute) to terminate criminal proceedings. In the case of criminal proceedings on indictment, that is those tried by jury and thus generally the most serious, the proceedings are automatically ended. In the case of summary proceedings – those in magistrate's courts – the leave of the court is required. This leave would normally be automatic. Pleas of nolle prosequi are not appealable. Nor does the attorney-general (or the solicitor-general) have to give a reason for their plea, although normally a reason will be given such as "not in the public interest" or "unfit to plead".

What to do if you get to court

82. Tempting as it may be to represent yourself, there is a good deal of truth in the adage that a man who represents himself has a fool for a client.

83. Most people have little experience in speaking in public. That alone will make them very nervous. The court atmosphere will be intimidating even if the court is a modern one. Then there is the problem of court procedure which the novice will find bewildering. Above all, there will be the need to question witnesses. This might seem simple but it is not. The average person will not be able to keep the flow of questioning going or construct sequences of questions which logically build up to a “killer” question. The average person will also put questions to witnesses which are irrelevant or inadmissible (which tries the patience of the court), questions which allow the witness to embroider their reply (which slow proceedings and may influence the jury in ways you do not want) and questions to which no certain answer can be expected. Good barristers ask only questions to which they know the reply, which is ideally yes or no.

84. However, having said all that there are cases where it may be necessary to defend yourself. This is where you cannot reasonably have any confidence in any barrister (or these days, solicitor) presenting your defence, honestly, ably or energetically in court. Such cases are very rare and are likely to arise only where the charge being answered is essentially political. Charges under Section 70 of the Race Relations Act might fall into this category.

85. The only other occasion when you should consider

presenting your own case is when you come to the conclusion during your trial that your counsel is making such a hash of your defence that to take it over yourself could not make matters worse.

86. If you do end up defending yourself, you may make use of advice in court from someone who is not your appointed counsel (a Mckenzie's Friend – http://www.mckenzie-friends.co.uk/), for example a friend with some legal knowledge such as a solicitor's clerk. However, the person does not need any legal knowledge. The judge should also extend a good deal of latitude to you when it comes to questioning of witnesses. He may even question witnesses on your behalf if he feels that you are failing to do the job adequately.

Should you go into the witness box?

87. Generally I would say no for the same reasons that I hold to the belief that keeping silent is on balance the best tactic. Give the court as little to go on as possible. It also hamstrings the judge, for "summing ups" frequently revolve around evidence given by the accused in the box. Such advantages will more than counterbalance any disadvantage you may incur by the magistrate or jury questioning why you have not taken the stand. But there are other reasons as well.

88. If you go into the witness box you will probably be very nervous. Prosecuting counsel will hold all the cards. He determines what questions will be put. You will be restricted more often than not to yes or no answers. Even if you are completely innocent, you may well come out of the box seeming dishonest. Moreover, if you do not go into the box, the jury or magistrate do not get a

glimpse of your personality. They have to go entirely on the facts of the case. That is generally an advantage, particularly where a jury is concerned, because most people who give evidence come across as either frightened (which tends to make the jury despise them) or bombastic (which makes the jury dislike them.

89. The one occasion you probably should go into the witness box is if you are engaged in a political trial for that will give you the chance to expose the nature of the charge against you.

Expert witnesses

90. If you want an “expert” opinion to support your case you can usually find one. Moreover, certain types of evidence are either intellectually worthless or so questionable that they should, rationally, immediately create a “reasonable doubt”, the evidential test for a criminal conviction. It is up to you and your lawyers to make sure the questionable nature of the evidence is brought out emphatically during your trial. Even the most famous of forensic evidence, fingerprints, are not as secure a piece of evidence as the courts make out. A few years ago an historian of science, Simon Cole, published Suspect Identities: a history of fingerprinting and criminal identification (Harvard University Press) which demolishes their infallibility and attacks the science which underlies fingerprint evidence.

91. Such things as handwriting comparisons and voice prints are inconclusive – try getting a so-called handwriting expert to identify correctly fifty pieces of handwriting when he does not know how many were written by the same person. If you are faced with such

an expert, get your counsel to set him such a test. If an audio recording is produced purporting to contain your voice, have it tested to see if it is edited and the recording is an original not a copy. Different recording machines of even the same model may produce different "electronic footprints". Ditto video recordings. If you are faced with an audio alone, simply claim the person is not you. It is damned difficult to prove otherwise. Much video evidence is inconclusive because of camera angles and image quality. If all else fails, rest you claim on the fact that digital recordings can be manipulated in very sophisticated fashion and even what seems to be a cast iron recording of you doing whatever the prosecution says you were doing is no real proof.

92. Psychiatry is no better than institutionalised quackery. As the psychologist Hans Eysenck never tired of pointing out, people suffering from mental illness who receive treatment from psychiatrists show no greater rates of recovery than those who receive no treatment. Incredible but true.

93. You can refuse to be seen by a psychiatrist unless you have been sectioned under the Mental Health Act. If you agree to be seen by a prosecution psychiatrist before your trial, insist on (1) your solicitor being present and (2) the interview(s) being recorded by your solicitor. Then say that you will not answer any questions unless the psychiatrist can provide objective evidence that his understanding of the human mind is any better than the next man's as a result of his psychiatric training. There being no objective evidence, the psychiatrist will be unable to provide it. He may or may not admit so much. However, he can be forced in court to make the

admission when he is under oath. Moreover, you can enter the recording of your meeting with him before the trial as evidence of quackery and your willingness to cooperate if it could be shown that such cooperation would have any worth.

94. You may be faced in court with psychiatric evidence which has not involved your cooperation, for example “Cracker” type speculation. Again, get your counsel to ask the psychiatrist to show objectively that he has special expertise. If he cannot show that he has special expertise, then he should be disqualified as an expert. At the worst you will have demonstrated to the jury or magistrate that there are solid grounds for doubting the evidence.

95. Eye witness evidence is so suspect that it is a wonder it is allowed. Academic study after academic study has shown the same thing: eye witnesses are monumentally unreliable. Get a psychologist who specialises in the field to give evidence on your behalf. Pay special attention to the time lapse between the crime and the first time the eye-witness makes a statement – the longer the time, the more suspect the evidence.

96. If you require expert advice for your defence, you have two main problems: (1) finding and paying the expert and (2) getting counsel who can understand the expert. (If you want to see counsel making an idiot of themselves, go and see a case involving serious forensic evidence. Second favourite for this sport is a case where counsel has to deal with a company fraud case involving arcane accountancy practices.) A further problem is that much of the forensic expertise readily available in this

country is to be found in government controlled laboratories.

97. If you cannot get your own forensic tests done, you could be convicted simply because of incompetence by the laboratory used by the prosecution. Quite a few instances have come to light in recent years. Moreover, there have been a number of cases where there has been a deliberate attempt to cover up mistakes. So do try to get your own forensic tests done.

98. There is also the question of forensic evidence being planted by the police. Take DNA. It is a simple matter to obtain DNA evidence from a suspect. Get them to touch something. Get them to eat something like an apple. Take a hair from them without their knowledge. Pick up a used tissue. I think a defence could reasonably be mounted against DNA evidence on the grounds that it was planted. Similar objections could be made against other forensic evidence. Juries are much more susceptible to claims of the planting of evidence than they once were.

Other paths to explore

99. Try putting prosecuting counsel into the witness box on the grounds that he is being dishonest and that cross-examination will reveal that dishonesty. (For example, why has counsel asked about Y when he also knew about Z and Z discounts Y?) I do not think that this has ever been done, but it would be interesting to see what the judge's response would be. A refusal might also provide grounds for an appeal.

100. Similarly call the Crown Prosecution case worker

who dealt with your case. It is a fair bet that cross examination will reveal him or her to be incompetent. This could cause a prosecution case to simply collapse. Again whether you will be allowed to call this witness is dubious. But is worth trying.

Formal police caution or court?

101. The police are increasingly using formal cautions as alternative to taking a case to court. The caution has nothing to do with caution issued to warn you that anything you say may be used in evidence against you. It is a procedure whereby the person accepts their guilt and receives what amounts to a form of administrative justice by being formally advised of his offence, the acceptance of the crime and the consequences of accepting a caution, namely, that the caution and all the details of the crime will go on the Police Computer together with their DNA and fingerprints (as things stand) for all time.

102. There is a strong temptation to accept a caution even if you are innocent because it takes away the stress of a trial with the possibility of a significant punishment if convicted, the expense of defending yourself if you cannot get legal Aid, gets the matter ended rapidly, avoids publicity and does not leave you with as criminal conviction. However, a caution will be taken into account by a judge if you are sentenced for a future offence and may cause you difficulty with employers especially those needing a Criminal Records Bureau check. You need to take legal advice before accepting a caution. It could also cause problems if you want to go to countries which require a declaration of criminal

offences – they may consider a caution a conviction even though it is not considered so in this country.

When should you plead guilty?

103. Discounts on sentences are available for those who plead guilty. An admission of guilt at the earliest opportunity could earn a one third discount on sentence although that would depend on the circumstances of an admission. Being caught redhanded during a burglary would count for less than the man who went to the police and gave himself up because he was troubled by a bad conscience. Pleading guilty at a later stage will get smaller discounts.

104. The question of whether you should plead guilty is obviously dependant on circumstances. Listen to your lawyer. However, if you confess to your lawyer(s) that you are guilty then they cannot continue to represent you if you insist on a not guilty plea.

105. A special circumstance is when plea bargaining comes into play. There is no official plea bargaining, but the prosecution may informally make it clear to the defence that they will drop a more serious charge if a guilty plea is entered on a lesser charge. There is a strong temptation to accept such a deal even if the defendant believes themselves to be innocent. If you find yourself in such a position, you will have to decide whether conviction even though you are innocent is the lesser of two evils.

Want your politics with the cant taken out? Then try Robert Henderson blogs:

http://www.livinginamadhouse.wordpress.com/

http://www.englandcalling.wordpress.com/

http://www.ukcmri.wordpress.com/

Twitter RH156 and Facebook