

FROM ARREST OF A SUSPECT TO SENTENCE OF A CRIMINAL

The procedure in England

David Williamson

After studying physics and working as a Development Engineer in England, the author lived in Łódź from 1960 to 1968 learning Polish, studying at the Film School and acting as an export correspondent. Since 1992 much of his time has been spent in London interpreting in marine and criminal cases and for commercial delegations, while written translation has ranged from notarial deeds to dialogue for films.

First I should make clear that the title of this talk does mean what it says: the system I shall try to describe is English, not British.

English law has been imposed on the Welsh since soon after their conquest in 1284 and I cannot resist telling how we got away with it, although I cannot tell such hoary old chestnuts as I did at the last Workshop, because I am no longer the only Brit in the lecture theatre. The victorious English King told the Welsh nobles that he was inclined to be magnanimous and to appoint as their ruler someone who had been born in Wales and could not speak a word of the English language. Would they accept him? They said yes. He then revealed that his Queen had given birth to a son in Cardiff castle a short time earlier. And that is how they got the first Prince of Wales.

The Scots kept their own laws at the Act of Union and there are still differences in practice and nomenclature on which I am not competent to comment. Nor shall I cover immigration procedures, where normally the Police provide facilities only and decisions are taken by administrators without reference to the Courts. There is a lot to be said about immigration, which is responsible for one third of the calls that I get to Police Stations, but we do not have the time.

When he is making an arrest [w trakcie aresztowania] an English Police Officer is permitted to use reasonable force [uzasadniony przymus]. Obviously a suspect [podejrzany] may disagree as to what is "reasonable" in a given set of circumstances but if he does not try to run away, and is not violent or abusive, he is likely to encounter what our Police call "tactical affability" [uprzejmość taktyczna]. It may be quite entertaining to hear a senior police officer addressing a smelly, drunken old vagabond as "Sir". But it reduces the aggravation remarkably. It is indeed an effective technique for use by the suspect also. By treating traffic policemen [policjanci drogowi] as though they were human beings I have saved myself trouble in Slovenia, Germany and Bulgaria and led an officer of the Citizens' Militia in Łódź to reduce an on-the-spot fine by 60% of the amount he first thought of.

On arrival at the Police Station [komisariat] the suspect is told by the Custody Sergeant [sierżant nadzorczy] why he has been arrested (never mind that he probably knows already) and handed a printed notice informing him of his rights. These rights cover four sides of A4 and every station in the Metropolitan Area has both a supply of them printed in English and a loose leaf file with translations into 29 different languages, which can be photo-copied.

The number of languages for which interpreters are available is 90 and the tables show the statistics for the Metropolitan area during 1993, and how they have changed since 1992. This analysis shows slightly more calls to interpret Polish than there were Poles caught by the Police, because last year I had three calls to interpret for a British citizen. Each time it was undoubtedly Polish vodka that he had been drinking, but he had a British passport so I am afraid we have to acknowledge him as "One of Ours".

Similarly, although Lithuania scores zero, there was at least one occasion when a Lithuanian citizen was apprehended because she was arrested at the same time as two Poles for whom I was called, and I heard a colleague interpreting for her in Russian.

In 1993 there were only 454 calls to interpret Polish London Police stations, compared with over a thousand for Arabic, Bengali, French, and Turkish. No doubt you will be astonished, as I was, that there are no more calls to interpret French than for any other language. But you see, France is member of the European Common Market, so French citizens are not arrested for immigration offences as often as Turks and Arabs. So far as calls to interpret Polish are concerned, I find that roughly one third involve immigration. Of course some calls are for witnesses or victims of crime, but in my experience this is a very small percentage, perhaps 1% or 2%. If you are a witness of a serious crime, say murder or import of a kilogram of cocaine, there is a chance you may get a free trip to England when the case comes on.

When a suspect is brought in the Custody Sergeant will note down such particulars as name, current address, date and place of birth. He will also read over the main rights whether or not the suspect already knows them.

These are, firstly, to speak free of charge to an independent solicitor [prawnik z upoważnieniem występowania przy niższych sądach oraz do przygotowania spraw dla adwokata występującego przy wyższych sądach; obrońca sądowy]. Local firms take it in turn to provide "Duty Solicitors" [adwokaci dyżurni w sądach niższej instancji]; the suspect could call his own lawyer, but then he would be responsible for payment of his fees.

Secondly, the right to have somebody informed of where he is. Again I return to precision in the use of words: the right is to have someone informed of your arrest. You do not have the right to inform someone of your arrest. People who think that everyone can make at least one telephone call are probably confusing England with the United States of America, which is actually a different country, no longer even one of colonies.

Thirdly, there is the right to consult the code of practice governing Police powers and procedures. This is quite detailed but for the most part it is not necessary to refer to it: the mere fact that it is easily available means that it provides a good protection against the temptation someone might occasionally feel to break the rules.

Foreign nationals have an additional right, which is to speak to someone from their Consulate. In my experience Polish citizens almost never avail themselves of this last right.

An interpreter must be called for a suspect who does not speak English, and an "appropriate adult" [stosowna osoba dorosła] is also called for people in certain other categories. Naturally a parent will be called if a juvenile [nieletni; ale górną granicę wieku

należy sprawdzić w danym kontekście] is arrested, or a social worker [pracownik opieki społecznej] if the parents do not want to know. But there are other categories. I myself have acted as an "appropriate adult" – because I happened to be there – for a grown man who suffered from dyslexia and so could not read what he was asked to sign. My duty was to make sure that he did not suffer any disadvantage by reason of his disability.

If the suspect wants to consult a solicitor nothing much can happen until he has done so. The conversation is "privileged" [poufny], which means that what has been said must not be revealed to the Police. If I did repeat, without permission, anything I had heard when interpreting between a solicitor and his client, this would be a serious breach of professional confidence [nadużycie zaufania zawodowego] and I would not last long as an interpreter. This can be embarrassing: a suspect once made an accusation against her solicitor, alleging in effect that he had given her unethical advice, which could have meant serious trouble for him. I knew that what she was saying was untrue, but I could not comment.

Indeed, it is sound practice for an interpreter never to comment, and certainly never to advise. We should listen to what is said in one language and repeat what we have heard in the other language, no more and no less. Even if I have heard all the evidence, which is never the case, if I start to think "This man is innocent" or "That woman is guilty" there must be a danger that my belief might colour my interpretation. I want to be a professional interpreter, not an amateur Magistrate. Advice is even more dangerous, both for me and for the person who needs an interpreter. I was once accused of putting undue pressure on a prisoner to plead guilty [przyznawać się do winy], when what I had in fact done was to advise him to tell the truth. Admittedly I seldom feel that the lawyer who is acting as duty solicitor is really first rate, the sort of man or woman I would like to have acting for me if I were in trouble. But he has law books and senior colleagues to whom he can turn for help, the way I have dictionaries and colleagues who know more about translation than I do.

Incidentally I must say that a very pleasant aspect of work as a Polish interpreter and translator in England is the support and assistance which I can rely upon from professional colleagues.

After the suspect has spoken to the Duty Solicitor there is usually a formal interview [przesłuchanie]. Note that we use the same word as a series of questions from a journalist or an employer deciding whether to engage an applicant for a job. But people who find the process unpleasant would call it an "interrogation". If there is no request for a solicitor matters will proceed more quickly, but the interpreter may go hungry: the half hour or so while the solicitor is travelling from his office to the Station is often the only break in which I can go to the canteen for a meal. I carry a pack of biscuits to a Police Station more frequently than a dictionary.

When I first started interpreting for the Metropolitan Police in 1976 interviews took hours and hours. The officer would put a question in English. I would write it down in Polish. I read it to the interviewee [osoba przesłuchiwana] in Polish. I wrote down his answer in Polish. I read that to the Officer in English. And so on. Now all interviews by the Metropolitan Police are recorded, which takes one third as long as the old system. The tape

recorders are special, recording two cassettes simultaneously and incorporating devices to prevent subsequent tampering. One cassette is sealed as a master copy and cannot then be opened without the permission of a Judge, the other is a working copy.

It is a salutary experience for an interpreter to listen to one of his taped interviews: there is always a tendency to try to maintain the flow of the exchange, but when you have once played back a tape on which you will be cross-examined by Counsel for the Defence you will realise that you must, you absolutely must, impose some discipline. You must stop people from starting to talk before you have finished interpreting the previous question or answer, otherwise material will inevitably be lost. And remember that an inaccuracy may add or subtract years from a man's life.

There is a routine introduction at the beginning of each interview: where we are, the date and time, each person present gives his name and function. The suspect is reminded of his right to free legal advice and asked whether he agrees to the interview being held without the presence of a solicitor – or his solicitor may already be present. If he says "No" the interview is stopped then and there, and a solicitor is called. He is asked whether he understands the interpreter. Just as well: I was once called to interpret for a Polish citizen who turned out to speak only French and Russian. He is given the standard caution, namely "You do not have to say anything unless you wish to do so, but anything you do say may be given in evidence." The people who have watched too many American films think that we have left out the phrase "against you", but we do not use it. The interviewee is asked whether he understands the caution, and if he says no it is explained again. But I am surprised at how few people avail themselves of this right to silence, even when advised to do so by their lawyers. Amateurs seem to have a compulsion to explain their actions.

Of course if they have been caught red handed [złapani na gorącym uczynku] at a minor offence [wykroczenie] it may be clearly to their advantage to be open about it. Provided it really is minor, say a theft of goods worth less than fifty pounds, but never for an assault causing injury to another person, and provided it is a first offence which the suspect admits, there is a chance of a Police caution if an officer of rank above that of Sergeant agrees. This caution is kept in Police records and has the same effect as a first conviction if a similar offence is repeated within three years.

The thinking is as follows. For a first offence by an amateur the shock of being arrested, spending some hours in Police custody and being finger printed should be sufficient to ensure that the mistake will not be repeated – and that after all is the objective. If the offender [przestępca] were sent to Court in such a case the expense to the State would be much higher than the amount of the fine and the deterrence would not be much greater.

Of course, some people misunderstand the system. I have actually heard it said, by a Polish gypsy, "We were told that there are no penalties in England." Someone who is caught for a second offence of a similar type to his first will learn that there are penalties.

If the suspect does not "put his hands up", i.e., admit guilt, the Police will continue their enquiries until either they feel they can mark the file N.F.A. (No Further Action) or charge [oskarżać z urzędu] the suspect, that is, accuse him formally.

If the suspect has been in custody [zatrzymany] for six hours without being charged a senior officer must review the case if continued detention is to be authorised. There is another review after fifteen hours but if the Police wish to hold someone for a day or two before charging him they must take him before a Magistrate [sędzia sądu najniższej instancji] and justify such a request. This only happens with serious or complicated cases: in almost twenty years during which calls have built up until now they are averaging about fifteen per month, I have known this happen perhaps half a dozen times, for such matters as murder [morderstwo], arson [podpalenie], grievous bodily harm [ciężkie uszkodzenie ciała] and counterfeiting [fałszerstwo] to a value of about \$10,000,000. There is no need to hold a suspect in Police custody, as opposed to on remand in a prison, unless the officer in the case thinks he will wish to put questions in the future which he cannot put immediately.

Once the suspect has been charged formally he cannot be interviewed further concerning the same alleged offence. There are then two possibilities: bail [warunkowe zwolnienie] or custody. He may be bailed to attend Court at some time in the future, the delay depending on the case load of the Court [obciążenie sądu sprawami] taking cases from that particular Police Station. I have not found a single word in Polish which is a precise equivalent of "bail" in the context of the criminal law. It implies release on the understanding that some condition is complied with, failure to comply constituting a separate offence which is often more serious than the original one. A Police Sergeant can bail someone to appear at Court or, before charging him formally, can bail him to return to the Station if extra time is required to complete an investigation before a decision can be taken whether to charge or not. When a Court grants bail, for example because the lawyers have had insufficient time to prepare their case, it can impose further conditions. These might be to sleep every night at a specified address, to report periodically to a Police Station, not to approach a specified place or person, or a curfew.

It is not open to a Custody Sergeant to impose such conditions: he either grants bail or does not. Broadly speaking, his decision will be based on an assessment of the risk that, if released, the bailee will abscond. Thus he is likely to grant bail to someone with a fixed abode [ustalone miejsce pobytu] who has been accused of a minor offence. Someone who cannot remember his address or who says that he has lost his passport but not yet reported the loss to his Consulate is most unlikely to be released, but the second alternative then comes into play. The Police must bring him before a Court at the earliest opportunity.

This usually means a night in the cells and an appearance before the Magistrates the following morning. The Courts do not sit on Sunday, so it is unwise to go shoplifting on a Saturday.

It is also unwise for a Pole to rent a room in a house where all the other residents are Poles. Do I have to tell you what the reply will be if a policeman in uniform knocks on their door and asks "Does Jan Kowalski live here?" – "Never heard of him." "Wasn't that the chap who was in the front room but went to Sweden at the beginning of last month?" "There was a Jan Kowalski around last Christmas, but I thought he was living somewhere in Hammersmith." The answers will still be evasive if Jan Kowalski knows very well that he was

playing cards with three of his flat-mates at the time he was supposed to be committing an offence, and is relying on them to provide an alibi. Incidentally, those who have this sort of trouble are almost always young people who say that they come to England to learn the language. The problems of Poles for whom I interpret are so often due to other Poles that when I am abroad I always keep well away from anyone that I hear speaking English, for fear of the same sort of affliction.

The first appearance is always at a Magistrates' Court, and for a minor offence it may finish there before a Stipendiary Magistrate [etatowy sędzia najniższej instancji] or a bench of Lay Justices [lawnicy]. For certain categories of offence, roughly those of dishonesty, the accused can elect to be tried either there or before the Court of next higher instance, the Crown Court, where there will be a Judge and a Jury of twelve ordinary citizens.

The choice is put formally by the Clerk of the Court [sekretarz sądu] who also says "Before you decide where you wish to be tried you should know that in the event that you plead guilty or are found guilty the Magistrate will hear all about you and any previous offences you may have committed. If he then considers that his powers are insufficient he may send you to the Crown Court for sentencing. Do you understand?"

As you can imagine, suddenly to be presented with such a situation can strike people into a heap of jelly: a night in the cells with a drunk yelling his head off next door, steel doors and gaolers with bunches of keys, standing in the dock with everyone staring at them, not altogether in a friendly way, an old-fashioned courtroom in dark wood designed to emphasize the authority of the Magistrate, and now "Jesus Maria, all I did was travel one station too far on the Underground, and he can send me to a higher Court if his powers of punishment are not enough?" So unless a solicitor has already done so I always try to explain that I have never known this to apply to a first offender. The point is that a Magistrate may be competent to find a man guilty of breaking into a house at midnight and stealing ten pounds. But he cannot award more than six months in prison. Before the trial he does not know, but this might be a first offence. When he hears that it is in fact the sixth time the man has done the same thing he may feel that the penalty should be at least two years' loss of liberty. But this would have to be awarded by the Crown Court.

Let us say that the accused chooses to be tried before the Magistrates, and they accept jurisdiction [uznają właściwość sądu]. The charge [oskarzenie] will then be read out, in the same wording as was written and read out by the Custody Sergeant at the Police Station. Again I come back to precise wording. It is an important principle in English law that a person accused of a criminal offence should know exactly what he is alleged to have done, and what provision of what Act of Parliament makes this an offence. We have Courts of Law, not Courts of Justice, which has given our lawyers some problems in coming to terms with the legal institutions on the continent. I once had difficulty with a driver who kept saying "But I did have an accident, I hit a parked car and I damaged it." I suppose if that had been all, he might have been charged with careless driving. But he was accused of a drink driving offence, which is so much more serious and carries so much heavier penalties that the damage to the parked car did not justify a separate charge.

When the charge has been read the accused will be asked to plead, that is, to say whether he is guilty or not guilty. This is not the place for discussion, the answer should be black or white, yes or no. The person who is accused of being drunk in a public place and on being asked whether he was drunk or not says "Slightly" will merely irritate the Magistrate and risk being remanded in custody. If he pleads guilty there can be a short trial on the basis of an account from the lawyer acting for the CPS, the Crown Prosecution Service, of what happened, a few questions to the accused such as whether he agrees with the account, why he did it, and any mitigating circumstances. The choice of Court and plea of guilty or not guilty must be expressed by the accused himself, but the rest of the case could be conducted either by him in person or by a lawyer. Many Magistrates insist that a person who has difficulties with the language should be assisted by the Duty Solicitor even if he has not asked for legal advice, and even if guilt has been admitted from the outset.

If the accused does not plead guilty the case must be remanded until there is time for a full trial with witnesses and any evidence that prosecution or defence can present. For example, one of the few people I have known to take something from a shop without paying but not be convicted of theft was able to produce as evidence a certificate from a hospital confirming that she had been discharged that day still under the influence of a drug. To be guilty of theft it is not enough to take something away from another party, you must have the intention of depriving them of it permanently. With the help of the evidence from the hospital this woman's lawyer convinced the Court that under the influence of the drug she was incapable of forming such an intention. I am afraid the influence of vodka is not acceptable in this way.

The penalty [kara] in a Magistrates' Court on being convicted for the first time is most likely to be a fine [grzywna], but if it cannot be paid on the spot there may be problems. I once interpreted for someone who was due to leave for Germany the next day and had already changed all his pounds into deutschmarks. Luckily a friend was in Court who agreed to take some marks and change them back into sterling, but until the fine was paid the man had to stay in custody. Not infrequently a fine is awarded with a prison sentence in default of payment. If two thirds of the fine is paid, one third of the sentence will be served in prison.

For the more serious offences the first appearance will still be before the Magistrates, and this may be repeated if the accused is remanded in custody, to give him a chance to apply for bail. Then there will be a committal hearing to transfer the case to the higher Court. Sometimes the defence tries to get the case thrown out [doprowadzić do umorzenia sprawy] at this stage: the idea of the committal is to filter out weak cases so as not to waste time and money. But it is more usual merely to make another bid for bail [podanie o zwolnienie]. There was one Polish woman before the Crown Court last year who had been remanded in custody [odesłana do aresztu śledczego] so long that she had learnt English in prison, to such a standard that she scarcely needed an interpreter. She was found guilty of carrying a firearm and assisting in the import of cocaine, for which she received a prison sentence of ten or so years. The long period on remand in custody was therefore to her advantage, because it counts towards the sentence, but conditions on remand are much easier.

Perhaps it would be useful to end by summarising the functions of those involved. The Police Officer in the case investigates an allegation that an offence has been committed and relates what he has found to the Custody Sergeant. The latter decides, not whether the suspect is guilty or not, but whether there is a case to answer – roughly, whether he can find a charge so worded that there is at least a 50% chance that a Court will convict. Where appropriate, the Custody Sergeant decides to recommend a Police caution, on which an Inspector must give the decision. The Crown Prosecution Service (CPS) does employ lawyers on a permanent basis, but also engages solicitors and barristers in private practice to prosecute in the Courts. Stipendiary Magistrates who are full time professionals and Justices who are responsible private citizens acting together, usually on a bench of three, weigh the facts and, with the assistance of the Clerk of the Court, who is a salaried official with legal training, decide legal questions in the court of first instance. In the Crown Court, which will hear a case only if it has been sent up from a Magistrates' Court, the Judge decides all questions of the law and how it should be interpreted, while the Jury, chosen at random from local residents, decides on the facts, such as whose evidence to believe in the event of conflict and, most important, whether the accused is guilty or innocent. We in England do not have the possibility of the Scottish verdict "Not proven". Either someone is guilty beyond reasonable doubt, or he is innocent.

Now there is a saying that "A little knowledge is a dangerous thing." I have tried to pack a very small amount of knowledge into this limited space, on a subject which fills many metres of space on the bookshelves, and where highly educated and trained specialists can argue for hours to convince a Judge, only to have the decision overturned on appeal. I ought not to open my mouth at all. But I feel confident that nobody here will ever find themselves in a position where this little knowledge will prove dangerous.

Glossary of terms used

appropriate adult – stosowna osoba dorosła

arson – podpalenie

bail – warunkowe zwolnienie

bid for bail – podanie o zwolnienie

breach of professional confidence – nadużycie zaufania zawodowego

case load of the Court – obciążenie sądu sprawami

caught red handed – złapany na gorącym uczynku

charge – oskarżenie

Clerk of the Court – sekretarz sądu

counterfeiting – fałszerstwo

Custody Sergeant – sierżant nadzorczy

Duty Solicitor – adwokat dyżurny (występujący tylko w sądach niższych)

dyslexia – dysleksja

fine – grzywna

fixed abode – ustalone miejsce pobytu

grievous bodily harm – ciężkie uszkodzenie ciała

in custody – zatrzymany
interview – przesłuchanie
interviewee – osoba przesłuchiwana
lay Justices – ławnicy
magistrate – sędzia sądu najniższej instancji
making an arrest – w trakcie aresztowania
minor offence – wykroczenie
murder – morderstwo
offender – przestępca
penalty – kara
Police Station – komisariat
privileged – poufny
reasonable force – uzasadniony przymus
remanded in custody – odesłany do aresztu śledczego
social worker – pracownik opieki społecznej
solicitor – adwokat występujący tylko niższych sądach
Stipendiary Magistrate – etatowy sędzia pokoju
suspect – podejrzany
tactical affability – uprzejmość taktyczna
to accept jurisdiction – uznać właściwość Sądu
to charge – oskarżać z urzędu
to get the case thrown out – doprowadzić do umorzenia sprawy
to plead guilty – przyznawać się do winy
traffic policeman – policjant drogowy