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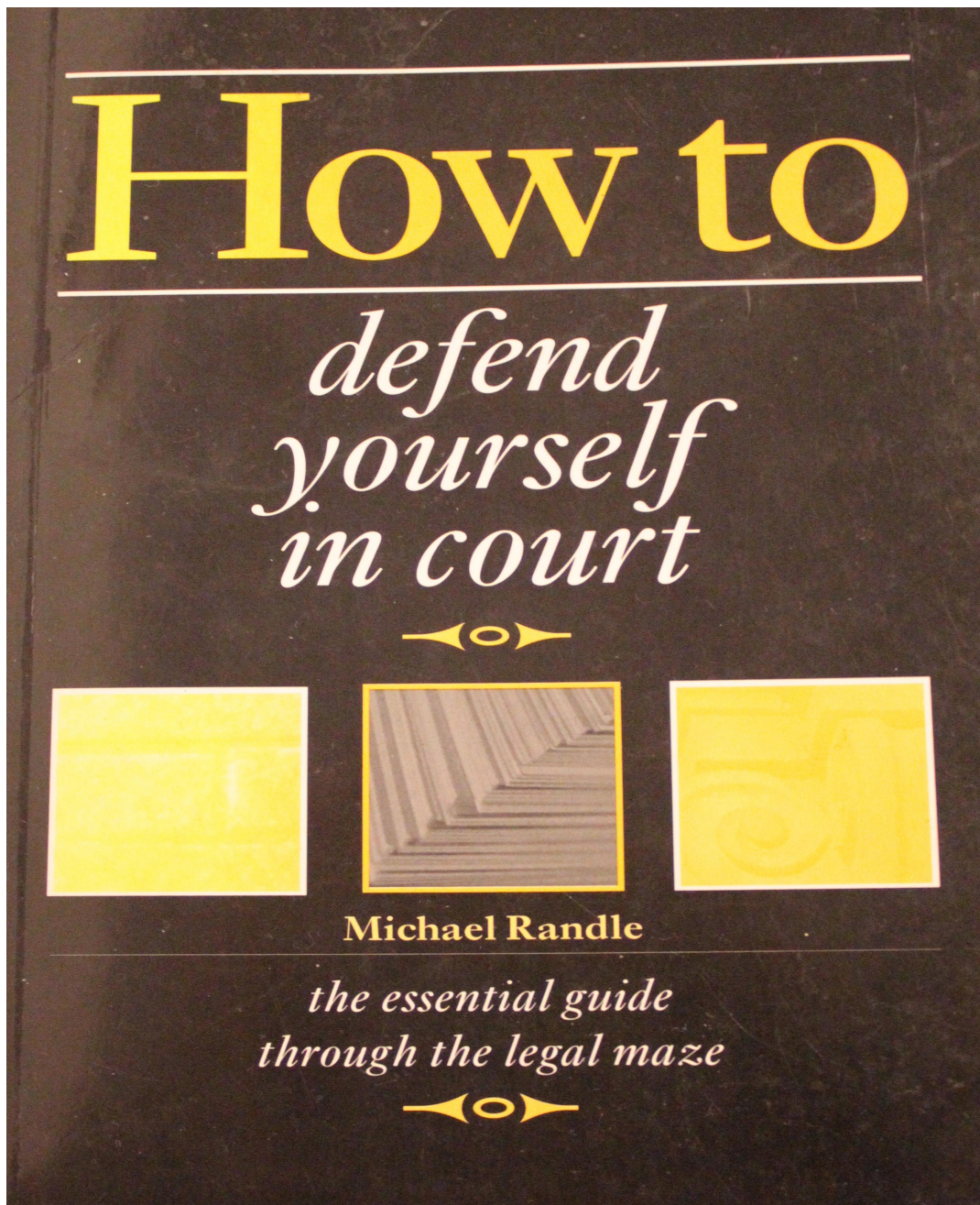
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Michael Randle  
July 1995



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# Foreword by Geoffrey Robertson, QC

The noble art of self-defence is not much practised in British courtrooms. Its decline has been for the best of reasons: the advent of a comprehensive legal aid system, which provides a solicitor and often a barrister or two for every defendant facing significant criminal charges. The necessity, today, of protecting that system from political attack and threatened financial cutbacks does not diminish the importance of the inalienable right to forgo legal representation, and to speak up for yourself in our courts.

The value of Michael Randle's astute and good-humoured book is that it will help citizens to make an informed choice as to whether, or (more often) to what extent, they wish to participate in their own defence. It is always a mistake to leave everything to lawyers; they perform better at every level when their clients are actively involved. But conducting a case in the courtroom can be frightening - even for professionals - and it is usually in a defendant's best interests to leave advocacy to the advocates. I say "usually" because there undoubtedly are cases when it is better to speak for yourself, this book helps to identify them.

But reader, be warned. The thicket of criminal law is overgrown and thorny, and though you may believe it has been left that way by lawyers in order to make themselves indispensable, the fact remains that they are best equipped to guide you through it to safety. Certainly in respect of serious criminal charges, there are few examples this century of unaided defendants outwitting their accusers. Horatio Bottomley, the crooked MP, secured for himself some wrongful acquittals because he was much cleverer than the pompous silks who prosecuted him, but John Stonehouse

cut a pathetic figure as he struggled alone in the Old Bailey dock, alienating the judge as well as the jury and receiving in consequence a much severer sentence.

In political conspiracy trials, self-defence has been most effective when used by one (usually the most charismatic) of the alleged conspirators, hand-in-hand with the wigs and gowns appearing for the co-accused. Richard Neville was one of the first to employ this method with John Mortimer QC in the "Oz" trial in 1971, successfully followed by Gweneth Williams in the "incitement to disaffection" trial in 1976 and by Ronan Bennet in the "anarchist" trial in 1979. These were conspiracy trials with political overtones, and self-defence worked because it worked side-by-side with legal defence. As a result, such prosecutions are rarely brought nowadays.

We still have laws which some think so bad that they are obliged to break them. Logically, they should plead guilty and accept punishment as the cost of having conscientious beliefs. A few - Michael Randle and his co-accused Pat Pottle are recent examples - plead not guilty and attempt to convince the jury, by their arguments, that they were right to do as they did. This is possible because every jury has a traditional right to bring in what lawyers term a "perverse acquittal". Lord Devlin put it more kindly "a jury may do justice, whereas a judge, who has to follow the law, sometimes may not." Such an option is open only to those who defend themselves: barristers are not permitted to urge a jury to nullify or ignore the law. The author gives examples of cases involving the poll tax and nuclear weapons; causes which command more widespread acceptance than some of the beliefs which can inspire acts of "conscientious" defiance. Those who attack doctors and patients outside abortion clinics, or send letter-bombs to scientists involved in animal testing, or who incite hatred against Jews and immigrants, all have the same right to plead not guilty and defend themselves.

But that is the price we pay for all "rights" - they serve those we despise as well as those we applaud. The right of self-defence is an inconvenient one, in that it throws the court into some disarray and generally means that the trial takes longer while the self-defendant stumbles over procedure. But the existence and occasional exercise of

this right to self-defence serve as a necessary reminder to all who practice in the courts that the workings of the law should be simple enough and fair enough to be understood and even practised by those it puts on trial. Think hard before you decide to play the justice game as an amateur. If you lose, you'll have no-one to blame but yourself. But if you win an acquittal, you'll have earned it.

Geoffrey Robertson, QC



# 1

## About this guide

For a variety of reasons, people defend themselves in the criminal courts. If you are considering doing so, this guide will help you to make up your mind, and help you if you decide to go ahead. It also aims to help if you are represented in court, and you want to understand more fully what is going on and to play a more active part in the discussions with the lawyers conducting your case.

This guide doesn't assume that you have any knowledge of the law or experience of the criminal courts. If you want to delve more deeply into particular aspects of law and criminal procedure, or to check facts relevant to your particular case, there is a short book list at the end of the guide.

Civil actions aren't covered - for instance, libel actions, disputes over compensation, divorce, breach of contract and so forth. What this guide does is to set out the arguments for and against conducting your own defence in a criminal trial. It presents a brief overview of the criminal justice system in England and Wales, and describes the procedures from summons or arrest to trial, in both the magistrates' courts and the Crown Courts. It takes you through the task of preparing a defence, including applying for legal aid, lining up witnesses and carrying out research, and helps you consider the strategy and tactics you could use in the trial itself. There follows some

information on appeals, a substantial section on running a defence in "political" trials, a glossary of common legal terms, and finally a book list to help with further reading and research and some useful addresses.

This is not a learned treatise on the finer points of the law and criminal procedure. It's a guide to help you cut through the legal jargon and procedures, with practical help and advice, if you find yourself in the dock in the criminal courts.

## 2

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# Should you defend yourself ?

The arguments against defending yourself are obvious enough. Most lay people have little knowledge of the law and court procedures, and may have problems understanding the relevant law even where they have the time to study it. Even when you do get to grips with the legal complexities, it is still difficult to marshal the arguments and present your case confidently and effectively to a magistrate, or to a judge and jury. This objection may not apply so strongly if your work involves presenting briefs and reports, or if you are experienced in public speaking. But anyone, with or without this experience, can get bogged down in detail and lose the thread of the argument, if they become too emotionally involved in the case. Issues which loom large in a defendant's mind can be at best of minor significance from a legal point of view - and at worst entirely irrelevant. The risk of too intense an emotional involvement is the main argument against anyone - even a trained lawyer - conducting their own defence.

If you don't have previous experience in the demanding and skilful task of cross-examination, you may miss points of significance which a solicitor or barrister would be more likely to spot. You may be nervous or tense in the unfamiliar and formal surroundings of a court – particularly the Crown Court, where there is so much pomp and ceremony and the buildings are designed to awe and intimidate. Finally, you'll be up against professionals who are thoroughly familiar with the system and are



likely to have had previous dealings with the magistrate or judge hearing the case, who will treat them to some extent as colleagues. Statistics lend weight to these warnings. Surveys have consistently shown that unrepresented defendants are more likely to be convicted, and to receive a heavier sentence upon conviction, than those who are represented<sup>1</sup>.

### **People who choose not to be represented**

In spite of the problems, many people choose not to be represented in **summary cases**<sup>2</sup> - those that are dealt with in the magistrates' courts. And 98 per cent of all criminal prosecutions are conducted in magistrates' courts<sup>3</sup>. It is a much more serious decision to conduct your own defence in a trial on **indictment** at Crown Court level, since severer sentences can be imposed, and costs, if you are ordered to pay them, are often much higher.

Some defendants are put off from engaging lawyers because of the cost. Legal aid is not always available for cases heard in the magistrates' courts. For the Crown Court, legal aid is normally granted as a matter of course, though in both courts, defendants may have to meet part of the legal costs.

However, if you do decide to defend yourself, this does not mean that you have to do so without any legal advice or that you can thereby avoid all legal expenses. Indeed, this guide recommends that you obtain as much professional advice as possible before the trial begins. If you can get it free of charge, so much the better. But this will not always be the case, and money spent on good advice can prove a worthwhile investment.

Defendants who intend to plead guilty, especially to a relatively minor charge, often decide not to be represented. This can be a mistake. At the very least it's sensible to get legal advice to make sure that you're not pleading guilty to a more

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1 Marcel Berlins and Clare Dyer, *The Law Machine* Penguin Books, 1989, P.178.

2 **Bold** type like this means there's an explanation of this term in the glossary.

3 Richard Barr, "The English Legal System", in John Pritchard (Ed), *The New Penguin Guide to the Law*. Penguin Books, 1993, p.877.

serious charge than you should be. And even if you decide not to be formally represented in the court itself, it is usually advantageous to have representation up until that point, because it's far easier for lawyers to conduct plea-bargaining negotiations with the prosecution. It can also be to your advantage to have representation during the trial itself, since a good solicitor or barrister may be able to secure a more lenient sentence for you by a skilful plea in **mitigation** - that is, a plea that the circumstances of the offence, or your general good character, make a lenient or suspended sentence appropriate.

This guide is mainly designed to help people intending to plead not guilty and defend themselves against a criminal charge. However, it does also consider briefly the situation of people who plead guilty, since most unrepresented defendants who come before the courts do plead guilty.

### **Why defend yourself?**

- You are fighting your own battle, which is more empowering than being fought over by the professionals. There are few more frustrating and alienating experiences than being the passive spectator in a process on which your reputation and liberty may depend.
- There is a particular case for defending yourself where you do not deny the alleged facts but argue that there were compelling moral reasons for doing what you did. Nuclear disarmers, tried for obstructing the functioning of a missile base by sit-downs and occupations, have often argued that they were under a moral and perhaps even legal obligation to try to prevent a greater crime - the preparation for genocide. In Britain, peace and environmental campaigners have often been involved in cases of this kind. If you conduct your own defence in this type of case, as a layperson you are normally given greater latitude than lawyers to raise the broader moral and political issues in the course of the trial.
- The advantages of being represented can be overstated where the alternative is a

*well-prepared* defence by the accused. In individual cases, given hard work and informed back-up, it is sometimes a positive advantage for a defendant to conduct his or her own defence. For one thing, not all lawyers are competent. Many are also overworked and may have had only a short time to learn the facts and to consider the issues involved. And sometimes the lawyer who knows the case is called away at the last minute on other urgent business and has to hand over the defence to an understudy who may have only an hour or two, and sometimes less than that, to study the facts. But you, as a defendant, live with the case day and night. No one knows it better than You.

The statistics on representation and sentencing, referred to on page 16, do not show how many people may have been pressurised by their solicitors into pleading guilty when in fact they ought to have pleaded not guilty and fought the case. A study of 50 law firms carried out by Professor Michael McConville found that solicitors routinely processed legal aid clients into guilty pleas rather than explore the possibility of a defence. He put this down to heavy workloads and low legal aid remuneration. "Solicitors do not have the time or the incentive to provide proper defence" he stated. "The only way they can make a profit is to prepare their clients for a guilty plea, not for trial, and an individual's rights rarely enter the equation. This inevitably makes it highly probable that there will be further miscarriages of justice."<sup>4</sup>

- Innocent defendants, with the confidence to speak out boldly on their behalf, have more opportunity to impress a magistrate or jury of their sincerity and honesty than those who are represented and have to sit silently in the dock throughout most of the proceedings. Even pleas in mitigation may ring truer when made by the defendant instead of a lawyer whom the magistrate or judge has heard umpteen times saying pretty much the same thing on behalf of every convicted client, and every client who

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<sup>4</sup> As quoted by Clare Dyer, *Guardian*, 4 November 1993. See Michael McConville, *Custodial Legal Advice and the Right to Silence*, Research Study No. 16, Royal Commission on Criminal Justice, HMSO, 1993. See also Michael McConville, *Standing Accused*. Oxford University Press, 1994

has pleaded guilty.

- Defending yourself can be fun. Scary as well, of course, and taxing both intellectually and emotionally. But also fun in the sense that accepting any new challenge and coming to terms with the hazards involved in it is fun. Indeed it is hardly worth considering defending yourself unless there is a certain spirit of adventure about it, a zest to take up the challenge, and a determination that, even if you do go down, you will go down fighting.

### 3

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## The legal system: some background

Before you consider how to prepare to defend yourself, you need some background information about the criminal justice system in England and Wales, and the court procedures.<sup>5</sup> You will probably also need to consult one or more of the books on the list which go into more detail about criminal justice procedures.

### Categories of criminal offence

Criminal offences are ranked in order of seriousness:

- least seriously, offences that can only be tried in the magistrates' courts. These carry relatively light maximum penalties
- offences that are **triable either way**. As the phrase indicates, these can be tried either summarily, in the magistrates' court, or on indictment, in the Crown Court. The accused can often choose where to be tried, though if the magistrates decide that the case is too serious or complex to be dealt with satisfactorily in a summary trial they can transfer it to the Crown Court no matter what the accused wants. You should be aware that proposals have been put forward from time to time to limit a defendant's

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<sup>5</sup> This guide doesn't cover the judicial system in Scotland, which differs from that in England and Wales in a number of important respects.

right to opt for Crown Court trial in some of the less serious either way offences

- the most serious category, offences that can be tried only in the Crown Court. These are always **indictable offences**.

### **The magistrates' courts**

The bedrock of the judicial system is the lay magistracy. It is "lay" in the double sense that its members are not normally law professionals, and that they are unpaid. There are approximately 28,000 lay magistrates in England and Wales. In addition there are paid, full-time and legally qualified magistrates - the stipendiary magistrates. There are currently about 60 stipendiary magistrates, approximately 40 of them operating in London. The top stipendiary magistrate is the Chief Metropolitan Magistrate who sits at Bow Street Magistrates' Court.

Magistrates' courts deal with around 98 per cent of all criminal cases. With a few exceptions, all the more serious cases which are eventually heard in the Crown Court come in the first instance before the magistrates' courts. The Criminal Justice and Public Order Act 1994 abolished the function of the magistrates' courts as examining magistrates (who decided whether at first glance the prosecution had made out a case for the defendant to answer). Proceedings on indictable offences still normally begin in the magistrates' courts, and the court's role is essentially to decide whether the nature of the charges is such that the proceedings should be transferred to the Crown Court. Usually the magistrates consider written evidence only at this stage, and neither the prosecutor nor the accused (or their legal representative) is present in court.

Many of the cases dealt with in the magistrates' courts are of a relatively trivial nature, such as minor motoring offences. Usually the defendant pleads guilty and the magistrates' role is to decide on an appropriate sentence. This may be a fine, imprisonment or both, up to an overall maximum of a £5,000 fine or six months imprisonment (or twelve months if more than one offence is involved). There are also

other sentences the magistrates may impose, such as probation or a community service order, or imposing a **binding over order** to keep the peace and be of good behaviour. Magistrates can also commit a convicted person to the Crown Court for sentencing if they feel that a heavier sentence is called for than they can impose.

Lay magistrates almost always sit in pairs or threes. They are advised and assisted on legal and procedural matters by a qualified full-time official, the Clerk to the Justices. The Clerk, or a deputy Clerk, is always present in court when cases are being heard. Stipendiary magistrates sit singly. Defendants may be represented in the magistrates' courts by a solicitor or - much less often - a barrister. Or, of course, they can choose to defend themselves.

### **The Crown Courts**

Cases in the Crown Courts are conducted in front of a jury, which decides whether the defendant is guilty or not guilty. A professional judge or recorder presides over these cases. There are some differences in procedure between magistrates' courts and Crown Courts. Some solicitors, as well as barristers, can now conduct the case for the prosecution and defence in the Crown Courts, after the rules changed in 1994. Barristers and judges are obliged to wear wigs and gowns in the Crown Courts, and in general the atmosphere is more formal.

Offences triable in the Crown Court are again graded in order of seriousness. The least serious - such as certain offences against property - may be tried by a part-time recorder. Recorders are always fully qualified barristers or solicitors who devote part of their time to this work. The most serious cases - such as murder and treason are normally tried by a High Court judge - called Red judges, because of the robes they wear on these occasions, rather than the political views they hold.

# 4

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## What happens from summons or arrest up to the trial

You can find yourself in the dock as a result of either a summons or an arrest.

### **Summons**

A summons is an order to appear in court on a certain day at a stated time and is used for less serious offences. The procedure here is that the police **lay an information** with a magistrate; that is, they make a statement that an offence has been committed and request the magistrate to issue a summons, or, in more serious cases, a warrant for the arrest of the suspect. If you have been summonsed, you may have the option of pleading guilty by letter rather than appearing in person in court. This applies in the case of some - mainly motoring - offences carrying a maximum penalty of three months imprisonment. Note that the summons always states if you can plead guilty by post.

### **Arrest**

The police on their own initiative may arrest people in a variety of circumstances. An arrest does not necessarily imply that the offence is serious; it could be for something as trivial as obstructing the highway or being drunk and disorderly where the police decide that an arrest is necessary to deal with an immediate problem. Police powers of arrest are now considerable and they sometimes use them as a means of putting additional pressure on a suspect where a summons would be the more reasonable way



to deal with the matter.

If you are arrested, the police have to tell you why. Once detained you should be told about your rights, including your right to remain silent - and the possible adverse consequences of doing so - your right to contact a solicitor and to let someone on the outside know of your arrest<sup>6</sup>

Arrest and charging are two separate processes. If the police interrogate an arrested suspect, they must do so *before* they formally charge the person with a particular breach of the law. In short, the police may interrogate a suspect but not an accused.

As a general rule, if you are a suspect you must be formally charged, granted bail, or released unconditionally within 24 hours of being taken to a police station after your arrest. Suspects are usually detained only for two or three hours. However, a senior police officer can authorise detention for up to 30 hours. After this, the police must apply to a magistrate if they want to detain you any longer. The Magistrate can authorise further 36-hour periods of detention up to a total of 96 hours - four days. If, however, you are arrested on suspicion of involvement in terrorist offences, you may be held for an initial period of 48 hours, and for a further five days with the consent of the Home Secretary.

If you are arrested *on suspicion* of being involved in a crime and released on bail, you remain a suspect only, and may be ordered to report back to a police station for further questioning. This could happen, for instance, if your home or office is searched after your arrest and the police want to ask questions about items they have found. Provided you remain on bail, there could be a delay of weeks or even months before the prosecuting authorities decide whether or not to press charges.

The police can, of course, question you without arresting you if you agree to "assist them with their enquiries". Such interrogations, as any reader of crime fiction will be aware, can lead to an arrest. It is usually a sensible precaution, therefore, to seek legal advice before agreeing to be interviewed and to have a solicitor present when the

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<sup>6</sup> The police can delay the exercise of your rights to contact a solicitor and inform someone outside of your detention in the case of a "serious" charge. For details see John Wadham (Ed), *Your Rights*, Pluto, 1994, p 148.

interview takes place.

### **Searches of individuals and premises**

Under the Police and Criminal Evidence Act 1984, the police have powers to stop and search people if they have "reasonable grounds" for suspecting that they have committed an offence or are about to do so. These Powers have been expanded under the provisions of the Criminal Justice and Public Order Act 1994, so that in some circumstances the police do not have to have reasonable suspicion.

If you have been arrested, the police can also search your home or office provided they have reason to believe this will uncover evidence related to an offence. Before an arrest, they may obtain a search warrant if they can satisfy a magistrate that a search is necessary. Some material is treated as confidential, such as the files of doctors, journalists and lawyers, and can only be searched or seized if this is authorised by a judge. If your home or office is searched, you are normally allowed to have a friend or legal adviser present while the search is carried out. But this is not necessarily the case, especially if the alleged offence is a serious one.

### **Fingerprinting, photographing and body samples**

After arrest, a senior police officer can order your fingerprints to be taken if he or she considers this is necessary to establish - or rule out - your connection with an offence. The police can, as a matter of course, take fingerprints once a person has been charged. They have similar powers to photograph suspects, but whereas they are allowed to use "reasonable force" to take fingerprints, they may not do so to obtain a photograph. If the police or prosecuting authorities decide not to press charges, or if you are acquitted after a trial, the police are normally obliged to destroy any fingerprints or photographs they have taken as soon as practicable. However, the police need not destroy fingerprints in these circumstances if the person has been previously convicted of an offence.

The police can also take other body samples, defined as either intimate or non-intimate. The suspect's consent is necessary before any intimate body sample is

taken<sup>7</sup> - though if you refuse to allow this it can be taken into account by the court or jury in a trial. The police can order non-intimate samples to be taken without your consent in some circumstances - if you are charged with a **recordable offence**, or are informed that you will be reported for such an offence - or if you have a previous conviction for a recordable offence. Samples can be taken at the time or up to one month later. Some parts of the body which used to be designated as intimate - including the mouth - have been re-classified as non-intimate<sup>8</sup>. In the past the police were only entitled to take body samples from suspects held in detention, but now, subject to certain conditions they can order a suspect who has not been detained to report to a police station for fingerprinting or to have body samples taken.

### **The right to silence**

The Criminal Justice and Public Order Act has radically altered the traditional right of a suspect or accused to remain silent. You still have that right, but magistrates and juries may now take your silence as a possible indication of guilt, and take it into account in reaching their decision or verdict.

Specifically, the courts can take account of and "may draw such inferences ... as appear proper" from your failure or refusal to mention, at the time you are questioned or are charged with an offence, any alleged facts which you later rely on during your trial; that is, if you do not tell them at that stage of a defence that you later use in court. Similarly, the courts can take into account in the same way your failure or refusal to account for having certain objects in your possession, or for marks on clothing and so forth, or your refusal to give an explanation for being present in a particular place at the time an offence was committed.

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<sup>7</sup> Unless you are suspected of driving under the influence of alcohol, in which case the police can order you to take a breath test, or to give either a blood or urine sample, under the provisions of the Road Traffic Act 1988.

<sup>8</sup> Intimate samples under the amended Police and Criminal Evidence Act, are blood, semen, urine, pubic hair, a swab taken from a person's body orifices other than the mouth or a dental impression. Non-intimate samples are hair (other than pubic hair), saliva. A mouth swab or a swab taken from any part of a person's body other than orifices, a sample from a nail or under a nail, or a footprint or similar impression from a person's body.

The **adverse inferences** can, in fact, be drawn at various stages in criminal procedures.

- A magistrates' court can take the accused's silence into consideration in deciding whether to grant an application for dismissal in the proceedings to transfer a case for trial to the Crown Court. For more details of the transfer procedure, see page 33.
- Magistrates and judges can take silence into account in the course of a trial, when considering a submission by the defence that there is no case to answer. See page 41.
- Most seriously of all, the court or jury can take silence when being questioned or charged into account when determining whether or not the accused is guilty of the offence. The courts are now also permitted to draw adverse inferences if an accused person decides not to take the witness stand and face cross-examination by the prosecution. You're under no obligation to take the witness stand, and can't, for instance, be charged with contempt of court for not doing so. But it could count against you when the court or jury considers the question of guilt or innocence.

One of the strongest arguments in favour of the right of silence as it previously existed - when no-one was permitted to draw adverse inferences from it - is that the experience of being arrested and locked up can be unnerving, even if you spend no more than an hour or two in a police cell. Under interrogation, defendants who have been traumatised by the experience may become confused and make contradictory, inaccurate and potentially incriminating statements. Also, under the English adversarial legal system, if an accused person does make a statement, the prosecution may be given an undue advantage by learning the gist of their defence at an early stage. The changes make it all the more important for anyone who has been arrested to take advice from a lawyer before deciding to answer police questions. Clearly, there is now a slightly stronger case than in the past for making a statement -

preferably in the presence of a solicitor soon after being arrested or charged. If you don't, the explanations you give later on in court may not be believed, or may be viewed very sceptically. Alternatively, a statement to the police (drafted by a solicitor) can clear up a simple misunderstanding and convince the police or the prosecuting authorities that there is no point in pressing charges, or persisting with those they have already laid against you. However, in spite of the new drawbacks of remaining silent, it is better in most circumstances to say nothing when arrested or charged.

Certainly talk over such matters with a solicitor before you answer questions. Even if you, as a defendant, have decided not to make a statement, it can prove to be a psychological advantage to have someone “on your side” present during a police interrogation. If you don't have a solicitor, or don't know of one, you can consult the duty solicitor free of charge. Duty solicitors are paid for through public funds and you can call upon them in police stations and most magistrates' courts.

### **Remand in custody and bail**

The police must charge a person they have arrested and detained within a specified period - normally within 24 hours of the arrest – but suspects may be **remanded on bail** (police bail) while the police carry out further investigations. If this is what happens, you are ordered to report back to the police station at a particular date and time. Note that the Criminal Justice and Public Order Act allows the police to impose conditions on you before they grant bail.

If you are charged following arrest, again you are then either **remanded in custody** (held in prison) or remanded on bail pending an appearance at a magistrates' court on a specified date. As a general rule, an accused person has a right to bail pending trial. But there are many exceptions, and the Criminal Justice and Public Order Act has further restricted the right to bail. It specifies that persons accused of murder, attempted murder, manslaughter, rape or attempted rape will be refused bail if they have a previous conviction for any such offences. It states too that bail is less

likely to be granted to persons accused of indictable offences, including offences triable either way, if the alleged offence was committed while the accused was on bail. You may also be refused police bail after being arrested and charged if the custody officer believes you will fail to appear in court to answer bail, or if it is necessary to detain you for your own protection or to prevent you from committing another offence, physical injury to another person, or damage to property.

If the police initiated the arrest they decide whether or not bail should be granted in the first instance. If the arrest has taken place on the authority of a bench warrant, this will say whether or not to grant bail at the initial stage.

If you are refused bail, you must be brought before a magistrate "as soon as practicable" - usually the day after the arrest. With minor offences where the accused pleads guilty the sentencing can take place straight away. If the defendant pleads not guilty, the case is adjourned to allow the defendant time to apply for legal aid and prepare a defence. The prosecution also needs time to prepare its case and bring its witnesses to court.

If a case can't be dealt with at the first court hearing, the magistrates decide whether to remand a defendant in custody or allow bail. Bail is normally granted at this stage - though not always - if the police have previously given it, or if the magistrates themselves have authorised it on a bench warrant. In other circumstances, the magistrates take into account whether or not the Crown Prosecution Service objects to bail, and anything the defendant or the defendant's lawyers have to say on the matter. The magistrates can also vary the conditions of bail rather than refusing it outright. However, if they do refuse bail, they are obliged to state in writing the reasons for doing so. It may be important for you to have legal representation at this stage, since a lawyer may be more successful than you could be in persuading the magistrate to allow bail in the face of police objection.

If you *are* remanded in custody, the general rule is that you must be brought back to the court every eight days for a further period of remand, until the trial takes place or until the case is transferred to the Crown Court. With your agreement, however, the

period can be extended to 28 days, and this is now the more common practice. If you are represented, the court can impose a 28-day remand even without your consent. You can, if you wish, apply to the Crown Court to overrule the magistrates and to grant bail. In the early stages this is not always a wise tactic, however, because if the judge turns down this application the magistrate is less likely to reconsider his or her decision at a subsequent remand hearing. Lawyers often delay an application for bail to the Crown Court until they have sufficient information about a defendant's circumstances and know the details of the prosecution evidence.

If you are granted bail, the court states in writing when you have to surrender it - that is, report back to the court for a further hearing. If you fail to do so without adequate reason, the magistrates issue a bench warrant for your arrest, and subsequently bail will almost certainly be denied. It is a criminal offence to abscond, punishable by a fine or imprisonment. Conditions are often attached to the granting of bail. The most common ones are that someone else has to **stand surety** in a stated sum of money, or that you have to have a particular address - a residence condition. The surety does not have to pay money to the court at the time bail is granted, but can be called upon to do so if you fail to turn up as required. If the charge is serious, you may be ordered to surrender your passport as a condition of bail.

It is greatly to your advantage to get bail, and particularly important if you are conducting your own defence. Aside from the trauma and inconvenience of spending time in prison, it is very much more difficult while there to obtain books and advice, and do a thorough job of preparation.

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# Choosing where to be tried

When the offence you've been charged with is triable either way, you may be given the choice of standing trial in the magistrates' court or the Crown Court. But first the magistrates have to decide whether the case is one that can be dealt with adequately in a summary trial. If they decide it is not, the procedure for transferring the case to the Crown Court is set in motion. If, however, the magistrates decide that the case is suitable for summary trial, it is then up to you to choose whether to accept this or to insist on the right to trial by jury at the Crown Court.

### **Factors to consider**

- Defendants are much less frequently acquitted in summary trials than in Crown Court trials, and least frequently of all in trials conducted before stipendiary magistrates. And if you are acquitted, the prosecution has the right to lodge an appeal on a point of law "by way of case stated" to the Divisional Court. See *Appeals*, on page 75. If the Divisional Court finds that the magistrates have made a mistake, the case is sent back to the magistrates for a new trial. This can't happen in the Crown Courts.
- In magistrates' courts, sentences are normally less severe if you are convicted, though this does not apply if magistrates, after finding you guilty, refer the case to the Crown Court for sentencing.



- If costs are awarded against you, they are always very much higher in Crown Court trials.
- If you are pleading not guilty, a trial at a magistrates' court may in practice happen more quickly than a jury trial, though this isn't necessarily the case. In the Crown Court, although you risk heavier penalties and costs the chances of obtaining legal aid are improved.
- In "Political" cases especially, you are more likely to convince a jury than a magistrate by an appeal to wider, non-legal considerations.

Obviously if you intend to plead guilty you should opt for a summary trial. The worst possible course of action would be to insist on a Crown Court trial and change the plea to guilty sometime after the trial began. This simply invites a severer sentence and heavier costs, yet it occurs surprisingly often. The Criminal Justice and Public Order Act states explicitly that courts, in deciding whether or not to grant a reduction in sentence in the light of a guilty plea, should take account of the stage in the proceedings at which this plea was entered, and the circumstances in which it occurred. However, if you want to challenge the admissibility of a confession made or allegedly made by you - for instance on the grounds that it was obtained under duress, or has been falsified - it is far better to go for a Crown Court trial. The Jury will never hear the alleged confession if the judge rules it inadmissible - that is, rules that it cannot be used as evidence in the case - and so the jury cannot be influenced by it. A magistrate can also rule a confession inadmissible but may nevertheless be influenced to some degree by having read it. Juries, too, tend to be more ready than magistrates to acquit a defendant in cases where police evidence is challenged.

### **Before you decide**

Before you make your decision, you are entitled to have a summary of the

prosecution evidence, or full prosecution witness statements. You should press strongly to be given the witnesses' statements in full, although you may not always get them. Innocence of itself is no guarantee of an acquittal, and the statements will help you to assess your chances. If it seems highly probable that you will be found guilty wherever the case is heard, you may decide that it is better to accept a summary trial. (You may, on the other hand, still want to fight the case and have a jury rather than a magistrate pronounce upon your guilt or innocence.) In the Crown Courts, the prosecution is obliged to give the defence copies of its witnesses' statements, but this is not the usual practice in magistrates' courts. So if you do see full witness statements, and decide to go for a summary trial, you will be in a better position to plan the cross-examination of prosecution witnesses.

If you opt for a Crown Court trial, the case is adjourned while the procedure for transferring a case to the Crown Court is undertaken.

### **The procedure for transfer to the Crown Court**

The Criminal Justice and Public Order Act 1994 abolished committal proceedings and instituted a new procedure for transferring a case to the Crown Court. This procedure applies where the offence:

- can only be tried on indictment (that is, in the Crown Court)
- is triable either way, and the magistrates' court decides that it ought to be heard in the Crown Court
- is triable either way and the defendant opts for a Crown Court trial.

First, the prosecutor serves on the magistrates' court and the defence, within a prescribed period,<sup>9</sup> a notice of the case. This prosecutor's notice must state the charge or charges, and include a set of the documents containing the evidence, including any

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<sup>9</sup> At the time of going to press, this period is not defined.

oral evidence, that the prosecution is intending to produce at the trial.<sup>10</sup>

Once the notice of the prosecution case has been given to the magistrates' court, the accused (or any one of them if there are several co-defendants) can apply in writing to the court for the charge to be dismissed. The reason for applying for the case to be dismissed is to avoid having a trial at all, and you would do this if you were convinced that the prosecution had not made any case against you. You have to make the application for dismissal within the prescribed period, or any extension of it that the court allows, and you are obliged to send a copy of it "as soon as reasonably practicable" to the prosecutor and any co-accused.

Normally the magistrates' court considers the application in the light of the written material only, and neither the prosecutor nor the accused is entitled to be present. However, if you are not represented, the court must allow you to address it in support of an application for dismissal, if you want to do so. If you are represented, your lawyers can also apply to speak to the court in support of an application, on the grounds that the case is particularly complex or difficult. But in these circumstances, the court has the discretion to say yes or no. If it says yes, or if you are speaking in support of your application, the prosecutor is also allowed to be present and to speak in reply. No witnesses can be called.

If the magistrates have received an application for dismissal, they can dismiss a case on the grounds that there is not sufficient evidence for the accused to stand trial before a jury. Thus the magistrates, in these circumstances, have a residual role as examining justices. They may also amend the charges, or substitute different ones if they find evidence to support such moves. If they dismiss the case, the defendant walks free and that is the end of the matter.

If the magistrates turn down an application for dismissal, or do not receive one,

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<sup>10</sup> The prosecutor can apply to the court for extra time in which to prepare and serve the notice, but the defendant (or of course his or her legal representative) when informed of this can write to the court opposing it. You might want to do this where the facts of the case are straightforward and there is no good reason for a delay which will necessarily cause you uncertainty, stress and inconvenience.

they then arrange for the transfer of proceedings to a Crown Court. The magistrates pass on all the evidence to the appropriate Crown Court and inform you when and where you are to be tried. If you have been bailed to report to the magistrates' court on a given date, you may be instructed to surrender bail at the Crown Court at the commencement of the trial or at the magistrates' court, as before. At the magistrates' court, the magistrates can renew bail, vary its conditions, or remand you in custody pending trial. If you have earlier been remanded in custody, the magistrates can order you to be delivered to the appropriate Crown Court for the start of the trial or for you to be released on bail.

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## **Pleas and plea-bargaining**

Sometimes the prosecution is willing to substitute a less serious charge for the original one - for instance, manslaughter instead of murder, or common assault instead of assault causing actual bodily harm – on condition the defendant pleads guilty to the lesser charge. Similarly where there are a number of charges related to the same incident, the prosecution may be willing to drop the more serious ones in exchange for a plea of guilty on one or more of the other charges. The judge too may be involved by letting it be known, informally, that he or she will not impose a prison sentence if the accused pleads guilty. This is the process known as plea-bargaining, which usually takes place behind closed doors in discussions between defence and prosecution counsel.

The attraction of plea-bargaining for the accused is that the maximum possible penalty is reduced - sometimes considerably reduced. The danger is that you may be tempted to strike a bargain even though you are innocent. There have undoubtedly been occasions when innocent people have been cajoled or bullied by their own lawyers into "copping a plea" out of the fear that they will be (wrongfully) convicted if the case goes to trial and will then face a severer sentence. It is crucial to resist pressure of this sort, from wherever it may come.

Negotiations on plea bargains are normally conducted between the lawyers on both

sides. It is less likely that a deal will be worked out without lawyers because the prosecution will be wary of dealing directly with the accused.

For some more minor offences, usually motoring offences, you can plead guilty by post. The summons you receive will tell you if you can do this and how precisely to go about it. If you are in this situation and decide to write to the court you should obviously include an apology in the letter and perhaps explain briefly the circumstances in which the offence occurred. But you will probably fare better by going to the court even though you are not obliged to do so - and making the apology, and explaining any mitigating circumstances, in person.

## **Trials in the magistrates' courts**

The procedures at magistrates' courts and Crown Courts follow the same general pattern, though there are some important differences. In general the atmosphere is less formal and intimidating in the magistrates' courts - though, of course, intimidating enough for anyone experiencing it for the first time.

Trials at magistrates' courts are conducted before either a single stipendiary magistrate or a bench of two or three lay magistrates. At the outset of the trial, you (the defendant) are formally identified, the charge is read out, and you plead guilty or not guilty.

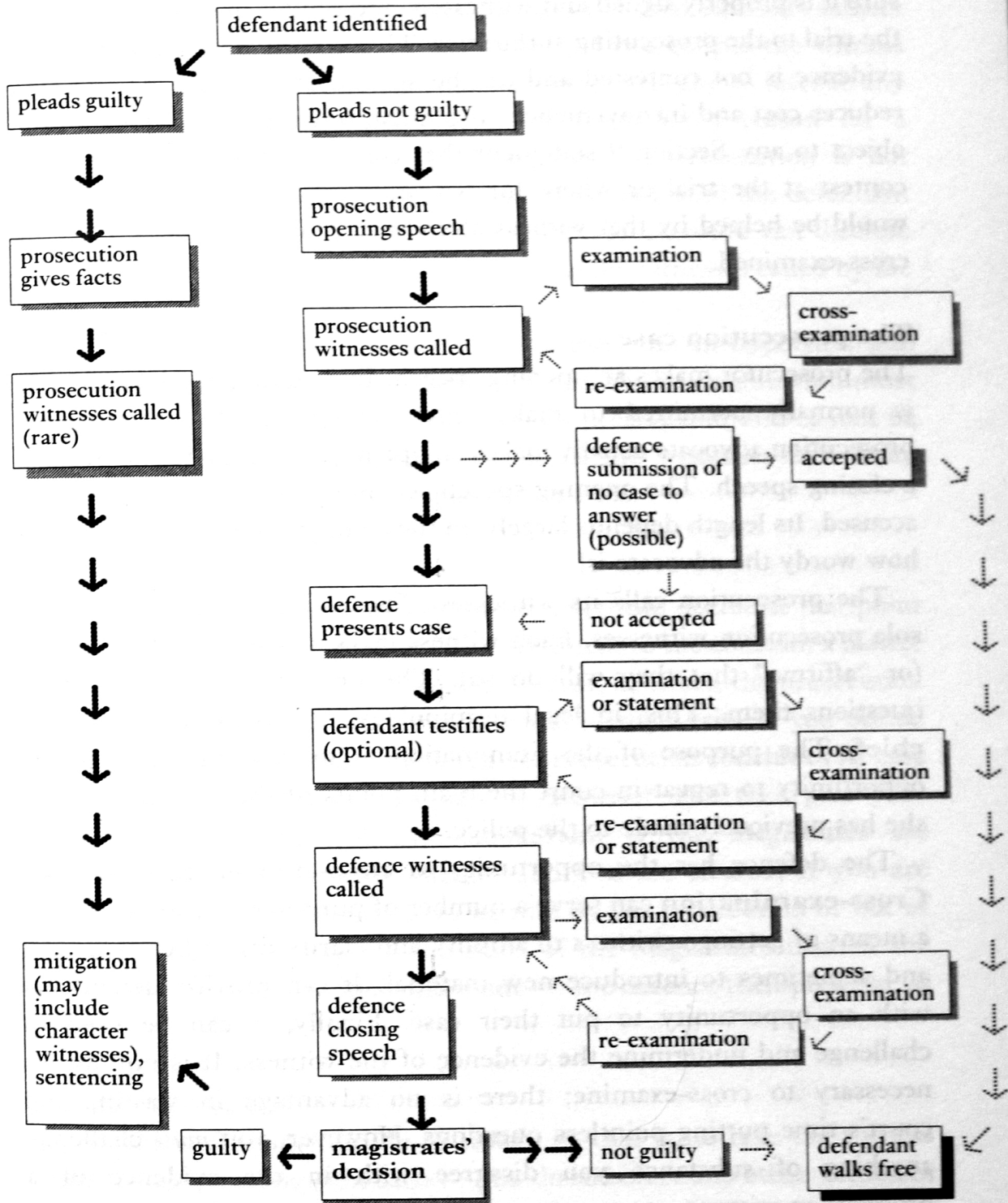
### **If you plead guilty**

No witnesses are called. Instead the prosecution advocate (a solicitor or barrister) gives the main facts of the case. After that the procedure is identical to that followed where a defendant is convicted in a contested trial, that is, one in which the defendant is pleading not guilty.

### **If you plead not guilty**

Before a trial either the prosecution or the defence can serve a **Section 9 statement**. This is a statement of the evidence that a particular witness will give and in a particular form. Section 9 refers to Section 9 of the Criminal Justice Act 1967. This specifies that if the statement is in a proper form, is served and the other party does not object to its use within seven days the evidence can be read out in court and the witness does not need to attend. If you wish to serve a Section 9 statement, you

## What happens in magistrates' courts





should obtain the appropriate form from your solicitor, law centre or legal advice centre, get your witness to write his or her statement, make sure it is properly signed and witnessed, and send it in good time before the trial to the prosecuting authorities. This system is very useful where evidence is not contested and can be agreed. It shortens the trial and reduces cost and inconvenience. You must, however, be very careful to object to any Section 9 statement that contains anything you wish to contest at the trial or where for whatever reason you feel your case would be helped by that witness attending, giving evidence and being cross-examined.

### **The prosecution case**

The prosecutor makes an opening speech. In a summary trial each side is normally permitted to make only one speech. In practice, the prosecution advocate usually makes an opening speech, and the defence a closing speech. The opening speech sets out the evidence against the accused. Its length depends largely on the complexity of the case – and how wordy the advocate is!

The prosecution calls its witnesses. The police are quite often the sole prosecution witnesses. Each witness takes an oath to tell the truth (or "affirms" that they will do so). The prosecution advocate then questions them. This, in legal terminology, is the **examination in chief**. The purpose of the examination is to give the witness the opportunity to repeat in court the main points of the statement he or she has previously made to the police.

The defence has the opportunity to **cross-examine** each witness. Cross-examination can serve a number of purposes. It can be used as a means of getting a witness to amplify and clarify his or her evidence, and sometimes to introduce new material. It can provide defendants with an opportunity to put their case. Finally, it can be used to challenge and undermine the evidence of the witness. It is not always necessary to cross-examine; there is no advantage in wasting the court's time putting pointless questions. However, you *must* challenge anything of substance you disagree with in the evidence of a prosecution witness.

If you, either in person or through your legal representatives, make allegations about the character of prosecution witnesses as a means of undermining their credibility, the prosecution is then entitled (subject to the discretion of the judge or magistrate), if you go into the witness box, to cross-examine you about your own character, and to refer to any previous convictions you may have. This can be a reason for a defendant choosing not to testify. Normally, the prosecution is not allowed to disclose previous convictions unless and until the defendant is convicted in the current case. Though the prosecution can disclose them through the cross-examination of character witnesses called by the defence. See page 42 .

After any cross-examination, the prosecution has an opportunity to re-examine the witness. Questions put during the re-examination must be related to the cross-examination that has preceded it, and cannot be used to introduce new evidence. When all the witnesses have been called, the presentation for the prosecution ends.

### **Submission of no case to answer**

At the conclusion of the prosecution case, you can decide at that point to make a legal submission (that is, an argument to the court on a matter of law) that there is no case to answer - that in effect the prosecution has produced no valid evidence that would justify a trial. If you decide to do this, you simply stand up when the prosecution concludes its case and say "I submit there is no case to answer." You then give your arguments in support of the submission. If the magistrates are persuaded, they dismiss the charges and you are cleared. If you are cleared you can apply for costs to be met by the prosecution or out of "central funds" provided by the state. If the magistrates dismiss the submission - or if you don't make one - the defence then presents its case.

### **The defence case**

If you (the defendant) decide to testify - that is, to take the witness stand and give evidence on oath - you do so before any other witnesses are called. Under new regulations introduced by the Criminal Justice and Public Order Act, the court must

at this point advise you that the time has arrived for you to decide whether or not to take the witness stand, and that whilst there is no legal obligation to give evidence, the court can take into account your failure to do so when it reaches its decision on your guilt or innocence.

If you do testify, you can make an initial statement in the witness box - though you cannot read it out from notes. If you are not represented, the statement should cover the main facts of the case, giving your version of what took place. If you are represented, the defence advocate can bring out these facts in the examination in chief; alternatively, your co-defendant (if you have one and are unrepresented) can conduct the examination in chief. Sometimes when a number of co-defendants face trial together on the same charge, some choose to be represented and others defend themselves. In these circumstances, the advocate for one or more of the represented co-defendants can conduct the examination in chief and the re-examination of the unrepresented defendant.

You then face cross-examination by the prosecution. This is followed - if you are represented - by re-examination by your defence counsel. If you are not represented, you can make a statement, though only to clarify any points that have arisen in the cross-examination.

You then call other defence witnesses. The procedure parallels that of the prosecution witnesses except that now, obviously, you (or your advocate) carry out the initial examination, the prosecution cross-examines if it wants to, and the defence has the right of re-examination. You may decide, however, to rely solely on your own testimony and call no other witnesses - or, less commonly, to call no evidence at all. You can also call one or more character witnesses at this stage. The role of a character witness is to testify to your general good character and to try to convince the magistrate (or the jury in the Crown Court) that you are not the kind of person who would commit the offence in question. Note, however, that the prosecution, in cross-examining a character witness, is allowed to disclose any previous convictions you may have.

After any defence witnesses have been heard, you or your advocate can make a closing speech. This is the only opportunity you have to argue your case, and to highlight the evidence that points to your innocence. It is the penultimate act of the drama, since the magistrates must then come to a decision on guilt or innocence.

### **The magistrates' decision**

The magistrates usually confer for a short time after hearing the evidence before announcing their decision. If they find that the charge has not been proved, that is the end of the matter and the defendant is free to leave. If you are acquitted, you can ask for your legal costs to be met. You might also want to consider whether you should sue in the civil courts for false imprisonment or malicious prosecution. If the magistrates find the charge proved, the sentencing procedure begins.

### **Mitigation and sentencing**

The prosecution gives the magistrates details of any previous convictions you have. There may also be social reports, or reports from prison officials, or reports from probation officers. Such reports are always needed, unless the court intends only to impose a fine or conditional discharge, or where the case is so serious that the sentence is bound to be a long prison sentence. You or your legal representative then have the opportunity of making a statement in mitigation before sentence is passed. This is your opportunity to plead for a lenient sentence. As part of mitigation, you can also call one or more character witnesses. Finally the magistrates either pass sentence or postpone this while they consider the reports of prison officials or probation officers.

Sometimes a person wishes to plead guilty but does not accept the facts set out by the prosecution. In those circumstances, the court can hold a Newton hearing.<sup>11</sup> The court has a trial, not to establish guilt or innocence, but to decide the facts. Newton hearings, although rare, can take place in both the magistrates' and the Crown Courts. Arrangements to hold such a hearing should be sorted out between you, the

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<sup>11</sup> R v Newton [1982] 77 Cr App Rep 13. (These legal abbreviations are explained on page 54.)

prosecution and the court well in advance of the hearing.

Defendants sometimes use mitigation as an opportunity to re-assert their innocence. As far as the court is concerned, this is irrelevant since the magistrates have already made their decision. Nevertheless such assertions may have an impact on the press and public, particularly if there is some disquiet about the conviction. The opportunity is also used on occasions by defendants in civil disobedience cases to re-state their motives for breaking the law and to say why they think they were right to do so.

Penalties may vary: a prison sentence, fine, suspended sentence, community service order, and so forth. However, in 80 per cent of magistrates' court cases, the sentence is a fine. If a fine is imposed, you can request time to pay. Usually the magistrates agree to the fine being paid in instalments over a period of several months, though they question you first about your means and ability to pay.

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# Crown Court trials

Aside from the greater pomp and formality, and the wearing of wigs, gowns and other items of fancy dress, the main difference between summary and Crown Court trials is the presence of a jury, which must decide whether the defendant is guilty or not guilty. The judge has the responsibilities of ensuring that the trial is properly conducted, of deciding whether evidence is admissible or not, of summing up the evidence for the jury, after the closing speeches of prosecution and defence, and finally of passing sentence if the defendant is convicted.

Discussion of legal issues, such as whether particular evidence can be heard, or whether a particular line of defence is open to the accused, normally takes place in the absence of the jury. There are two reasons for this:

- A defendant's case could be harmed if the jury heard evidence that the judge then ruled inadmissible; for instance, a confession made under duress or undue police pressure.
- It is for the judge, not the jury, to decide on all the issues of law that arise. Exceptionally, however, at the request of the defence, the judge may allow the jury to be present during **legal argument**.

### **If you plead guilty**

No jury is sworn in and the procedure then parallels that of the magistrates' court. The prosecution summarises the evidence, and the judge is given social reports

(where appropriate), details of any previous convictions and so forth. Finally,, the judge hears anything the defence has to say in mitigation, and the evidence of any character witnesses, before passing sentence. Again he or she may decide on an adjournment before doing so.

### **If you plead not guilty**

The prosecution presents its case in the same way as in the magistrates' court: the prosecuting advocate makes an opening statement summarising the evidence, and then calls prosecution witnesses to take the stand. At the conclusion of the prosecution evidence the defence can – as in a summary trial - make a legal submission that there is no case to answer. If the judge agrees with this, he or she instructs the jury to bring in a formal verdict of not guilty, and dismisses the charges. Otherwise, you, the defence, open your case.

You are entitled to make an opening statement, provided you are calling at least one witness (other than a character witness) to give evidence. Usually, however, the defence doesn't make an opening speech, and the defendant or other witnesses present their evidence. You can draw the threads of the case together later, in the final speech.

When the defence has called all its witnesses, the prosecuting advocate is entitled to make a closing speech - this is another procedural difference between summary and Crown Court trials. However, if you have called no witnesses as to the facts, the prosecution loses its right to make a closing speech. And in fact, the prosecution does not usually make this closing speech when the defendant is unrepresented.

The prosecution's closing speech - if there is one - is followed by that of the defence. It is important to note that no new evidence can be introduced in closing speeches by either side. Their purpose is to review and interpret the evidence that has already been given.

Before the jurors retire to consider their verdict, the judge sums up the evidence presented by each side, clarifies or re-states any issues of law that have arisen, and

emphasises to the jury that it is for them and them alone to decide on the facts.

The jurors then retire to the jury room to consider their verdict for whatever length of time it may take. The judge instructs them to try to reach a unanimous verdict. If, after a minimum period of two hours' deliberation, they fail to agree, the judge may tell them that he or she is willing to accept a majority verdict. Usually, however, the judge first sends them back for a further period of deliberation to try to reach a unanimous decision. No more than two jurors may disagree with their colleagues for the majority verdict to stand. Should the jury fail to agree, the trial becomes void and there has to be a retrial, unless exceptionally - the prosecution decides to drop the case. Usually the prosecution will try a second time but not a third time.

When the jury returns to the court, its elected foreman or forewoman speaks for the jury. The clerk of the court re-reads the charge against the accused and asks the foreman or forewoman to deliver the verdict. If the verdict is not guilty, the defendant can apply for legal costs to be met out of central funds or by the prosecution. A defendant who has been acquitted is entitled as of right to have costs met out of central funds. The prosecution will only be obliged by the court to pay if the defendant can show that the prosecution has acted wrongfully. If the verdict is guilty, the procedure for sentencing begins. Sometimes the judge delays passing sentence until the next day to give time for consideration, or for three weeks, to wait for a pre-sentence report to be prepared by the probation service, as in the magistrates' courts.



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# Preparing your own defence

Some general points:

- If the charge against you arises out of a specific incident, and there are independent witnesses to this incident, who may be willing to testify on your behalf, it is crucial to get their names and addresses, and to urge them to write down what they saw and heard straight away, or as soon as possible afterwards. If you cannot take a detailed statement from them straight away, arrange to see them in order to do so at the earliest possible moment. Lining up witnesses, and obtaining their statements is, of course, important, whether or not you intend to be represented in court.
- Get all the legal help and advice you can, even if you don't intend to be represented at the trial itself.
- Begin your research as soon as possible. Check up on the law relating to the charge and to possible defences. This will make discussions with lawyers and advisers more fruitful, and stand you in good stead in the trial itself.
- Bear in mind that the burden of proof rests on the prosecution. It is the prosecution which has to prove your guilt beyond reasonable doubt, not you who have to prove your innocence. But clearly, the stronger your case, and the more convincingly you present it, the more likely you are to be acquitted.

## Getting free legal advice

If you already have a good solicitor, or a friend has recommended one, you should first take advice from him or her. If you are on a low income, and you have limited disposable assets – such as savings in the bank or building society – you may be eligible for help through the Legal Advice and Assistance Scheme, known as the **Green Form Scheme**. The scheme covers the cost, wholly or in part, of consulting a solicitor in civil or criminal cases, and it may also extend to some legal work on a case, such as applying for legal aid, or even getting a barrister's opinion.<sup>12</sup> The Green Form Scheme does not cover legal representation in court itself, for which a full legal aid certificate is required. All magistrates' courts have a duty solicitor scheme. The duty solicitor usually deals with new cases and issues like bail and remands, and can be very helpful at your first hearing. You should ask to see the duty solicitor if, by the time of your first hearing, you are not sure of the procedure or just need help on the day. Duty solicitors do not conduct trials whilst they are on duty.

You can get free advice in the police station from the duty solicitor, regardless of your means, if you have been arrested and face questioning. Free legal advice is also available from several other sources. Citizens Advice Bureau and Legal Advice Centres are good places to start from, and may be able to provide you with all the help you need if your case is a straightforward one. They can also give you information and guidance about applying for legal aid. There are about 50 Law Centres in the country, mainly in inner-city areas. They provide help free of charge, and, unlike the Advice Centres, can represent clients in court. They tend to concentrate on civil cases related to housing, employment and children in care, or on juvenile criminal cases.

## Legal aid

The court grants a defendant legal aid where it considers legal representation is required in the interest of justice and the defendant cannot afford to pay for it. The

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<sup>12</sup> It is not usually necessary to have a barrister's opinion in a criminal case at such an early stage

court takes into account your income and disposable capital when deciding whether you are eligible, and if so, to what extent. Currently, about 95 per cent of Crown Court cases are financed by legal aid, and a much smaller proportion of criminal cases in the magistrates' courts.

You can get forms from the magistrates' court or Crown Court, from a solicitor, legal Advice Centre, Law Center or Citizens Advice Bureau. It is the courts themselves that decide whether or not to grant legal aid, and some are more generous than others. You can, of course, instruct a solicitor to start work on your case before hearing the court's decision, although if you do so you may be faced with having to meet the costs yourself if your application is unsuccessful. Apply as soon as possible as the court may take some time to decide. If legal aid is refused in an either way or indictable offence, you can appeal to the Legal Aid Board. There is no appeal in summary only cases, although you can apply in person to the court when your case is being dealt with.

It is well worth consulting a solicitor when you apply for legal aid. He or she can help you fill in the forms. Legal aid does not cover the cost of this initial consultation, although this may be met through the Green Form Scheme. Some solicitors offer their services at a cheap rate for an initial short consultation; others may be willing to assist you free of charge at this stage in the expectation of representing you at a later point.

If you intend to defend yourself, it is still usually advantageous to accept legal aid to whatever extent it is available, and to use it to get professional guidance and help. Legal aid may also cover the cost of having your solicitor present in court if you are defending yourself.

But note that legal aid does not necessarily cover all the legal costs. For this reason it is crucial to keep a check on the financial commitments you are entering into when you engage the services of lawyers, even for pretrial advice and work.

If the charge is a serious one, legal aid may cover the costs of engaging a barrister, or both a junior and senior barrister. (Senior barristers are usually assisted in court by

a “junior”). A barrister's principal role is to represent clients in the higher courts, whether civil or criminal. The senior members of the profession are the Queen's Counsel (QCs, or “silks”). Some solicitors can now represent clients in the Crown Court as well as in the magistrates' courts, although their more usual role in the Crown Court is to assist the barristers. They do much of the pre-trial work and act as an intermediary between the defendant and the barristers. According to strict protocol, the defendant does not approach the barrister directly but only through his or her solicitor. Normally, however, there are meetings – conferences as they're known in the legal jargon – in which solicitors, barristers and defendants all sit together to discuss the case. If legal aid covers the cost of engaging barristers, you should probably get the best you can and work with them up to the start of the trial. Your solicitor can advise you on which barristers have the necessary skills and experience to take on your type of case, and he or she needs to make the initial approach to one or more of them. It may take some time to find a barrister who is both suitable and free at the right time to represent you.

Let solicitors and barristers know from the start if you intend to defend yourself in court. They may well try to talk you out of it, warning you of the dire consequences of persisting in such folly. In some cases they could be right! This is something you have to decide for yourself after considering everything they say. But don't be brow-beaten into acting against your own considered judgement.

If the barristers and solicitors in the course of a meeting make what seems a strong case for representing you at the trial and are pressing for an immediate decision, tell them you will let them know in a few days time, when you have had a chance to weight up all the arguments. The lawyers get paid for any work done, so there is no reason for them to take umbrage provided you keep them informed of your intentions.

### **Doing your research**

Whether or not you are working with lawyers before the trial, do as much research as

possible of your own and start as soon as you can. You may have experience of conducting research through your work – for example, teaching, social work, business or trade union management – or study. If you don't have this experience, don't be put off by the term “research”, or think that you have to be a learned academic to do it. Almost everybody is involved in research some of the time: reading articles, listening to radio programmes or watching television documentaries, to learn more about a topic that interests them.

If you have no special knowledge of the law, research on conducting your own defence starts at this basic level. Some of the essential books<sup>13</sup> are readily available in the public libraries of cities and larger towns, often in the reference section. If a particular law book is not in stock, you can order it through the inter-libraries loan scheme. It may be worth buying one or two books specially written for the layperson. Some student law books are simply and clearly written.

Don't be put off by the size of the law books, or the number of volumes in a law library. You are not doing a law degree, just looking into the particular area of the law that is applicable to your case. Essentially you need information about two areas: the offence with which you have been charged - including possible defences - and the court procedures.

You could start with some of the books written specifically for the lay reader on various aspects of the law and court procedure.

- Tom Wainwright, Anna Morris, Katherine Craig and Owen Greenhall *The Protest Handbook*. This paperback provides useful information, possible defences and guidance on the law commonly used in protest situations.
- John Pritchard (Ed), *The New Penguin Guide to the Law*. This paperback is particularly recommended. Its chapter by John Wadham on criminal law provides a succinct guide to legal procedures and the rights of defendants.

<sup>13</sup> There are Publication details for all the books mentioned here in the *Books* section on page 108.

- John Wadham (Ed), *Your Rights: the Liberty Guide*. This is also worth getting hold of.
- Marcel Berlins and Clare Dyer, *The Law Machine* is a short and accessible book with much essential information
- Martin Cutts, *Making Sense of English in the Law* is another cheap and useful paperback, written with the aim of demystifying the language of the courts.

### **Criminal law**

- *Stone's Justices' Manual*, re-issued yearly, is the bible on matters of law and procedure in the magistrates' courts.
- *Archbold - Pleading, Evidence and Practice In Criminal Cases* is the corresponding work for the Crown Courts, for which supplements are regularly published.
- *Blackstone's Criminal Practice* is another standard work which is user-friendly in the way it is organised and laid out.

These three books are the authorities to which judges and lawyers themselves refer if questions of law or procedure arise in the course of a trial. You may have to pay a visit to a specialist law library, or the reference library in a town or city, to consult them.

There are also several standard works on criminal law which give the text of relevant statutes or define common law offences. Statute law is that enacted by parliamentary statute, and common law is that established solely by legal precedent - significant legal judgements in the courts.

- *Halsbury's Statutes of England and Wales* gives the full text (with notes) of all statutes passed up to the time of publication; Volume 12 (1994 reissue) deals with the criminal law.
- *Halsbury's Laws of England* covers both statute and common law.

However both of these are difficult to follow in places, especially the statutes with their endless cross-references to sections and subsections. Books which set out to clarify the laws, and explain their implications, are generally more accessible.

- J.C. Smith and Brian Hogan, *Criminal Law*, or
- Glanville Williams, *Textbook of Criminal Law* both discuss some general legal principles and possible defences to the various charges.
- *Current Law Monthly Digest* and the corresponding *Current Law Book* are worth checking at an early stage for recent judgements.

### **Case reports**

You will find fuller reports of many cases in these publications:

- *Weekly Law Reports* (WLR)
- *Criminal Appeal Reports* (Cr App Rep)
- *Appeal Cases* (AC)
- *All England Law Reports* (All ER)
- *Criminal Law Review* (Crim LR)

Summary reports can also be found in the law reports of the Times, Guardian, and Independent, and in the *Solicitor's Journal* (Sol Jo), and *Justice of the Peace* (JP).

Note the abbreviations given in brackets for these publications. This is how they are referred to in law books and reports. The standard way of referring to a case which has been reported is:

*Case Name*, [the year in which the report appeared], volume number, abbreviated publication title, page number for the start of the report.

For example, *R v Conway*, [1988] 3 WLR 1238; [1988] 3 All ER, 1025

This means the criminal case of *Regina versus Conway* is reported in volume 3 of *Weekly Law Reports* for 1988 starting on page 1238, and in volume 3 of All England Law Reports for 1988 starting on page 1025.<sup>14</sup> In criminal cases the Crown (*Rex or Regina*, often abbreviated to *R*) is the prosecuting authority. But sometimes criminal cases are listed for convenience simply in the name of the defendant. For example, *Rex v Bourne* is listed in many law books simply as *Bourne*.

Be aware of one possible source of confusion when you are tracking down cases: it used to be that if a case went to appeal, the order of the listing was reversed so that the defendant's name appeared first. For examples the original trial of Chandler and others in the Central Criminal Court (1962) is listed as *R v Chandler & others*, but the appeal is listed *Chandler v Director of Public Prosecutions*. Today, however, the practice is to retain the original order when the case goes to appeal.

If you are working with lawyers before the trial, they should be able to point out possible lines of defence and either research the relevant cases themselves or point you in the right direction. But be prepared to question and challenge the views they express. Even if a particular line of defence is open to objection on legal grounds, it may be still worth attempting to present it in court. In the Crown Court, it could swing the jury in your favour even if the judge has told them to ignore it. A speech or cross-examination may also be aimed at the wider public outside the court.

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<sup>14</sup> The year in which a case is reported in a law journal may be later than the year in which the trial or appeal occurred. The date always refers to the date of the report



## **Court procedure**

In addition to the two "bibles" - *Stone's Justices' Manual* and *Archbold* - there are several books which focus specifically on procedure.

- John Sprach (Ed), *Emmins on Criminal Procedure*, regularly revised, is a comprehensive but accessible book, dealing with procedure in both magistrates' and Crown Courts.
- Inigo Bing, *Criminal Procedure and Sentencing in the Magistrates' Court*, and
- Moiser and Phillips, *Practice and Procedure in Magistrates' Courts* focus on procedure in summary trials.

Until new editions are published, you need to read these bearing in mind the changes in procedure introduced by the Criminal Justice and Public Order Act.

## **Advocacy**

The following may be useful, especially if you have no experience of public speaking.

- David Napley, *The Technique of Persuasion* is a short primer on advocacy aimed at young barristers. It deals with the preparation of a case, court procedures, and the strategy and tactics of conducting a case.
- Greville Janner, *Janner's Complete Speechmaker* has some very useful hints on constructing and delivering a speech.

## **Doing research if you're in custody**

Conducting research is obviously more difficult if you have been remanded in custody, especially if you're held three to a cell designed to hold one person. You are entitled to receive books, though the number you are allowed to keep in your cell at any one time is normally restricted. Check the law section of the prison library for

books that may be of use. The quality of prison libraries varies, but some central prisons in major cities have a good selection.

It is even more important to engage solicitors and work with them before the trial. They can arrange legal conferences inside the prison where you can discuss the case with them in confidence, and with barristers if they have been engaged. Solicitors should also be able to see witnesses, take statements from them, and discuss with them the questions you intend to put to them and the issues that are likely to arise during cross-examination.

On the positive side, you cannot as a remand prisoner be made to work so there is no shortage of time to read and write. You are also entitled to visits from friends acting as advisers to discuss legal issues relevant to the case. This can be stimulating. It is an opportunity to bounce the ideas you have been working on off other people and it relieves the staleness that can come from constantly working, on your own.

### **Lining up witnesses**

Before the trial, visit your witnesses and take them through the questions you intend to ask them. Remember that witnesses – for either the prosecution or the defence - can give evidence only about events they themselves have seen or heard. They are not permitted to give hearsay evidence, that is, evidence based on accounts heard from other people. They cannot express personal opinions about the facts unless they are **expert witnesses**, such as forensic experts, doctors or other specialists who are allowed to comment on the significance of evidence within their area of expertise.

If there are any witnesses to an incident likely to lead to a trial, urge them to make notes straight away of what they have seen and heard. They are allowed to bring the "contemporaneous" notes into the witness box and to refer to them when they give evidence. The rule for all witnesses giving evidence in court - prosecution and defence witnesses, or defendants giving evidence on their own behalf - is that they are not allowed to bring any written material into the witness box except contemporaneous notes. Police officers, for instance, giving evidence, normally refer

to their notebooks which contain their account of events written up (or allegedly written up) immediately afterwards.

You are not allowed to ask your witnesses leading questions; that is, questions in a form that indicates the answer you want or expect. You can ask, for instance: "What occurred next?" but not "Did you then see the arresting officer kick me in the kidneys while I was lying helpless on the ground?" This rule applies equally to the prosecution when it is examining its witnesses. In cross-examination, however, each side can, and often does, ask leading questions.

Discuss in advance with your witnesses the kind of questions the prosecution might ask them in cross-examination, so that they have time to think about how to respond most effectively. Your aim is to ensure that witnesses give their evidence in a clear and confident manner and are not browbeaten or intimidated by prosecuting counsel. If your witnesses have never been to a court before, encourage them to spend an hour or two in the visitors' gallery so that they too can get the feel of the place.

Witnesses who are unwilling to attend and give evidence can be served with a witness summons - a court order which puts them under a legal obligation to testify. You can get the necessary form at the courts. However, a reluctant or **hostile witness** can prove a liability and their evidence may even play into the hands of the prosecution. Witness summonses should normally be issued only as a last resort and where you are sure that the witness has evidence crucial to your case – unless the witness needs or would prefer to receive a witness summons, for instance, in order to get time off work to attend the court. If there is some genuine problem that prevents a witnesses from attending, such as serious illness or absence abroad, he or she can sign a written statement and it may be possible for this to be read out in court.

### **Accepting uncontroversial prosecution evidence**

In Crown Court cases, the prosecution supplies the defence with a list of the witnesses it intends to call, and a copy of their statements. If you accept that the

evidence of any witnesses is true and decide you have no questions to ask them, you can inform the prosecution of this fact before the trial. Their statements can then form part of the evidence without their having to appear in court. This saves the court's time, and shows the judge that you are not interested in wasting it. Obviously, before you agree to this, you should go through the witnesses' statements very carefully to make quite sure there is nothing of importance you wish to challenge, and no points in your favour which, you could bring out during cross-examination.

### **Disclosure of documents**

The prosecution is under a general obligation to disclose all the evidence in its possession that could possibly be of assistance to the defence.<sup>15</sup> The prosecution must produce, in good time before the trial document, including all prosecution witness statements, the statements of other people the police have interviewed where these have a bearing on the case, and all relevant reports, letters, memoranda and so forth. If you have engaged a solicitor, these are sent directly to him or her to copy and pass on to you. Otherwise they are sent directly to you. If the prosecution fails to send the documents in good time for you to prepare your case, this could be grounds to request postponing the date of the trial.

Occasionally a dispute arises about such disclosure. The prosecution may argue that certain documents would not assist the defence and that their disclosure could harm innocent third parties. Sometimes, especially in trials of a political nature, the prosecution claims **Public Interest Immunity** for certain police or government documents. This claim may even be supported by **affidavits** (sworn statements) from government ministers - as happened in the famous 1992 case over arms sales to Iraq by the British engineering firm Matrix-Churchill.

You can challenge the prosecution's decision to withhold documents. If your case is to be heard in the magistrates' court, you apply to the magistrates' court for a hearing, and if you are turned down, you can seek a judicial review in the High Court.

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<sup>15</sup> The current duty of the prosecution to disclose may be restricted and linked to disclosure by the defence. This is not likely to take effect until May 1997.

Alternatively, if your case is to be heard in the Crown Court, you can insist on a pre-trial hearing of the issue. Because of the complexity of the legal argument that can arise, it is usually advantageous, and may prove crucial, to have a barrister represent you for this challenge, even if you intend to defend yourself during the trial itself.

### **Scenarios and role play of the trial**

Prepare a scenario of the forthcoming trial, including "stage directions" detailing procedure, and a list of the main questions you intend to put to the prosecution and defence witnesses. It can also be valuable and entertaining to role-play the event, or key elements of it, with friends, including friends with legal experience, if possible. If your own legal advisers have the time and inclination to run through some key moments, so much the better. They, or any friend with a good knowledge of the law, could take on the role of the prosecuting advocate, or of the magistrate or judge, while you rehearse the cross-examination of a prosecution witness, or a closing speech. The friend's task is to interrupt you when they anticipate there would be an objection during the trial itself. You may still decide to put the same question, or make the same argument, during the trial, but you are more alert to the possible objections.

Role reversal is a useful device within role play. You take the part of a prosecution witness and have a friend put your prepared questions. If you can think yourself into the new role, this is a valuable exercise and may expose weaknesses in your proposed line of questioning or your final speech. You could also take on the role of prosecuting counsel for a session or two, though in general it is helpful to have people with legal knowledge and experience do this. If you have a co-defendant – a person appearing with you on the same charge - he or she can take turns in playing different roles. If you cannot set up a role play it is still worth rehearsing aloud your draft closing speech, preferably in front of an audience.

# Preparing for court

## **Familiarising yourself with the court**

There is nothing like a visit to the courts in session to familiarise yourself with their atmosphere and procedures. If you are on bail, or have been summonsed, it is worth paying several such visits, preferably to the court at which you are due to be tried. The ritual and architecture - especially in the Crown Courts - are designed to impress and intimidate. But familiarity breeds confidence. The more you understand what is going on and why, the less intimidating it all becomes. It is useful, too, to get precise details from your lawyer of the order in which things happen - including the behind-the-scenes procedures, such as the surrender of bail, which a visit to the court will not reveal. Put the information down in writing rather than trust your memory.

It is difficult to find out in advance which judge or magistrate will be hearing your case, and it may be even more difficult to learn who will be presiding on any given day in a lay magistrates' court. Your lawyers, if you are working with a team before the trial, may be able to help in finding out who will be hearing your case and some information about them. If you can find this out, try to see the magistrates or judge in action in other cases. Find out as much as you can about their background, personality and interests. Who's Who is a useful source of information. So too are local libraries and newspaper offices in the case of lay magistrates. You may be able to use the knowledge to good effect in your presentation. Competent lawyers use this kind of information all the time and have the advantage of knowing the courts and the people involved in them.

It can be still more important to learn what you can about the prosecuting solicitors or barristers. Your solicitor, if you have one, can help. Or you can ask the Crown Prosecution Service who is going to present their case in court, although they may not know until just before the trial. Again, try to see the prosecuting solicitors or barristers in action in other cases so that you have an idea of how they operate, and what you are up against. Note how they conduct cross-examinations, since you will be at the receiving end of their technique if you go into the witness box during the trial.

If you have been remanded in custody you obviously have much less freedom of action. You don't have the opportunity to visit the courts - except when you are taken there for remand or transfer proceedings. It is therefore particularly important to read up about the court procedure and make notes on it, and ask your lawyers if things are not clear.

### **Getting your papers in order**

A prerequisite of conducting an effective defence is to have all papers and references in good order. The papers include notes on your own speeches, questions prepared for prosecution witnesses, and questions prepared for the examination in chief of your own witnesses.

If you are planning to make a legal submission - that is, to present an argument to the court on a matter of law - you need three copies of any law reports to which you will be referring: one for yourself, one for the magistrate or judge and one for the prosecuting advocate. The normal procedure is for you or your **McKenzie friend** to hand a copy of the appropriate report to the magistrate or judge when you mention it in your presentation. The role of the McKenzie friend is discussed on page 67.

Write down the main questions to put to both defence and prosecution witnesses - preferably with bold headings for easy reference. Keep your questions short and simple. A long question may be open to the objection that it contains several questions rolled up in one. Avoid making your list of questions too elaborate - for

instance, don't try to set out in advance all the additional follow-up questions you might ask in a cross-examination depending on how earlier questions might have been answered. Aim for simplicity and ease of reference.

In practice it is more difficult to get witness statements in advance in magistrates' courts. It is therefore easier to prepare the questions in a Crown Court case, where you are given in advance a copy of witnesses' statements; or in triable either way offences in magistrates' courts where you've insisted on seeing the evidence before opting for a summary trial. But even in other magistrates' court trials, where you don't always see the witnesses' statements in advance, you usually have a fair idea of the issues that are likely to arise.

Be aware that the pattern of questions and answers rarely goes exactly as anticipated and you have to look out for unexpected openings that strengthen your case. The headings should help to bolster your confidence and ensure that key points are not overlooked.

You need notes or prompt cards for opening and closing speeches - even the most experienced barristers have them. One well-established technique amongst public speakers is to have a series of cards with a brief heading or two on each. Alternatively, you can write the notes large on separate pages in a ring-binder file or notebook. If you are an experienced public speaker, you will already have a method that suits you. You can, of course, write the speech out in full and read it in the court. That too is all right, though there are techniques for delivering a written speech effectively - see page 72.

### **Conducting prior dealings with the prosecution**

When a defendant is represented in a Crown Court case, each side usually informs the other of any legal issues it intends to raise. But, as an unrepresented defendant, you don't have to do this, and probably shouldn't. The prosecution advocate, after all, knows the ropes, and should be able to anticipate any defences you may want to put forward.



But in two instances you are obliged to give information to the prosecution before the trial:

- In a Crown Court trial only, where you are relying on an alibi defence. The procedure is that you serve an **alibi notice** on the prosecution within seven days of the magistrates' decision to transfer the case to the Crown Court. The notice sets out details of where you claim to have been at the relevant time and lists the witnesses you intend to call in support of your claim. If you produce an alibi defence at the last moment in a magistrates' court, the prosecution is likely to apply for the case to be adjourned.
- At either a summary or Crown Court trial, where you are producing an expert witness. You need to give the other side the details of what the expert is going to say in the witness box - that is, their statement.

You should be aware, too, that in May 1995 the Home Secretary announced his intention of introducing new legislation that would oblige defendants to disclose their defence to the prosecution before the trial.

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# Strategy and tactics in court

### **General behaviour in court**

Your behaviour affects the way magistrates, jurors, judges, court officials and the press and public view you and respond to you. Where the evidence is finely balanced, it may even affect the outcome of the trial. In general, remain polite and reasonable. This does not mean you can't express anger, for example during the cross-examination of a witness who is evidently vindictive or lying. But it is crucial to remain in control. On the whole, humour and irony are more effective than direct angry attacks.

Judges and magistrates need to be treated with special care – they have after all a sting in their tail if the case goes badly. Some professional lawyers bow and scrape to magistrates and judges, and feel obliged to laugh at their every joke or witticism, however feeble. Avoid this, but don't purposely antagonise them either - at least not without good reason! Try to remain calm even when you feel they are being unfair.

Use the correct forms of address. Magistrates are addressed as "Sir" or "Madam". Judges in Crown Courts, other than the Central Criminal Court, are addressed as "Your Honour". High Court judges sitting in the Crown Court, and all judges sitting in the Central Criminal Court, are referred to as "My Lord" or "My Lady". It makes sense to use these forms, though without larding them over every sentence.

Speak slowly and clearly. Remember it is not only the magistrates, or the judge and jury who need to hear you, but the-court stenographer, the press and the people in the public gallery. A touch of humour during speeches and cross-examinations can be particularly effective, especially in the Crown Court, if you can get the jurors, and even a prosecution witness, laughing with you.

Don't be hurried or harried by the judge or magistrate. It is perfectly all right to stop in the middle of a presentation or cross-examination to look through your notes, or to consult co-defendants, legal advisers or McKenzie friends. You can say "excuse me" to the magistrate, or to the judge and jury in the Crown Court, and nobody will object. It is a good idea, too, to have a glass of water to hand. The court usher normally supplies this. You can sip it not only if experiencing a nervous dry mouth but also as a delaying device while collecting your thoughts.

Don't let anyone blind you with Latin and legal jargon. If there is a word or phrase you don't understand, make a note of it and ask the magistrate or judge to explain it at a suitable moment.

Avoid time-wasting tactics, such as long, repetitive speeches, and cross-examinations to no particular purpose. Points made briefly are more effective though repetition is sometimes necessary to drive home a key point. If a judge is satisfied that in general the case is moving ahead well, you are more likely to get away with, for example, making a point that he or she has ruled out of order.

In Crown Court cases, the judge asks you before the beginning of the trial approximately how many days your defence is likely to take. As a general rule, the shorter your estimate, the better your chances of being allowed to stray outside strict legal bounds in your defence. But you must allow yourself sufficient time to present your case adequately.

If the prosecuting advocate gets some fact wrong during the opening speech, it is a good tactic to interrupt and offer "to assist" him or her. It will boost your confidence and may undermine or at least dent that of the prosecutor. But it is not a good idea to do this more than once, and in general don't get involved in a point-scoring contest.

## **The McKenzie friend**

An appeal court ruling in 1970 (*McKenzie vs McKenzie*) established that unrepresented litigants (and unrepresented litigants in the civil courts) could bring a friend into court to help and advise. McKenzie friends need not be legally qualified, though they may be.

There continued to be some doubt following the judgement in the McKenzie case as to whether unrepresented defendants had the right to insist on having a friend present or whether this was at the discretion of the court. However, a more recent Appeal Court decision in 1991 arising out of a poll tax case (*Regina v Leicester City ex parte Barrow*) confirmed that unrepresented litigants - and by extension, defendants in criminal cases - are entitled as of right to have a friend in court to assist them.<sup>16</sup>

An adviser of this kind is always valuable and can sometimes make the difference between success and failure. He or she can take notes and look out for inconsistencies in the replies of prosecution witnesses. The McKenzie friend can discreetly interrupt you during the cross-examination of a witness to point out any contradictions in the evidence being given and perhaps suggest another line of questioning. But he or she is not allowed to conduct a cross-examination or to address the court on your behalf as a defending advocate would do. Your solicitor can be a McKenzie friend, but it may be difficult to get legal aid for this although it is possible.

Always ask permission to have a McKenzie Friend as soon as you can in court, and do so at each hearing. It is at the judge or magistrates' discretion at each appearance in court. If necessary you could argue that you should be given permission under article 6 of the European Convention on Human Rights, which guarantees a right to a fair trial.

## **During the presentation of the prosecution case**

Make notes of any statements by the prosecuting advocate or the prosecution

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<sup>16</sup> *Independent*, Law Report, 7 August 1991. Although the case arose out of a civil action in the magistrates' courts, the rights it confirmed for litigants (parties in a civil action) apply also to defendants in both magistrates' courts and Crown Court trials.

witnesses that you wish to challenge. Listen carefully to what prosecution witnesses say during their examination by the prosecuting advocate, and take notes. If you have had the witnesses' statements in advance, be alert to any discrepancies between the statements and the evidence given in court. Your McKenzie friend can be particularly valuable here as an additional note-taker. You can spend two or three minutes consulting with him or her at the end of the examination of a witness by the prosecuting advocate, before you begin your cross-examination - it is in order for you to ask for a few minutes' adjournment to get your thoughts and questions in order following the examination in chief, and this is normally granted. You may need to add further questions to your prepared list. You must challenge any evidence by prosecution witnesses that conflicts with your version of events or the evidence you intend to give if you take the witness stand.

### **Should you take the witness stand?**

The magistrates, or the jury in the Crown Court, are likely to be strongly influenced in your favour if you take the witness stand, make a convincing statement of your version of events, and stand up well to cross-examination by the prosecuting advocate. Moreover, they can draw adverse inferences from a decision on your part not to testify and assume that your defence isn't true.

You have to make your final decision about whether to take the stand after the prosecution witnesses have given evidence - but you should give it some serious thought well before then.

Consider the kind of questions the prosecution may ask, and how you will respond. Will the magistrates or Judge find your answers convincing? How easily could the prosecution undermine your credibility by a particular line of questioning. Prosecutors are not all brilliant, but they are experienced in the ploys and techniques of cross-examination.

Another consideration is how well the prosecution witnesses have stood up under cross-examination. If you have forced some damaging admissions out of them, and

undermined the prosecution case, you may decide at that point that there is no need to take the witness stand or even to call any witnesses. Your final speech, in that case, would concentrate on the evidence you have extracted from the prosecution witnesses and the contradictions and weaknesses of the Crown case.

Still, it is advisable to give evidence on your own behalf unless there are really strong reasons - positive or negative - for not doing so. If the case hinges on facts alleged by the prosecution and supported by evidence it has produced, then your simple denial of them in your closing speech is not a strong or effective rejoinder. It is not *evidence* in the legal sense of the term, whereas your testimony, or that of any witnesses you call, *is* evidence. Without evidence, the judge can tell the jury that the prosecution evidence stands uncontradicted. Such comments could be very damaging, and even swing the jury against you.

Facing cross-examination is always something of an ordeal, but if you have prepared yourself well you need not feel intimidated. Give yourself time, and answer as clearly, firmly and calmly as you can. In this way you are likely to impress the jurors and retain their sympathy. Remember to answer the question actually put to you and not what you think may lie behind it. Remember, too, that the prosecuting counsel risks losing the jury's sympathy if he or she is too aggressive or bullying. If you come well out of the ordeal of cross-examination, your prospects can be improved immeasurably.

### **Examining and cross-examining witnesses**

It is sensible to work from notes when you examine your witnesses or cross-examine those of the prosecution. But be careful not to bury your head in your notes all the time. Look at the witness and make eye contact where possible. If you have gone through the questions with your own witnesses, their examination in chief should present no problem. You may find it useful to put a tick against your written questions as you ask them, so that you can check before concluding an examination or cross-examination that you haven't left out something important. Remember you

can call witnesses to your character as well as to the facts.

Exceptionally, you might find that one of your witnesses has changed his or her story and adopts a hostile attitude towards you. If this happens, you can ask the magistrate or judge for permission to treat the witness as hostile. If this is accepted, you are then entitled to cross-examine and put leading questions. But this situation is unlikely to arise where you have seen a witness beforehand and briefed him or her about the questions you intend to ask. It is more likely that witnesses will prove hostile when you have forced them to come to court by issuing a witness summons - which is one good reason for not doing so unless it is essential.

As a general rule, you should challenge every statement that you disagree with made by a prosecution witness - assuming that it has a significant bearing on the case. If you fail to do this, the magistrate or jury is likely to accept the statement as correct. However, if a prosecution witness falters and concedes a key point in your favour, it is sometimes worth cutting short the cross-examination with a curt "No further questions", in the best Perry Mason style. This can be an effective way of dramatising the point in the minds of the jury. There is a particularly strong case for doing this if the witness has said something which thoroughly undermines his or her credibility, in which case it may no longer be important to challenge every particular statement he or she has made. Always try to give your cross-examination a crisp ending.

If a prosecution witness is simply establishing facts that you accept as true, there is often no need to cross-examine, but sometimes it may still be to your advantage to do so in order to draw out aspects of the evidence that are helpful to you. For instance you might want to establish or underline the fact that a witness had noted that you acted non-violently during a political demonstration at which you had been arrested.

Finally, be careful not to be unduly aggressive in dealing with prosecution witnesses. This is particularly important where it appears that they are ordinary decent people who happened to have witnessed a particular event or are in possession of some facts relevant to the case. Obviously there are occasions when you need to be tough - if a witness is lying or being evasive. But such occasions need to be carefully

judged, and generally you want to show the magistrate or jury that you are a patient and reasonable person.

### **Legal argument**

Normally, in the Crown Court, the jury leaves the courtroom during legal argument. This is the discussion of points of law, such as whether certain evidence should be allowed, or whether the defendant is entitled to put forward a particular defence.

You can, if you wish, ask the judge to allow the jury to remain, and it is within his or her power to let them. It is sometimes an advantage to have the jury present, for instance to hear your argument for a line of defence which the prosecution or judge has challenged. Even if the judge finds against you on the point of law, the jury may still be influenced by what you have said. On the other hand if the issue is whether certain prosecution evidence should be allowed, you clearly do not want the jurors present while the matter is discussed - and nor would any competent judge allow them to be.

In a summary trial, if the magistrates rule out a particular line of defence on legal grounds, there is little point in pursuing it further, since it is they who decide on your guilt or innocence. You can tell the court that you intend to appeal against the decision (though don't expect this to have much impact), and in "political" cases especially, you may want to state in a crisp sentence or two, for the benefit of the journalists and public, why you think the judgement is unreasonable. To tell the court that you are going to appeal, you stand up and say so when the magistrate rules against you. Then, when the trial is over you get the necessary appeal form from the court, or from the legal officer in prison if that's where you've been sent.

In the Crown Court, you may find opportunities to smuggle the argument back in during cross-examination, or to raise it again explicitly in the final speech. It is often worth doing both if you can get away with it, in the hope of persuading the jury that it is relevant and that the judge's ruling is unreasonable. However, don't return repeatedly to a line of argument or questioning a judge has ruled inadmissible. This



runs the risk of trying not only the judge's patience but also that of the jury - something you want to avoid at all costs.

### **Making the opening and closing speeches**

You are entitled to make an opening speech in the Crown Court if you are calling at least one defence witness, other than a character witness. The purpose of an opening speech is not to win the case there and then but to indicate to the jury the line of defence you intend to present, to outline the evidence to come, and in short to inform the jurors what to look for in the defence case.

The opening speech can provide a valuable opportunity for you to summarise your side of the story, with your notes to assist you. Remember that if you go into the witness box you cannot take any written material with you, apart from contemporaneous notes. Thus, unless you have a co-defendant to take you through your evidence, you have no prompts or reminders about the points you need to make in the witness box. If you do not intend to give evidence on your own behalf, the opening speech provides you with an alternative though less effective means of creating an initial favourable impression on the jury. However, whether or not you intend to take the witness stand, you may decide against an opening speech, and save your energies for the closing speech when your witnesses - if there are any - have given their evidence. Clearly, if you decide neither to call witnesses nor to give evidence yourself, you can only make a closing speech.

You cannot introduce any new evidence during the closing speech. But it does give you a final chance to state or re-state moral and political arguments, if you're basing your defence on them. Provided magistrates and judges are not confronted with a long, rambling discourse, they tend to be tolerant about the re-introduction of "inadmissible" arguments by unrepresented defendants at this stage, if only because the case is nearing its conclusion and they are about to have the last word.

It is best to be brief in your closing speech. If you speak for too long you are liable to bore the jurors, or even confuse them if you bury essential points under a mountain

of detail. Twenty or 30 minutes is a good maximum time to aim for - though if you need more time to cover the essential points, take it. If you can lighten your speech with some humour, do so. It is sometimes worth repeating a sentence or phrase to make sure the jury has grasped its significance. The crucial points of your defence - the points on which your case stands or falls - can be put in at the beginning, repeated half-way through, and said yet again (with feeling) at the end. You need to structure the speech to highlight the essential points and retain the interest of the listeners.

You can use prompt cards for your speech, or have key points on separate pages of a ring binder folder or exercise book. If you decide to write out the speech in full and read it from the dock, you must vary the intonation, look up after every sentence or two to make eye contact with members of the jury, and pause at appropriate moments to allow time for a point to sink in and take effect. You must *deliver* the speech, rather than simply read it.

## **Verdicts**

### **If you are found guilty**

You can make a short statement in mitigation and call any character witness you have lined up. Or you may decide to maintain a dignified silence. A plea in mitigation should not take the form of an apology, if you pleaded not guilty, since this would amount to an admission of guilt. However, you can explain what the consequences would be for you and your family if you were fined heavily or sent to prison. If you are fined, don't forget to ask for time to pay if you need it. Character witnesses, in addition to saying what a splendid person you are, can also give evidence as to the effect imprisonment or a heavy fine would have on your family or career.

### **If you pleaded guilty**

If you have pleaded guilty from the start, it is normally both appropriate and advisable to apologise. (The exception is in some "political" trials.) You are in a better position to make an apology if you have pleaded guilty than if you have been

convicted after denying the charge and fighting the case. But don't grovel. Maintain your dignity and self-respect.

**If you are acquitted**

In the magistrates' court, thank the magistrates for their patience in hearing you out. In the Crown Court, thank the jurors - and invite them all to your celebration party!

You should also think about whether you could sue the police for assault, wrongful arrest, false imprisonment, or malicious prosecution. However the simple fact that you have been acquitted does not mean that you are entitled to compensation. For this, you have to show that the police have acted unlawfully. Take legal advice before starting any proceedings. You can also find information in J. Harrison and S. Cragg, *Police Misconduct*, Legal Action Group, 1991, and R. Clayton and H. Tomlinson, *Actions Against the Police*, Sweet & Maxwell, 1991.

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## Appeals

### **The appeals system**

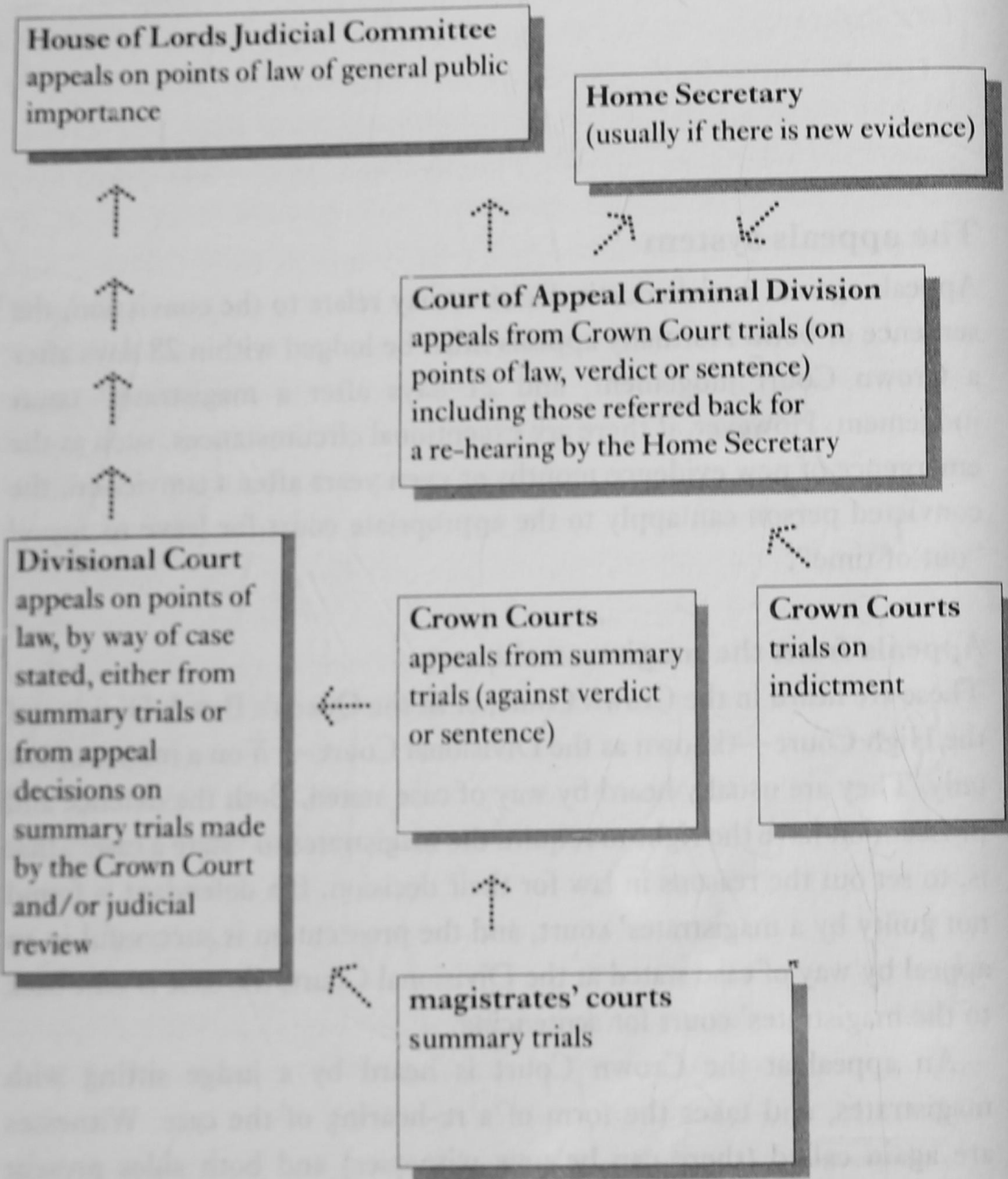
Appeals against a trial court's decision may relate to the conviction, the sentence or both. Normally appeals must be lodged within 28 days after a Crown Court judgement, and 21 days after a magistrates' court judgement. However, if there are exceptional circumstances, such as the emergence of new evidence months or even years after a conviction, the convicted person can apply to the appropriate court for leave to appeal "out of time".

### **Appeals from the magistrates' courts**

These are heard in the Crown Court, or in the Queen's Bench Division of the high Court - known as the Divisional Court - if on a matter of law only. They are usually heard by way of case stated. Both the defence and prosecution have the right to require the magistrates to "state a case"; that is, to set out the reasons in law for their decision. If a defendant is found not guilty by a magistrates' court, and the prosecution is successful in an appeal by way of case stated at the Divisional Court, the case is sent back to the magistrates' court for sentencing.

An appeal at the Crown Court is heard by a judge sitting with magistrates, and takes the form of a re-hearing of the case. Witnesses are again called (there can be new witnesses) and both sides present their evidence. There is no jury when the Crown Court sits as a court of appeal, and the decision on the case is made by a judge sitting with magistrates.

## The criminal courts appeals system



## **Appeals from the Crown Court**

Appeals against conviction, sentence or both following a trial on indictment in the Crown Court are heard in the Court of Appeal Criminal Division, by three judges, one of whom acts as the presiding judge.

Appeals from the Crown Court can only go ahead if leave to appeal is granted. A single judge decides whether to grant leave, without a hearing. However, if the application is turned down, it can be renewed before three Judges, who meet to consider the application. Legal aid is usually only given if leave to appeal has been granted by a single judge.

There is no re-run of the original trial in appeals from Crown Court trials. If the appeal is against conviction, appellants or their representatives, seek to show that there was some fault in the way the original trial was conducted - for instance, a misdirection by the judge, or a refusal on his or her part to allow relevant evidence to be heard – or that new evidence has subsequently come to light which might have altered the decision of the jury. The Appeal Court has the power to quash a Conviction and also to refer the case back to the Crown Court for re-trial. They are most likely to refer it back when there is significant new evidence. Appeal Court decisions on points of law set precedents which must afterwards be followed in the courts, unless they are overturned by a later Appeal Court decision or by the judicial committee in the House of Lords.

Once appeal rights have been exhausted for cases involving a conviction in the Crown Court, an appellant can petition the Home Secretary for a referral back to the Court of Appeal. This is the procedure usually followed in cases where fresh evidence is discovered. It was used, for instance, in the case of the Birmingham Six - six men wrongfully convicted of terrorist offences in 1975, whose convictions were finally quashed by the Appeal Court in March 1991. 'The government is about to set up a new body, the Criminal Cases Review Commission, to take over from the Home Secretary this role of reviewing miscarriages of justice. It is unlikely that this system

will be working until at least 1996.

If the appeal is against the sentence, the appellant seeks to show that the punishment is "unduly harsh". The prosecution has no right of appeal against a jury's verdict, but it can appeal against sentence if it thinks the punishment is "unduly lenient". If they do so, the Court of Appeal has the power to increase the sentence. The prosecution can go to the Court of Appeal to seek clarification on a point of law, even when a defendant has been acquitted. But the Appeal Court's ruling on this cannot reverse the acquittal of the defendant.

Where the Court of Appeal, or the Divisional Court acting in its capacity as a court of appeal, certifies that a case raises an issue of public importance, it goes for final adjudication to the judicial committee of the House of Lords. This is the highest court of appeal in the country, and the final arbiter concerning the interpretation of laws.

### **Judicial Review**

The Divisional Court may be involved in criminal cases in one other situation. It can be asked to conduct a Judicial Review of a ruling by the magistrates' court on the propriety of the legal process itself. For example, a defendant might have sought a ruling by the magistrates that a long delay in bringing the case to court prejudiced his or her defence and amounted to an abuse of the Judicial process. The magistrates could make this ruling or not, and depending on the magistrates' decision, either the Crown or the defendant could take the case to the Divisional Court for Judicial review. They must do this within three months of the court's ruling. A Judicial Review normally involves complex legal arguments and unless you have become a specialist in the field, you should let barristers handle the case at this stage.

### **The European Commission and European Court of Human Rights**

Exceptionally it is possible to seek redress by taking your case to the European Commission of Human Rights. It can adjudicate on the issue or refer it to the European Court of Human Rights. You might be able to do this where there are grounds for believing that the legal procedure employed, or the law itself which you

have been convicted of breaking, is in breach of the European Convention on Human Rights.

The process of appealing to the Commission or European Court is long and complicated, usually taking years from start to finish. You almost certainly need legal advice to take a case to the European Commission, and probably representation at the hearings if the initial application is successful. You can find out further details on taking action at this level in *The New Penguin Guide to the Law* and in John Wadham (Ed), *Your Rights: the Liberty Guide*. The address of the European Commission is listed at the back of this guide.

### **Conducting your own case in the Appeal Courts**

The first step, if you are not represented, is to get hold of an appeal form. If you have not been sent to prison, you can get this from the court at the end of the trial. If you have been sentenced to prison, you can get it from the Legal Aid Officer there. Make sure you return the form within 21 days if you have been sentenced in the magistrates' court, or 28 days if you have been sentenced in the Crown Court. Note that if you are appealing against the conviction, this means 28 days from the conviction date, not the sentencing date. If you can get help from a solicitor in completing the form, do so.

If you have been convicted in the magistrates' court, it usually a better tactic to lodge an appeal in the first instance with the Crown Court where matters of fact as well as of law can be considered. If this fails, you can require the Crown Court to state a case on a point of law and the appeal by way of case stated will go before the Divisional Court.

Appeals on points of law often involve complicated legal arguments about previous cases. For this reason it usually makes sense to be represented on appeal. But not all appeals are complex. Some are based on challenging a straightforward misdirection by the judge and with good preparation you may be perfectly competent to argue the case for yourself. Appeals on the basis of new evidence may also be



relatively straightforward. However, you have to convince the appeal judges not simply that there is new evidence but that it is of a kind that might have led a magistrate or jury to a different conclusion. Neither is it sufficient to show that the magistrate or judge made some error in conducting the trial; you have to convince the appeal judges that the errors could have affected the decision of the court.

Appeals against sentence are more straightforward than appeals on points of law. The considerations here, when deciding whether or not to conduct your own case, are essentially tactical. Is it more convincing for you in person to argue that the sentence was too harsh – or is this likely to come better from a barrister? It may be less awkward and embarrassing for someone else to say that you have been punished too severely. If you speak on your own behalf, the appeal judges may be inclined to respond: “You should have thought of the consequences before you broke the law”.

## Running a “political” defence

### **What is a “political” defence?**

What kind of defence are we talking about here? Essentially, it is not based on a denial of the facts alleged by the prosecution but on the contention that your actions were justified morally and – at least in some instances – also in law. It may also imply that if you had not acted as you did, your inaction would itself have amounted to a criminal abdication of your responsibility as a human being and a citizen. Some of the prosecution's allegations may, of course, also be disputed. A demonstrator, for instance, might agree that he or she cut down part of a perimeter fence and occupied a missile base – and that this action was justified – but deny an accusation of assault against police officers or service personnel. Cases in which such a defence may be appropriate can arise in a number of ways.

### **Civil disobedience**

First, they can result from campaigns of civil disobedience – that is the deliberate defiance of laws or regulations out of moral and political conviction. Within this category we can distinguish between campaigns in which the laws defied are considered intrinsically unjust and the objective is to have them repealed, and cases in which campaigners break “morally neutral” laws, such as those aimed at protecting public property or preventing the obstruction of the highway, in an effort to secure changes in public policy or the ending of some social or political abuse.

Gandhi's major campaigns in South Africa and India come into the first group, as

do more recent campaigns against apartheid laws in South Africa, and the anti-Poll Tax campaign in Britain. Many of the sit-downs, occupations and invasions of sites and bases by sections of the peace and environmental movements over recent decades fall within the second group. Here, generally speaking, the campaigners argue not that laws against obstruction are in themselves unjust and should be scrapped, but that it is right to break them to prevent a greater evil, such as preparations for nuclear war, or the wholesale destruction of the environment. Sometimes the validity of the laws and regulations is also challenged: for instance, the byelaws prohibiting access to military bases, or the restrictions on protest in the Criminal Justice and Public Order Act 1994. Even in that case, however, the central objective of the campaign remains a political one, namely to secure changes in the policy of the government, or, in some instances, of a semi-public or private organisation. Not all prosecutions arising out of political demonstrations call for a political or moral style of defence. Some turn simply on the facts and may be little different from any other criminal trial. This is likely to be the case where a demonstration was planned as a perfectly constitutional and legal protest but ended up as a confrontation between police and demonstrators.

### **Ways of life**

Cases also arise from people transgressing the law because their way of life or pattern of behaviour - which they are convinced they are fully entitled to follow - clashes with the law. Young gay men under 18 who have intercourse with a partner, in contravention of the law on the age of consent between homosexuals, are not defying the law as a form of organised political protest, but living their lives as they feel they are entitled to do.

The same is true of travellers, both traditional and "new age". Even before the Criminal Justice and Public Order Act, many travellers fell foul of restrictive laws which infringed their civil liberties and human rights. The new Act has made matters far worse. It rescinds the Caravans Act 1968 - which obliged local authorities to

provide sites for travellers - and increases the powers of the local authorities to order the removal of vehicles from any land forming part of the highway, from unoccupied land, or from any occupied land without the consent of the occupier. It also empowers the police to order suspected trespassers off private land in a variety of circumstances, gives them authority to seize vehicles whose owners have failed to remove them after being directed to do so, or who have returned to the site within three months of the direction being given.<sup>17</sup>

### **Individual conscience**

Some people feel compelled by special circumstances to break a particular law, but as an individual decision not as part of a public campaign. An example here is the case of Dr Anne Biezanek, a retired general practitioner who was tried at Liverpool Crown Court in October 1993 for supplying cannabis for medicinal purposes to her chronically sick daughter. She was acquitted after her counsel argued a defence of "necessity" under common law before the court.<sup>18</sup>

### **Should you defend yourself in a political case?**

There are some good reasons for conducting your own defence in political cases. As in other cases, as a layperson you will be given greater latitude than any solicitor or barrister in introducing arguments that are not strictly relevant in law - or which the magistrate or judge does not consider to be relevant. If your case goes to the Crown Court and the judge rules your defence inadmissible, you are better placed than a professional lawyer to circumvent the ruling and try to convince the jury to exercise their right to acquit you.

There are other considerations which strengthen the argument for defending yourself in political cases. The business of examining and cross-examining witnesses is less demanding if the central facts are not in dispute. The cross-examination may still be important in building up a persuasive case to convince a magistrate or jury,

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<sup>17</sup> Sections 61, 62, 67 and 77 to 80, Criminal Justice and Public Order Act 1994

<sup>18</sup> *Guardian*, "Doctor cleared of supplying cannabis", 20 October 1993.

but the success or failure of your defence does not hinge entirely on the credibility of prosecution and defence witnesses. You have a greater opportunity of impressing a jury - or just possibly a magistrate - if you speak for yourself and develop your own argument. This can be especially important when the outcome of the case depends on convincing the court that you honestly hold the beliefs which led you to take a certain course of action.

But in general, magistrates' courts have no interest in hearing your moral and political arguments. They often respond with bored cynicism and try to shut you up at the earliest possible moment. Don't go expecting a sympathetic hearing; count it as a bonus if you receive one. Magistrates are likely to be particularly unsympathetic where there is an ongoing campaign with a number of similar cases. But you can attempt to reach out to a wider audience outside the court through what you say and how you act. Judges in the Crown Court are no more likely to be sympathetic than magistrates, but at least it is the jury here that has the final word and they may be more open-minded.

Sometimes legal representation in political trials can be a distinct handicap. Your priorities as a political campaigner can be at odds with those of your legal representative. As a matter of habit and training, the goal is to secure an acquittal, and, where this cannot be done, the lightest possible sentence. In pursuit of these objectives, he or she may put arguments which undercut your moral and political stance and damage the cause that brought you to court in the first place. It is therefore important, if you are represented, to come to a clear understanding with your advocate about the arguments he or she intends to put forward.

Political cases, however, can raise complex issues of far-reaching legal and constitutional significance. Where this is so, and where there is a chance that an important legal precedent may be set, there is a strong argument for engaging the top barristers in the field, especially if the case goes to the Court of Appeal or the House of Lords. Some individuals who have become adept at defending themselves in trials and appeals decide to be represented when a legal issue of general importance is at

stake. Frequently, for this reason, where there are a number of co-defendants in a political trial, some defend themselves whilst the others are represented.

Not every solicitor or barrister is willing to take part in a double act of this kind. But if one won't, another will - and those that are too stuffy and self-important to appear alongside an amateur are probably not right for this type of case.

## **Civil disobedience: possible charges and penalties<sup>19</sup>**

### **Criminal charges**

Demonstrations involving civil disobedience - such as sit-downs, cutting perimeter fences round bases and airfields and obstructing the building of motorways or of nuclear power plants - can give rise to a variety of charges. The charges arising out of demonstrations where there has been no violence and no damage to property tend not to be very serious and the overwhelming majority of cases are dealt with in the magistrates' courts. In the past, some of the most common charges have been obstructing the highway and obstructing a constable in the execution of his duty. These are criminal offences, but relatively trivial. The penalty if you are found guilty is likely to be a fine, possibly combined with an order to be bound over to keep the peace. If you refuse to pay the fine or to be bound over you can be sent to prison.

But now travellers, squatters, political protesters, and people attending open air raves or gatherings are likely to fall foul of the Criminal Justice and Public Order Act, or of earlier statutes which have been amended by it. As far as political protesters are concerned the new offence of "aggravated trespass" is probably the most relevant. This is defined under Section 68 of the Act as a trespass undertaken with the intention of intimidating people engaged in lawful activity so as to deter them from engaging in it, or of obstructing or disrupting that activity. Thus anti-roads protesters entering construction sites to protest against road building work are likely to be charged under this section; so too are hunt saboteurs (the primary targets of this legislation), or

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<sup>19</sup> Also see *The Protestors Handbook* by Wainwright, Morris, Craig and Greenhall – in the book list on page 108.

protesters occupying military installations.

Protesters could also find themselves facing a charge under new provisions of the Public Order Act 1986, introduced by the Criminal Justice and Public Order Act. These empower councils to prohibit "trespassory assemblies" for up to four days in a particular area. This seems to be aimed primarily at prohibiting events like the summer solstice gatherings on Salisbury Plain. However, trespassory assemblies are defined broadly and include any gathering of 20 or more people held without the owner's permission on land to which the public has no right of access or only limited right of access, if it is judged likely to "exceed the public's right of access" and may result in "a serious disruption to the life of the community" or damage to land, buildings or monuments in areas of historical, architectural, archaeological or scientific importance. Participation in a prohibited assembly carries the penalty of a fine, but organising one or inciting others to participate in one, carry a possible sentence of three months imprisonment, or a heavier fine, or both. The police have powers to stop and turn back people on their way to a prohibited trespassory assembly.

Civil disobedience campaigners may also face far more serious charges, ranging from criminal damage, or assault to incitement to disaffection, and breaches of the Official Secrets Act. Organisers of demonstrations have on occasions been charged with conspiracy or incitement to commit particular offences. Even if you are not an organiser as such but publicly urge others to commit acts of civil disobedience, you could face incitement charges.

It you have not previously taken part in an action involving civil disobedience, be sure, before you do, to find out what you could be letting yourself in for in terms of possible charges and penalties.<sup>20</sup>

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<sup>20</sup> A useful booklet, *Peaceful protest: Liberty's guide to protest and the law* is available from Liberty, Liberty House, 26-30 Strutton Ground, London, SW1P 2HR

## The civil law

Conduct likely to cause a breach of the peace has been the civil offence most widely used against political demonstrators. It is not a serious charge, but a hard one to combat. This is because the police do not have to show that your conduct was violent or threatening, only that it could have provoked someone else to act violently. If the case goes against you the magistrate can then order you to be "bound over to keep the peace or to be of good behaviour."

Binding over is a flexible instrument in the hands of the courts. It obliges you to sign an undertaking, with or without sureties, to keep the peace. Refusal to be bound over, or disobeying the order, can result in a sentence of imprisonment. (Under the Justices of the Peace Act of 1361, indefinite imprisonment is theoretically possible!) Magistrates can order any defendant who appears before them to be bound over whether or not they have been convicted.

If they receive a complaint from the authorities (or from a private individual), magistrates can also issue summonses to individuals to appear in court "to show cause why they should not be bound over to keep the peace." This tactic has been used increasingly in recent years against anti-nuclear and environmental protesters, whose conduct is proving a nuisance to the authorities.

Other civil actions, notably for trespass, have been used to curb certain types of demonstration. The authorities have sought and obtained High Court injunctions prohibiting named persons from being in the vicinity of a particular site in the case of both anti-nuclear and environmentalist demonstrations. In future, however, criminal charges of participating in aggravated trespass, or trespassory assemblies, are more likely.

Although the law is likely to be complex, civil actions which are relatively straightforward are heard in the county courts or High Court. Normally one **circuit judge**<sup>21</sup> sits alone, without a jury, in the county courts. More serious and complex cases are heard in the High Court. Here too there is no jury, with a few exceptions,

21 Circuit judges are appointed by the Lord Chancellor and may serve in both Crown and county courts.



including most actions for defamation, and claims of false imprisonment.

Appeals from magistrates' courts in civil proceedings are heard in the appropriate division of the High Court and there may be further appeals from there to the Court of Appeal, Civil Division, and to the House of Lords. Appeals from the County Courts are heard in the Court of Appeal Civil Division, and, beyond that, in the House of Lords if the point at issue is judged to be one of public importance.

### **Defences in criminal cases**

Defendants running a political style defence have adopted two main approaches.

One is to plead guilty to the charge, and present the political or moral argument in mitigation. In a strictly legal sense they are not putting forward a defence after all, though they are doing so in the broader sense of justifying their actions and hoping to influence public opinion and government policy. Gandhi adopted this approach during his trial for incitement in India in 1922, as did many peace movement protesters during the campaigns of the 1960s and 1980s. An advantage of this approach, from the point of view of the individual defendant, is that the sentence is likely to be less severe than if he or she is found guilty after contesting the charge.

The main disadvantage is that much of the dramatic tension goes out of the case once a plea of guilty has been entered since the outcome is no longer in doubt. This may affect the level of press and public interest in the trial - indeed, strictly speaking, there is no trial. Another disadvantage is that the word "guilty" in everyday usage has moral overtones which may colour reports and affect public reaction. Finally, magistrates and judges are liable to cut short political and moral pleas during mitigation, remarking that they have already taken the defendant's motives into account and that they are not prepared to listen to political speeches. They are especially prone to do this if a number of similar cases have recently come before the court, for instance in the course of a civil disobedience campaign.

The other approach is to plead not guilty, relying on some version of "necessity" defence or "lawful excuse", including the defence that a person is entitled to use

reasonable force to prevent a greater crime. Alternatively, defendants may challenge the validity of the laws or regulations under which they are charged.

There is a danger in this approach of getting bogged down in legal jargon and technicalities, or of giving the impression that you are trying to wriggle out of the consequences of your act of principal by exploiting loopholes in the law. (In fact you usually run the risk of incurring a heavier sentence by contesting the case). These pitfalls can be avoided, at least to some degree, if you are clear from the outset that the primary object of the exercise is not to secure an acquittal as such (welcome as that might be!) but to present the wider moral and political argument as effectively as possible.

### **The defence of necessity**

English law provides several opportunities for a “necessity” defence. There is the defence of necessity as such, or “duress of circumstances”, under common law. It has been defined by a prominent expert in criminal law, Professor Glanville Williams, as follows:

Necessity in legal contexts involves the judgement that the evil of obeying the letter of the law is socially greater in the particular circumstances than the evil of breaking it. In other words, the law has to be broken to achieve a greater good.<sup>22</sup>

The very existence of this defence was a matter of dispute until quite recently, but in 1989 Mr Justice Simon Brown in the Appeal Court ruled that “English law does, in extreme circumstances, recognise a defence of necessity.” He therefore quashed the conviction of an appellant who had pleaded guilty to driving while disqualified, after the judge had informed him that a defence of necessity was not open to him.<sup>23</sup> However, Mr Justice Brown defined very narrowly the circumstances in which the necessity defence could apply, and judges and magistrates are loath to allow it in political cases.

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<sup>22</sup> Glanville Williams, *Textbook of Criminal Law*, Stevens & Sons, 1983, P. 597.

<sup>23</sup> R v Martin, [1989] 88 Cr App R, 3431; 1 All ER, 652.

The common law defence of necessity has the distinct advantage over some of the other defences considered here, that it is not necessary to prove that the authorities, or other parties who may be involved, have acted illegally or even unreasonably - though of course it will strengthen your case if you can show that they have. Most of the cases that have come before the courts in which the necessity defence has been judged valid have been motoring offences - such as driving while disqualified, breaking the speed limit or driving the wrong way down a one-way street - where there was a genuine emergency, or where the defendant claimed he or she honestly believed that there was one. Clearly the motoring laws here are not wrong in themselves, yet the courts now accept that it may be permissible to break them in extreme circumstances.

### **Self-defence**

Self-defence offers another possible line of defence under common law. Nuclear protesters have sometimes argued during their trials that the presence of nuclear weapons in the country put them in deadly peril therefore entitled to use reasonable force to protect themselves - including, for example, cutting through the perimeter fence of a missile site and staging a demonstration on the site. Again, this defence does not depend on the objective existence of a threat; it is sufficient that the person concerned honestly believed that the threat existed. However, the courts usually take the view that the connection between the act of obstruction or damage and the objective of defending oneself from the threat of a nuclear attack is too nebulous and remote for the defence to hold.

### **Reasonable force**

In statute law, the most relevant provision of a general kind is Section 3 of the Criminal Law Act 1967. This states that "a person may use such force as is reasonable in the circumstances in the prevention of a crime." Again anti-nuclear protesters have frequently based their defence on this clause, arguing that their acts of trespass, obstruction, even damage to property were a proportionate and reasonable

use of force aimed at preventing illegal activities by the authorities, namely preparations to commit the crime of genocide.

Some statutes contain a let-out clause or define particular circumstances which must apply if the actions in question are to constitute an offence.

The Criminal Damage Act 1971 contains the clause “without lawful excuse”, and Section 5 of the Act sets out some of the circumstances which would constitute a lawful excuse. Similarly, the Official Secrets Act prohibits a number of activities but only if they are carried out "for any purpose contrary to the safety and interest of the state."

### **International law**

Anti-nuclear demonstrators have mounted defences based on using international law to show that preparations for nuclear war are illegal.<sup>24</sup> In other cases, for instance arising from campaigns related to environmental issues or the rights of travellers, it may prove more difficult to argue that the government is acting in contravention of international law. However, the UN Declaration on Human Rights and the European Convention on Human Rights may be relevant in some instances. So may the growing volume of European law relating to the protection of the environment. Campaigning organisations in the appropriate field should be able to advise you on relevant national and international law, or at least point you in the right direction to do your own research.

In a defence of this type, you would need to satisfy a magistrate or judge that the provisions of international law apply, and in fact take precedence over British domestic law, and this is a further hurdle. The position in English law is far less satisfactory on this point than in US law. US law incorporates international law where it has been established by treaty; English law does not. However, there is a long-

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<sup>24</sup> For further discussion of international law and the illegality of nuclear weapons, see Keith Motherson, *From Hiroshima to the Hague: a guide to the World Court Project*, International Peace Bureau, 1992; George Delf, *Humanising Hell: the Law v. Nuclear Weapons*, Hamish Hamilton, 1985, and Adam Roberts and Richard Guelff, *Documents on the Laws of War*, Clarendon Press, 1989.

standing tradition that customary (international) law forms part of English law, and certain British statutes incorporate and give effect to international treaties, including the Geneva Conventions Act of 1957 and the UK Genocide Act of 1969.<sup>25</sup>

These are some of the commoner lines of defence in political trials – but you should note that the courts in England and Wales have almost invariably ruled the defences out of order<sup>26</sup> or at any rate have given them no weight. The exception is those cases where the authorities can be clearly shown to have acted beyond their legitimate powers. The next section outlines some cases in which this type of defence has been advanced, and includes a few in which defendants have succeeded in convincing magistrates or jury to acquit them.

### **Some relevant cases**

#### **Criminal Justice and Public Order Act 1994: defence against aggravated trespass**

*Earth First! campaigners, 1995*

On 4 November 1994 - the day the Criminal Justice and Public Order Act received Royal Assent - protesters from the environmental campaign Earth First! occupied a crane owned by the contractors John Laing at a construction site in Manchester. They hung a banner from it, which read "The CJB won't stop me!" Four protesters were arrested and charged under Sections 68 and 69 of the Act - aggravated trespass, and failing to leave land when ordered to do so by a police officer. Leaflets handed out explained that the protest was not against the work being carried out on the particular site at which the action was taking place, but against Laing's "desire to destroy large tracts of Lancashire green belt and the homes of 55 families" through its bid for the contract to build sections of the M65 motorway, and also against the Criminal Justice and Public Order Act itself, which "outlaws peaceful actions against such unwanted

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<sup>25</sup> For further discussion of this point, and some of the counter-arguments you are likely to encounter, see Keith Motherson, *From Hiroshima to the Hague*, pp-39-45.

<sup>26</sup> Though see the case of Chris Cole in Luton Crown Court, 1993, described on page 95.

and needless destruction." The leaflet also said the protest would be "entirely nonviolent" and "in no way a threat to the staff on the construction site, or the work being undertaken."

The case was heard by stipendiary magistrates Mr Berg, at Manchester Magistrates' Court in April 1995. All four defendants - Oliver Rodker, Paul Williamson, Peter Styles and Chris Walsh - pleaded not guilty, with Rodker and Williamson defending themselves. Their main defence was that they had not intended to obstruct work but simply to demonstrate against the Act. Oliver Rodker also cited in his defence the European Convention for the Protection of Human Rights, which protects the rights of freedom of expression and peaceful assembly. However, all defendants were found guilty, given a conditional discharge, and ordered to pay costs totalling £200.

### **Official Secrets cases: the public interest defence**

#### *Chandler, 1962*

In February 1961, six members of the anti-nuclear campaign, the Committee of 100, were charged with conspiracy to commit offences under Section I of the Official Secrets Act, and conspiracy to incite others to commit offences. This was for their part in organising a blockade and planned occupation of the United States Air Force base at Wethersfield in Essex where nuclear weapons were assumed to be located.<sup>27</sup>

At their trial at the Old Bailey, five of the defendants were represented, and one defended himself. The defendants did not deny the facts, but they argued that their purpose was not "contrary to the safety and interests of the state", but to safeguard the state from the danger of the total devastation that would occur in the event of a nuclear war. The judge ruled the defence inadmissible, the defendants were found guilty (though with a plea for clemency by the jury), and the case went to both the

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<sup>27</sup> R. v Chandler and others, Central Criminal Court, February 1962. For reports on the House of Lords judgement see [1964] AC 763. Cabinet papers released in 1994 confirm that nuclear weapons were indeed stored at the base, some loaded on aircraft for instant use, and that US troops threatened to open fire on demonstrators who entered the base. See *Independent on Sundays* 9 January 1994.

Appeal Court and House of Lords. The crucial ruling by the Lords was that "the disposition and armament of the armed forces are within the exclusive discretion of the Crown and ... no one can seek a legal remedy on the ground that such discretion has been wrongly exercised." Their Lordships also ruled that the defendants' intention to immobilise the base was what had to be considered when judging their purpose under the Act, and not any wider political aim they might have had. Judges often rely on this ruling when dismissing attempts to challenge the legality of the government's nuclear policy in trials and appeals.

### *Ponting, 1985*

Lawyers for Clive Ponting, a senior civil servant, relied on the same proviso in the Official Secrets Act when he was tried under Section 2 of the Act in 1985 for passing classified information to the Labour MP, Tam Dalyell, about the sinking of the Argentinian battleship *Belgrano* in 1981 during the Falklands war. The trial judge at the Old Bailey ruled the defence inadmissible but the jury ignored his ruling and found Ponting not guilty.<sup>28</sup>

### **Section 3, Criminal Justice Act 1967: the defence of preventing a crime**

#### *Zelter, 1986*

The defence of preventing a crime under Section 3 of the Criminal Justice Act was one of several defences put forward by Angie Zelter and her two co-defendants in their trial for criminal damage at Kings Lynn Crown Court in 1986. As members of the Snowball campaign directed against nuclear bases, they cut part of the perimeter fence at RAF Sculthorpe, and were charged on two counts: causing criminal damage, and going equipped with intent to cause criminal damage.

Zelter, defending herself, presented a model legal argument which brought in most of the defences listed above.<sup>29</sup> Unusually - and after some debate on the issue - the

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<sup>28</sup> Times, 12 February 1985. See also Guardian, 12 February 1985, "Search for a Scapegoat", and Richard Norton-Taylor, *The Ponting Affair*, Cecil Woolf, 1985.

<sup>29</sup> If you want a copy of Angie Zelter's legal argument and her final address to the jury, you can write to her at Valley Farmhouse, East Runton, Cromer, Norfolk NR2 9PN

jury was allowed to remain in court while she presented her argument. She was relying, she said, on three separate defences any one of which was sufficient to acquit her. They were:

- 1) that the act was done to uphold customary law (Intentional Defence);
- 2) that the act was done in self-defence (the common law defence);
- 3) that the act was done with lawful excuse (the statutory defence).

She argued that the government's preparations for nuclear war were contrary to international law and that by cutting the fence she was using reasonable force to prevent a crime - as authorised under Section 3 of the Criminal Justice Act of 1967. She argued that even though we might agree that all matters relating to the disposition and armament of the armed forces are in the control of the Crown, this must be on condition that they are legal.

The judge disallowed all three defences, but she appealed to the jury to consider the issue of principle involved and exercise their right to acquit her against the judge's ruling on the legal issue. The jury found her and the other defendants not guilty of the substantial offence of criminal damage, but guilty of the lesser charge of going equipped with intent. On appeal, the conviction on the second count was quashed, as the appeal judges agreed that it was not logical for the jury to find the defendants guilty on the one count and not guilty on the other.

### *Cole, 1993*

Chris Cole is a member of the international Ploughshares movement, which carries out symbolic - though sometimes far from token - sabotage of military hardware, usually nuclear missiles, or nuclear-capable aircraft. In January 1993, Cole broke into the British Aerospace factory in Stevenage and caused an estimated £100,000 of damage to the nose-cones of Eurofighter 2000 and Hawk ground attack aircraft destined for Indonesia. Cole argued that the Indonesian authorities intended to use the planes in pursuit of their genocidal policy in East Timor, a former Portuguese colony



which Indonesia illegally invaded and occupied in 1975, subjecting the population to repression and massacre. He was therefore entitled, he argued, to use reasonable force to try to prevent the crime of genocide.

Exceptionally the judge, Mr Justice Sedley, allowed Cole to put his defence and call evidence upon it, when the case was heard at Luton Crown Court in October 1993. In his summing up the judge told the jury that it was for them to decide whether or not the defendant had used reasonable force to prevent a crime. The result was a hung jury, and though Cole was convicted on a retrial, he received a relatively light sentence of six months and was immediately freed because of the time he had spent in prison on remand.

The extent of the damage Cole had caused could have been expected to tell against him at his trial. But Indonesian repression in East Timor was currently taking place and the planes were instruments of that policy so there was a direct relationship between his act and the crime he was attempting to prevent - a point in his favour from a legal as well as moral perspective. Perhaps even more important was the character and record of the trial judge, Mr Justice Sedley, who has had a long association with radical causes. It remains to be seen whether the Cole case has established a precedent which will be followed in other similar cases.

### **Section 5, Criminal Damage Act 1971: the defence of lawful excuse**

*Ian Lee, 1987*

Cruisewatch was a campaign to monitor the movement and deployment of transporters carrying mobile Cruise missiles, armed with nuclear weapons, and to maintain pressure for their removal. The campaign led to many prosecutions. One member, Ian Lee, was tried in Devizes Magistrates' Court in 1987 on a charge of criminal damage. Lee had painted out the windscreen of a cruise transporter lorry so that it could not be driven. He conducted his own defence, arguing lawful excuse under Section 5 of the Act. The magistrates acquitted him and the prosecution then asked the court to state a case for consideration at the Divisional Court. However, after more than a year, they abandoned the appeal process. The magistrates' decision

here does not constitute a binding precedent in law, though it can be cited to good effect in similar cases.

*Hill and Hall, 1988*

In a Court of Appeal decision in October 1988, Lord Lane, then Lord Chief Justice, sitting with two other judges, turned down an application for leave to appeal by two women protesters, Valerie Hill and Jennifer Hall. They had been separately convicted of criminal damage at Haverfordwest Crown Court for cutting part of the perimeter fence at RAF Brawdy in Wales. In both cases, the trial judge had directed the jury to convict.

Since the issues in these cases were identical, the Appeal Court focused only on one of them, that of Valerie Hill. At her trial, Hill had argued that in the event of war, the base would be subjected to nuclear attack resulting in the devastation of the area including her property, 40 miles away, and that of her friends. If enough people attacked the fence the US government might decide it was not secure and therefore remove the base; alternatively the British government could remove the need for such bases by abandoning the idea of nuclear defence.

In rejecting the application, Lord Lane stated that the trial judge had been correct in directing the jury to convict. The subjective test of "honest belief", he stated, applied to Hill's reasons for acting as she did, but it was necessary to apply an objective test to determine as a matter of law whether snipping a strand of fence could amount to something done to protect her home or those of her neighbours. The trial judge, Lord Lane continued, had been right to conclude that the act was too remote from the eventual aim at which Hill had targeted her actions to satisfy the test.<sup>30</sup> The appeal judges also supported the trial judge's ruling that there was no evidence of an immediate danger.<sup>31</sup>

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<sup>30</sup> But see the commentary on this judgement in *Criminal Law Review*, 1989, pp. 138-139. The commentator, J. C. Smith, states: 'The first question in the present case... requires us to ask, why did the applicant do this act? She answers 'in order to protect property'; and it is very difficult to see why the answer is false or how an objective test can be applied to it.'

<sup>31</sup> *Times*, Law Report, 6 October 1988, and *Criminal Law Review*, 1989, 136.

The argument about immediacy has been taken up by others, including Angie Zelter. However, the courts have generally taken the view not only in relation to Section 5 of the Criminal Damage Act but generally in relation to necessity defences in statute or common law - that the threat itself must be immediate.

The Bourne case (1938) can be cited in countering this argument.<sup>32</sup> Bourne, a surgeon, was charged with procuring an abortion for a young rape victim. He was acquitted after the judge in his summing up said that it was for the prosecution to prove beyond reasonable doubt that the operation was not performed in good faith to preserve the life of the girl. The surgeon did not have to wait until the patient was in peril of immediate death, but it was his duty to perform the operation if, on reasonable grounds and with adequate knowledge, he was of the opinion that the probable consequence of the continuance of the pregnancy would be to make the patient a physical and mental wreck.

### **The common law defence of necessity**

Pottle and Randle, 1991

In June 1991, Patrick Pottle and Michael Randle stood trial at the Old Bailey on three counts relating to their part in the escape from Wormwood Scrubs prison and flight to Russia of the double-agent George Blake in 1966. Pottle and Randle did not deny the facts, but argued that the 42-year sentence imposed on Blake in 1961 amounted to a cruel and unusual punishment (prohibited under the 1688 Bill of Rights), and that their action had been right and necessary to prevent Blake's physical and mental deterioration, and probable death, in prison. The judge disallowed their defence on the grounds that neither Blake's life nor mental stability was under immediate threat. He passed over the submission of the defendants that though the threat to Blake's well-being was not imminent it would inevitably have occurred unless they had seized the opportunity to help free him before prison security was tightened.

Despite the judge's ruling, the jury acquitted them on all counts. In this case, the

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<sup>32</sup> Rex v Bourne, [1931] 1 KB (*King's Bench*) 687; [1938] 3 All ER 615.

defendants persuaded the judge to allow the jury to stay in court to hear the legal argument, and this was probably crucial to securing their acquittal. The case, however, establishes no precedent in law, and in terms of opening up the necessity defence, the trial and acquittal of Dr Biezanek, outlined on Page 83, are more significant.

### **Challenging the military byelaws**

The late John Bugg, an ex-policeman, studied the Military Land Act of 1892 and questioned whether the byelaws established under the act actually fell within its terms or were *ultra vires* - that is, beyond the powers and legal authority conferred by the Act<sup>33</sup>

#### *Bugg, 1986*

Bugg successfully defended himself in person at Mildenhall Magistrates' Court in July 1986, arguing that the byelaws under which he had been arrested for entering the Alconbury base at Mildenhall were invalid. The magistrates, in dismissing the charges, stated that the Ministry of Defence had not established beyond reasonable doubt that the byelaws were valid. However, when the prosecution appealed by way of case stated, the Divisional Court upheld the appeal,<sup>34</sup> and the case was referred back to the magistrates' court for sentencing.

In an appeal on another case involving a challenge to military byelaws, Lord Justice Woolf paid tribute to John Bugg: "Mr Bugg has become a considerable authority on the laws relating to byelaws and he has used his knowledge to cause considerable embarrassment to the Ministry of Defence and the Director of Public Prosecutions. He has at least convinced us that over the last 30 years there has been a

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33 Byelaws are a form of delegated legislation, which derive their authority from an enabling Act of Parliament. If the lawmaker - in this instance the Minister of Defence, Michael Heseltine - goes beyond the powers conferred by the Act, the laws or regulations are said to be *ultra vires* the Act and hence invalid

34 *Corfield v Bugg*, 19 December 1986. Not reported but referred to in Barbara Cohen, "Byelaws under the Military Lands Act, 1892", *Legal Action*, April 1988, pp. 14-16.

regrettable decline in the standards adopted by the Ministry of Defence in complying with their obligations in respect of byelaws.”<sup>35</sup> Lord Justice Woolf also commented in the course of his judgement that: "No citizen is required to comply with a law which is bad on its face. If the citizen is satisfied that that is the situation, he is entitled to ignore the law." Unfortunately, while recognising that the appeals had "raised in an acute form a number of points of general importance as to the validity of bye-laws", his ruling, applied only to the particular bases covered by the case.

*Jean Hutchinson and Georgina Smith.*

On 23 July 1986, two Greenham women, Jean Hutchinson and Georgina Smith were convicted at Newbury Magistrates' Court on a charge of entering RAF Greenham Common without authority. They appealed to Reading Crown Court against the conviction, again on the grounds that the byelaws were invalid. The Court agreed that the women had raised a *bona fide* challenge to the validity of the byelaws, but concluded that it lacked jurisdiction to decide the question. The two women then applied to the Divisional Court for judicial review, seeking an order - in legal jargon an order of *mandamus* - requiring Reading Crown Court to determine whether or not the byelaws were valid.

Their case was heard on 31 July 1987 along with another case against Ran Lee. Lee, in this instance, had been convicted at Devizes Magistrates' Court under the Bulford Range Byelaws, but, in an unusual move, the prosecution sought a judicial review of the decision in its favour so that the legal issues at stake could be heard by a higher court. The Divisional Court allowed both applications and ordered the two courts to determine the validity of the byelaws. At the rehearing of the women's case, Reading Crown Court found that the Secretary of State, Mr Heseltine, had exceeded his powers under the Military Land Act by making byelaws which take away or prejudice the 'rights of common', and allowed the appeal. (Under the rights of common, 62 commoners had the right to graze cattle, dig up gravel and take firewood

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<sup>35</sup> *Yorkshire Post*, 4 August 1992. Report on the appeal of John Bugg, Rachel Greaves and Lindis Percy in the Divisional Court.

from the area covered by the byelaws. Although neither of the women claimed commoners' rights, the failure of the byelaws to make provision for these rights rendered them invalid.) Following this success, Newbury Magistrates' Court adjourned more than 100 Greenham by-law cases *sine die* - that is without naming a date, or in plain English, indefinitely.

The saga, however, did not end here. In October 1988, the Director of Public Prosecutions won an appeal by way of case stated at the Divisional Court. The Court accepted the argument of counsel for the Director of Public Prosecutions that those parts of the byelaws which went beyond the powers of the Military Land Act could be separated from the other regulations and that the latter remained valid (known as the principle of 'severance'). Finally, on 12 July 1990 an appeal by the women was heard in the House of Lords where five Law Lords ruled that the Greenham Common Byelaws were indeed *ultra vires* the Act and that the principle of severance could not be applied in this instance. Georgina Smith was represented at the House of Lords appeal; Jean Smith presented her case in person.<sup>36</sup>

### **Getting information and support**

The *Useful addresses* section, on page 112, has details of organisations which may help you, particularly if you are not part of an organised campaign.

If you are taking part in an organised and well-established civil disobedience campaign, the campaigning organisation you're attached to should give you information about court procedures, the charges you are likely to face, and the defences others have put up in court. They may also be able to help you to prepare yourself physically and psychologically for the tensions and frustrations of a court hearing, and for prison if you are likely to face that. The appropriate campaigning organisation is often a better first source of information, even on purely political cases. Normally, too, the organisation can refer you to a lawyer with the right experience and approach.

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<sup>36</sup> DPP v Hutchinson; DPP v Smith (conjoined appeals), House of Lords, 12 July 1990. See *Times*, Law Report, 13 July 1990.

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## If you go ahead. . .

Conducting your own defence in the criminal courts is a tricky business with many pitfalls, and clearly is not something to be undertaken lightly. It often involves running a greater risk of conviction and of incurring heavier penalties and costs. On the other hand, clients on legal aid can be ill-served by overworked, and occasionally unscrupulous or incompetent solicitors and barristers, and they would actually be better off defending themselves, with thorough preparation. There have been cases where defendants have been acquitted only because they resisted pressure from their lawyers to plead guilty, and decided instead to fight the case for themselves.

If you are seriously contemplating defending yourself, take careful stock of the situation before you decide. Yes, there are risks, but it can prove a stimulating challenge, exorcising the mystique of the courts and can bring you a sense of dignity and empowerment. This can only happen, however, if you have prepared your case well and made the decision with your eyes open. I hope this guide has helped you to arrive at the right decision for you, and, if you do defend yourself, will help you to present your case effectively when it comes before the court. If you decide to go ahead, good luck.

# Glossary of legal terms

**abscond:** to surrender bail; that is to fail to show up at the police station or court at the appointed time.

**adverse inferences:** negative interpretations. Courts can now draw adverse inferences from a defendant's decision to remain silent when questioned or not to testify - they can suspect the worst.

**advocate:** either a solicitor or a barrister acting for either the prosecution or defence in court. The term counsel is used only of barristers.

**affidavit:** a sworn statement in writing, witnessed and counter-signed by a commissioner of oaths, a solicitor or a court official, which can be produced in evidence in a court. An affidavit is mainly used in the civil courts.

**alibi notice:** a written notice to the prosecution giving the details of where the defendant was at the

time of the offence and the details of any witnesses to this fact.

**amicus curiae:** literally, "a friend of the court." A barrister appointed by the court in certain cases to assist it on legal issues.

**application for dismissal:** an application in writing to a magistrates' court for them to dismiss a charge which is to be considered for transfer to the Crown Court.

**arrestable offence:** an offence for which there is a minimum sentence of at least five years imprisonment, or some other listed offence, for instance, obstructing the highway. You can be arrested without a warrant for any arrestable offence.

**Attorney General:** the chief law officer of the Crown and head of the barristers' profession. Sometimes conducts



prosecutions on behalf of the state in serious cases. His or her consent is required for certain prosecutions, notably those under the Official Secrets Act.

- bail:** conditional release from custody authorised by the police, magistrates, or a judge, following arrest and before trial; or authorised by a magistrate or judge in the course of a trial.
- bench:** the magistrates or judge in a court.
- bench warrant:** an authorisation by a magistrate or judge to arrest a named individual or individuals.
- binding over order:** an order imposed by a magistrate on a person, obliging them either to keep the peace or to refrain from specified activities.
- burden of proof:** the obligation to demonstrate the facts of the case. For instance in a criminal trial, the prosecution has the burden of proof.
- case stated:** a summary of the facts as decided by the court and the legal considerations underlying a court's decision or ruling made by a lower court. This summary is made when a case is being reviewed, on points of law only, in a higher court - for instance, where a decision in the magistrates' court is appealed on a point of law to the Divisional Court.
- certiorari:** literally, "to be more informed". An order by the High Court overturning any decision of a public body, including a lower court if it was wrong in law or acted outside its powers.

**circuit judge:** a judge who occupies a tier below High Court judges in the judicial hierarchy. Circuit judges are drawn from the ranks of barristers of not less than ten years' standing, or solicitors who have been recorders for at least three years.

**Clerk to the Justices:** a full-time official who is responsible for the administration of lay magistrates' courts, and advises the magistrates on law and procedure.

**common law:** law established by the legal precedent in the courts. See for comparison, statute law.

**costs:** the legal expenses incurred by the defence or prosecution in a trial.

**counsel:** a barrister acting for either the prosecution or defence in court.

**Court of Appeal, Criminal Division:** the court empowered to review the convictions and sentences of Crown Courts.

**cross-examination:** the examination of a witness by the opposing side, after the side calling the witness has conducted the examination in chief.

**the Crown:** a shorthand term for the prosecuting authorities, in all criminal cases brought by the state, and in any subsequent appeal.

**defendant:** anyone being sued or prosecuted in the courts

**deposition:** a statement on oath by a witness.

**disclosure of documents:** the handing over of documents by the prosecution to the defence. The Crown Court, or sometimes the

Divisional Court may order disclosure if a dispute arises about whether or not the defence should see certain documents.

**Divisional Court, Queen's Bench**

**Division:** part of the High Court. Hears appeals, on points of law only, from magistrates' courts, usually by way of case stated. Also empowered to conduct judicial reviews of decisions made in magistrates' courts.

**Duty solicitor:** a solicitor who gives advice free of charge to accused persons in police stations and magistrates' courts. The duty solicitor scheme is financed from public funds.

**ex parte:** an application to the court by one side in the proceedings without the other side being present, or made by an interested person who is not a party in the proceedings.

**examination in chief:** the examination of a witness, either for the prosecution or the defence, by the side who has called that witness.

**expert witness:** a witness with specialist knowledge who is allowed to express opinions on the significance of evidence relating to his or her area of expertise.

**Green Form Scheme:** the Legal Advice and Assistance Scheme, which provides funds, on a means-tested basis, to people seeking preliminary legal advice from solicitors.

**High Court:** comprises three sections or "divisions": the Queen's

Bench Division; the Chancery Division and the Family Division. The High Court is essentially part of the structure of the Civil judiciary, though the Queen's Bench Division may be involved in deciding on issues of law and procedure that have arisen in the magistrates' courts in relation to criminal cases.

**hostile witness:** a witness judged by the court to be hostile to the side calling him or her. That side can put leading questions to a hostile witness.

**inadmissible:** not allowed as evidence.

**indictable offence:** any offence triable by judge and jury, though less serious ones may be tried in magistrates' courts.

**indictment:** literally, the written accusation by the Crown against a defendant in a Crown Court trial. The term "trial on indictment" is a convenient way of referring to any Crown Court trial.

**judicial review:** a review by the High Court of decisions by public bodies, including magistrates' courts or tribunals, relating to the conduct of a case. The High Court can issue an order of *certiorari*, *mandamus*, or prohibition.

**lay magistrate:** an unpaid part-time magistrate, probably not a legal professional. Lay magistrates are advised in court by the Clerk to the Justices.

**lay an information:** to give a statement to the magistrates saying that an offence has been committed and requesting them to issue a

summons or bench warrant. The police do this.

**leading question:** a question in a form which suggests the answer wanted or expected by the questioner. Allowed only in cross-examination or in the examination of a hostile witness.

**leave to appeal:** permission granted by a single judge for an appeal from a Crown Court trial to go ahead.

**legal argument:** discussion on points of law between advocates and the judge that takes place during a trial.

**nolle prosequi:** literally, "I shall not prosecute." In criminal cases, a decision by the Attorney General to stop a prosecution which he or she is empowered to do in any indictable prosecution. This is not equivalent to an acquittal.

**McKenzie friend:** a person, not necessarily legally qualified, who is present in court to assist a defendant (or a litigant in a civil case) conducting his or her own defence. The name derives from the case of *McKenzie v McKenzie*, which established the right of an unrepresented litigant to have an assistant in court.

**mandamus:** literally, "we command". An order by the High Court to a lower court to do something, such as to hear a claim which it had refused to hear.

**mitigation:** a reduction in blame attaching to an offender, from the circumstances surrounding

the offence which indicate that a more lenient punishment should be imposed. After conviction in a criminal trial the defendant or his or her legal representative has the opportunity to make a plea in mitigation.

**obiter dictum:** literally, "a saying by the way." A Judge's observation, or statement of opinion, given in a judgement, on a legal issue not relevant to the case he or she is hearing. This is not binding as a precedent.

**"perverse" verdict:** an acquittal by a jury which goes against, or appears to go against, the evidence.

**plea-bargaining:** the process whereby the prosecution agrees to drop certain charges provided the defendant is prepared to plead guilty to one or more less serious counts. Alternatively, the prosecution may be willing to substitute a lesser charge for the original one on condition that the defendant pleads guilty.

**prohibition:** an order of the Divisional Court of the High Court preventing a lower court from doing something, for instance hearing a case that falls outside its jurisdiction.

**Public Interest Immunity:** the right of the Crown to withhold particular documents from the defence on the grounds it would be against the public interest to disclose them. Claims of Public Interest Immunity are sometimes challenged by the defence in the Crown Court or Divisional court.

**ratio decidendi:** literally, "the reason of the decision". The central reason for a judicial decision. The *ratio decidendi* makes the decision a precedent, and constitutes the part of a judgement from a previous case used by lawyers in support of legal argument.

**recordable offence:** an offence that carries a sentence of imprisonment, and some specified non-imprisonable ones. Recordable offences include all serious offences, but not traffic offences.

**recorder:** a barrister or solicitor acting in the capacity of a part-time judge to try less serious offences in the Crown Court.

**remanded in custody:** detained in prison pending trial, on the authority of the magistrates.

**remanded on bail:** freed by a magistrate pending trial, or by the police while they carry out further investigations, with the requirement to report to the court or police station at a certain date. Bail may also have other conditions or sureties attached.

**section 9 statement:** a witness statement in writing which a magistrate or judge may admit in evidence during a trial without the witness having to appear in person. It is signed and witnessed and includes a standard note about the penalties for lying in legal proceedings.

**sine die:** literally, "without a [named] day". Indefinitely. A case that is adjourned *sine die* is effectively

dropped.

**stand surety:** to give a guarantee that a defendant released on bail will appear at the trial or subsequent hearing. The guarantee is underwritten by an obligation to pay the court a specified sum of money if the defendant fails to appear.

**statute:** Act of Parliament.

**statute law:** law established by Acts of Parliament, rather than by legal precedent, which is common law.

**stipendiary magistrate:** full-time, paid magistrate.

**summary trials:** trials in the magistrates' courts, where there is no jury.

**surety:** the guarantor when an arrested person is granted bail.

**transfer proceedings:** proceedings for transferring a trial from the magistrates' court to the Crown Court.

**trial on indictment:** a convenient shorthand way of referring to any trial that takes place before a jury in the Crown Court. Trial takes place following the indictment - the formal written charge against a defendant.

**triable either way:** a category of offences, which may be tried either in the Magistrates' Court or the Crown Court.

**ultra vires:** literally, "beyond the powers". Outside the legal powers of a court or other institution.

**witness summons:** a court order compelling a witness to attend the court and give evidence or produce documents.

# Books

Abbreviations

hb = hard back

pb = paper back

Note: prices quoted here are, by and large, those current in 1995

## **For the lay person**

David Barker and Colin Padfield, *The Law*, 8th Edition, in the "Made Simple Books", Butterworths-Heinemann, 1992. £8.95, pb.

Marcel Berlins and Clare Dyer, *The Law Machine*, Penguin, 1989. £4.99, pb.

R. Clayton and H. Tomlinson, *Civil Actions Against the Police*, 2nd edition, Sweet & Maxwell, 1991. £75.00, hb.

Martin Cutts, *Making Sense of English in the Law*, Chambers, 1992. £5.95, pb.

George Delf, *Humanizing Hell: The Law v. Nuclear Weapons*, Hamish Hamilton, 1985. £6.95, pb.

Iller Goodwin, *Criminal Litigation*, Butterworths, 1985. £24.95, pb.

Harrison and S. Cragg, *Police Misconduct: Legal Remedies*, Legal Action Group, 1991. £19.00, pb.

*Housmans Peace Diary and World Peace Directory*, 1994. £5.50, pb. Published yearly with comprehensive list of campaigning organisations in many countries. Available in bookshops or direct from Housmans Bookshop, 5 Caledonian Road, London N1 9DX.

Greville Janner, *Janner's Complete Speechmaker*, Century Business, London, 1991. £8.99, pb.

C.H. Moiser and Valerie Phillips, *Practice and Procedure in Magistrates' Courts*, 3rd edition, Fourmat Publishing, 1992. £22.50, pb.

Keith Motherson. *From Hiroshima to the Hague: a Guide to the World Court Project*. International Peace Bureau, 1992. £5.00, pb. Available from Keith Motherson, 53 Victoria Street, KPD, Castle Douglas, Galloway, DG7.

David Napley, *The Technique of Persuasion*, Sweet & Maxwell, 1991. £11.95, pb.

John Pritchard and others, *The New Penguin Guide to the Law*, 3<sup>rd</sup> edition, Penguin, 1993. £12.99, pb.

Adam Roberts and Richard Guelff, *Documents on the Laws of War*, 2<sup>nd</sup> edition, Clarendon Press, 1989. £17.95, pb.

Geoffrey Robertson, *Freedom, the Individual and the Law*, 7th edition. Penguin Books, 1993. £12.00, pb.

John Wadham (Ed), *Your Rights: the Liberty Guide*, Pluto, 1994. £9.99, pb.

Tom Wainwright, Anna Morris, Katherine Craig and Oweb Greenhall, *The Protest Handbook*. Bloomsbury Professional, 2012. £50 pb. (a discount may be available for activist groups –

contact the publishers).

### **Standard reference and specialist works**

Many of these are expensive. You can consult them in specialist law libraries and good reference libraries.

P.J. Richardson and others (Eds), *Archbold - Criminal Pleading, Evidence and Practice*, 1993-94 edition, £210.00, hb. Normally referred to simply as "Archbold" after its original author, John Frederick Archbold. See also the regularly published supplements which deal with changes in laws and procedures.

Inigo Bing, *Criminal Procedure and Sentencing in the Magistrates' Court* Sweet & Maxwell, 1990. £40.00, hb.

Peter Murphy and Judge Eric Stockdale (Eds), *Blackstone's Criminal Practice, 1993* edition, 1992. Blackstone Press, £95.00, hb

Sir Rupert Cross and Colin Tapper, *Cross on Evidence*, 7th edition, Butterworths, 1990. £23.95, pb.

Denis Keenan, *Smith & Keenan's English Law*, 11th edition, Pitman Publishing, 1995. £19.99, pb. Updated to take account of the new procedures introduced by the Criminal Justice and Public Order Act, 1994.

John Sprach (Ed), *Emmins on Criminal Procedure*, Blackstone Press Ltd, 1992. £19.95, pb.

Lord Hailsham of St. Marylebone (Ed), *Halsbury's The Laws of England*. 4th edition, Butterworths, 1990. Vol. 11 (1 and 2) deals with Criminal Law, Vol. 11(2) specifically with criminal evidence and procedure. There are also yearly cumulative supplements to this publication.

*Halsbury's Statutes of England and Wales*, 4th edition, Butterworths. Vol. 12 (1994 reissue) deals with criminal law.

John Richman, A.T. Draycott and Stuart Baker (Eds), *Stone's justices' Manual*, 125th edition, Butterworth & Co and Shaw & Sons Ltd, 1993. £175.00, hb. for the set of three. A new edition is published yearly.

J.C. Smith and Brian Hogan, *Criminal Law*, 7th edition, Butterworths, 1992. £25.95, pb.

Glanville Williams, *Textbook of Criminal Law*, 2nd edition, Stevens and Sons, 1983. This is now out of print, though available in many libraries.

*Who's Who - An Annual Biographical Dictionary*, A.C. Black, London.

### **Journals and law reports**

*Appeal Cases* (AC)

*All England Law Reports* (All ER)

*Cambridge Law Journal* (CLJ)

*The Criminal Appeal Reports* (Cr App Rep)

*The Criminal Law Review* (Crim LR)

*Current Law Monthly Digest* and *Current Law Year Book*

*Current Legal Problems*

*Justice of the Peace* (JP)

*King's Bench* (KB)

*Law Quarterly Review* (LQR)

*Queen's Bench* (QB)

*Solicitor's Journal* (Sol jo)

*Weekly Law Reports* (WLR)



# Useful addresses

Note: these addresses were correct in 1995 – we will try to update this section in the future

Alarm, UK (anti-roads campaign)

13 Stockwell Road

London SW9 9AU

Campaign for Nuclear Disarmament

162 Holloway Road

London N7

Campaign for Law and Peace (CAMLAP)

c/o Keith Motherson

53 Victoria Street

KPD

Castle Douglas

Galloway DG7

Citizens Advice Bureaux

Consult your local telephone directory for the nearest office.

Earth First!

Dept. 29

1 Newton Street

Piccadilly

Manchester M1 1 HW

There are also Earth First! contact addresses in many other towns and cities.

European Commission of Human Rights

Council of Europe

F-6-1075 Strasbourg Cedex

France

Friends of the Earth

26-28 Underwood Street

London N1 7JQ

Greenpeace

Canonbury Villas

London N1 2PN

International Association of Lawyers Against Nuclear Arms

P.O. Box 11589

2502 AN

The Hague

Netherlands

Law Society

113 Chancery Lane

London WC2

Tel.: 0207 242 1222

Has a computerised list of all solicitors. The list can be searched free of charge.

### Law Centres

Check your local telephone directory.

### Legal Advice Centres

Check your local telephone directory.

### Liberty

Liberty House, 26-30 Strutton Ground,

London, SW1P 2HR

020 7403 3888.

[www.liberty-human-rights.org.uk](http://www.liberty-human-rights.org.uk)

### Oyez Stationery / Bookshops

Specialises in legal books and forms. Headquarters address:

Oyez

29-37 Red Lion Street

London WC1R 4PP

Tel: 0207 242 7132

### Peace Movement Legal Support

162 Holloway Rd

London N7 8DQ

### War Resisters International

5 Caledonian Road

London N1

### World Court Project

c/o George Fairbrother

67 Summerheath Road, Hailsham