REGULATING DETENTION OF SUSPECTS IN ENGLAND AND WALES

İngiltere ve Galler'de Şüphelilerin Gözaltına Alınması

Mehmet ARICAN*

Özet

1984 tarihli İngiliz Polis ve Adli Deliller Kanunu ve buna bağlı olarak çıkarılan yönetmelikler, İngiltere ve Galler'de arama, gözaltına alma, yakalama, sorgulama ve parmak izi alma gibi prosedürler ile ilgili olarak polisin yetki ve ödevlerini düzenleyen ayrıntılı hukuki düzenlemeler içermektedir. Daha önce mahkeme içtihatlarının yön verdiği polisin gözaltına alma yetkisi, anılan kanunla birlikte İngiliz hukuk tarihinde ilk defa bir kanun ve yönetmelik tarafından doğrudan bir hukuki prosedüre tabi tutulmuştur. Kısaca PACE olarak adlandırılan bu yasaya göre gözaltına alınan şüpheliler, bir takım haklara sahiptir. Bunların başında haklarının kendisine bildirilmesi, bir avukat ile görüşebilme ve gözaltına alındığının yakınlarına haber verilmesini isteme gibi haklar gelmektedir. Kanunla getirilen en önemli yenilik ise 'gözaltı memuru' (custody officer) uygulamasıdır. Bu uygulama ile gözaltı memuru, gözaltına alma prosedürünün tam olarak işleyişinden birinci derecede sorumlu tutulmakta ve bir anlamda kanunun amacına uygun işleyişi güvence altına alınmaya çalışılmaktadır. Ancak, kanunun uygulamada işleyişi ile ilgili yapılan bilimsel araştırmalar kanun koyucunun amaçlarının tam olarak gerçekleşmediğini göstermektedir. Bununla beraber, adli hataların yeni kanunun yürürlüğe girmesinden sonra bir azalma sürecine girdiği görülmektedir.

Anahtar Kelimeler: Polisin Yetkileri, Sanık Hakları, Şüpheli, Gözaltına Alma, İngiltere.

Abstract

The Police and Criminal Evidence Act (PACE) was regarded as a fundamental law reform in the field of police powers and suspects' rights and a landmark in the history of modern policing in England and Wales. Notably, as a statutory codification and rationalisation of police powers and the safeguards over their exercise, it had a symbolic and a practical importance. Together with its associated codes of practice, it not only provided for the first time a detailed legislative framework for the operation of police powers and rights of suspects, but also set up a framework of rules designed to provide a tighter regulation of police powers and new controls on the treatment of suspects in custody. The act introduced a number of new elements in the detention of a suspect, such as the provision of a custody officer and review of detention, and whilst claiming to provide a tighter regulation of detention procedure, it increased and intensified the powers of the police to bring the suspects into police custody. Perhaps one of the most important changes that took place was detention for questioning. With a considerable clarity, PACE legalized the pre-charge detention procedure and detention for questioning; leaving litt-

* Dr., Polis Akademisi Güvenlik Bilimleri Fakültesi, Email: mehmetarican@hotmail.com

le room for ambiguity that may have been caused by lack of regulation. After PACE came into force a considerable amount of research investigated whether or not the new rules had any impact when compared with the previous practices. The review of these studies suggests that PACE seems to have had a certain effect on the nature and outcomes of police handling of suspects, but integration of the rules into police culture and working practices was uneven and incomplete. In conclusion, it appears that the detention procedure under PACE still remains open to errors, although this is less likely than in the pre-PACE period.

Key Words: Police Powers, Suspects Rights, Detention, Custody Officer, PACE.

Introduction

England and Wales have been regarded as among the most fortunate of states in respect of their police (Regan, 1993:1). The British bobby has been a figure representing 'political continuity, cultural homogeneity, and moral consensus: alone, unarmed, he walked the beat, and people ask him the time' (Morgan and Newburn, 1997:1). A survey conducted for the Royal Commission on the Police (RCP) in 1960 found that 80% of the public in the rather representative sample thought that the British police were the best in the world:

> *The findings of the survey constitute an overwhelming vote of confidence in the police…relations between the police and the public are on the whole very good, and we have no reason to suppose that they have ever, in recent times, been otherwise. This is a finding which we believe will give great satisfaction to your Majesty, to the police, and to the public* (RCP Report, 1962:Para 3.38).

In fact, the RCP survey reflected the public view of a so-called 'Golden Age' of policing in the '50s in England and Wales (Benyon, 1986:7). Nevertheless, the same survey (RCP) also found that one in five of the sample still did not have satisfactory views of the police, 42% thought some policemen took bribes, and 35% thought that unfair methods were used on occasion to get information (RCP, 1962: paras. 3.44-3.48). In particular, the following two decades, after the Royal Commission on Police in 1960, have witnessed a significant number of miscarriages of justice in which police conduct played a role. The following cases were publicly well-known examples that occurred in this period: *Hanratty* (1962), *Stafford and Luvaglio* (1967), *Murphy, McMahon and Cooper* (the London post office murder in 1970), *Lattimore, Salih and Leighton* (the Confait case in 1972), *Dougherty* (1973), and *Maynard and Dudley* (the Legal and General gang in 1977). Amongst these miscarriage of justice cases, the Confait case[1] has a parti-

1 In 1972, a person called Maxwell Confait was murdered and the house in which he lived burnt down. Later, two youths were charged with the murder and another boy was charged with causing the fire. The charges were the result of confessions made during police interviews. One of the boys was mentally retarded with a mental age of eight (his actual age was 18) and the other boys were 14 and 15 years old. They were all convicted on the basis of their confessions (Price and Kaplan 1977:11). Three years later, after a lengthy campaign to re-open the case, the Court of Appeal quashed the convictions. The Court evaluated the case according to the standard burden of criminal cases, namely whether the charges were proven beyond reasonable doubt and came to the conclusion that it did not meet the criteria (Baxter and Koffman, 1983:11).

cular importance because it was the triggering event which led to the reform of the criminal justice system and policing after the '80s (Walker, 1993:7; Regan, 1993:1; Asworth, 1994:91-92). The miscarriage of justice occurring in the Confait case led to the setting up of an inquiry that was conducted by Sir Henry Fisher and this inquiry raised serious questions about the police and their investigation of crime, particularly in relation to the treatment of juveniles and mentally-handicapped suspects (Benyon, 1986:34). Therefore, the outcome of the Confait case was seen by many writers as the starting point of the events which led to the establishment of the Royal Commission on Criminal Procedure[2] (RCCP) and eventually, the enactment of the Police and Criminal Evidence Act, 1984 (PACE) (Leigh, 1985:37; Lambert, 1986:8; McConville, *et al* 1991:3; Reiner, 1992:11; Walker, 1993:7).

As Bottomley *et al.* (1991) stated, the overall objective of the Commission's recommendations was to achieve a 'fundamental balance' between police powers and the rights of individuals while setting up an open, fair, and workable criminal procedure. This was pointed out in the report itself as follows:

> *The Commission's task has been to try to achieve a balance between a host of competing rights and objectives ... On the one hand there are those who see the fight to bring criminals to justice as being of paramount necessity in today's society. ... On the other side are those who believe that the cards are in practice stacked in favour of police power, and that the safeguards against abuse and oppression are inadequate. The majority of public and professional opinion is inevitably between the two* (RCCP, 1981a:2).

Three years on after the report of the Royal Commission, the Police and Criminal Evidence Act (PACE) became law in October 1984 and came fully into force in January 1986. Even though some would argue that it was one of the most controversial pieces of legislation (Freeman, 1985; Zander, 1991), it was regarded as a fundamental law reform in the field of police powers and suspects' rights and a landmark in the history of modern policing in this country (Benyon, 1986; Reiner, 1992). Notably, as a statutory codification and rationalisation of police powers and the safeguards over their exercise, it had a symbolic and a practical importance (Asworth, 1994; Morgan and Newburn, 1997).

Whilst clarifying the existing law, PACE introduced new procedures and provisions (Morgan and Newburn, 1997:51). Together with its associated codes of practice, it not only provided for the first time a detailed legislative framework for the operation of police powers and rights of suspects, but also set up a framework of rules designed to provide a tighter regulation of police powers and new controls on the treatment of suspects in custody (Sanders and Young, 1994:1, Da-

2 RCCP reported in 1981 and this proved controversial because the report recommended an increase in police powers as well as additional rights for individuals. While the police welcomed the report, wide criticisms were raised by left-wing and liberal commentators inside and outside Parliament (Morgan and Newburn, 1997:51).

vies *et al*., 1998:107). The Act[3] introduced the new post of Custody Officer whose job it was to inform the suspects of their rights and ensure that they were being treated fairly whilst in custody. Accordingly, the suspects were given the right to one phone call, free legal advice, and, for under-eighteens or mentally-handicapped adults, the right to have a responsible adult present with them. In addition, all interviews were to be tape-recorded and the suspect was to be detained for only twenty-four hours without charge. Finally, the job of prosecution was removed from the remit of the police to an independent body, the Crown Prosecution Service.

The new Act attracted a mixed response. Representative police bodies criticised the Act for reducing the powers of the police to prove a case against a guilty person whereas the civil liberties lobby criticised it for extending police powers. Critics maintained the new powers represented a serious danger to civil liberties and safeguards made available to the suspects would be largely ineffective. On the other hand, the police thought that these safeguards would most likely harm their efforts in fighting crime and criminals (Morgan and Newburn, 1997:51). These contradictory views were possible because PACE both extended police powers and attempted to regulate police behaviour more effectively in order to ensure a balance between suspects' rights and police powers (Asworth, 1994:91-92; Reiner, 1992:223; Jones *et al.,* 1994:23-24).

It has now been nearly two decades since the Police and Criminal Evidence Act came into force and inevitably the Act has, in a number of important aspects, affected the police function as well as the police culture. The specific practices and circumstances of the Act have, however, had a ranging impact because since PACE became law in 1984, the Court of Appeal has quashed convictions in a number of highly-publicised cases, including some miscarriages of justice which nevertheless occurred in the post-PACE period[4] (Bridges, 1994:20). The cases of Stefan Kiszko[5], The Guildford Four[6], The Birmingham Six, the Maguires and the

3 'The Act' refers to the Police and Criminal Evidence Act, 1984, unless the context shows otherwise.

4 Among the most prominent cases were the following: (1) The Guildford Four (murder caused by IRA pub bombings) (1990). (2) The Birmingham Six (murder caused by IRA pub bombings) (1991). (3) The Maguire Seven (possession of explosive substances which linked to bombings in London) (1992). (4) Judith Ward (IRA M62 bombings) (1992). (6) The Cardiff Three (murder of a Cardiff prostitute). (7) Tottenham Three (murder of a police officer during disturbances on the Broadwater Farm estate). (8) The Taylor sisters (murder of Alison Shaughnessy). (9) The Darvell brothers (rape and murder of a shop manageress). (10) Stefan Kiszko (sexual assault and murder of a schoolgirl). (11) Jacqueline Fletcher (infanticide of her baby). (12) Winston Silcott (murder of PC Keith Blakelock). (13) The Bridgewater Four (murder of a newspaper boy) (1997). (Except for the 'Cardiff Three', all cases above occurred in the pre-PACE period).

5 In the mid 1970's Stefan Kiszko was charged and convicted with the rape and murder of a thirteen-year-old schoolgirl. He spent fourteen years in prison. While Kiszko was still in prison, the case was brought to light again and it emerged that Stefan Kiszko was impotent, and therefore it would have been impossible for him to commit the crime. He was eventually released as his innocence had been proved (Eddleston, 2000).

6 In 1974-75 three Irish men and one woman were charged and convicted with murder. They stood trial accused of bombing an army pub in Guildford. In 1989 an appeal trial took place and the four were released. (Eddleston, 2000).

Tottenham Three[7] - together with serious allegations concerning the techniques of the West Midlands Serious Crime Squad - caused widespread concern over the handling of criminal investigations by the police and the reliability of police methods of collecting evidence (Morgan and Newburn, 1997:53-4). Thus, even though most of the well-known miscarriage of justice cases belong to the pre-PACE period, the question is still wide open as to whether the Act has been successful in preventing miscarriages of justice since it became law[8].

Detention under PACE

Prior to PACE legislation, the law on detention in a police station following arrest, as stated by the Royal Commission on Criminal Procedure (1981a), was 'uncertain and unsatisfactory'. In its report, the Commission reported that pre-charge detention should be reduced, and allowed only when it was 'necessary':

> *The Commission sees as one of the most important of its aims the restriction of circumstances in which the police exercise the power to deprive a person of his liberty to those in which it is genuinely necessary to enable them to execute their duty, to prevent the commission of offences, to investigate crime, and to bring suspected offenders before the courts* (RCCP, 1981b:5).

Further, the Commission listed five criteria, one of which would have to be met before an arrested person could be detained: refusal by the person arrested to identify himself/herself so that a summons could be served on him; the need to prevent the continuation or repetition of the offence in question; the need to protect the arrested person himself/herself or other peoples' property; the need to secure or preserve evidence of the offence, or to obtain such evidence from the suspect by questioning him; or the likelihood of the person failing to appear in court to answer any charge made against him (RCCP, 1981a). PACE detention provisions were derived from these recommendations and this was the first time a new legal framework for the process of pre-charge detentions was established on such a comprehensive scale (Leigh, 1985:100; Sanders, 1997:1060).

The act introduced a number of new elements in the detention of a suspect, such as the provision of a custody officer and review of detention, and whilst claiming to provide a tighter regulation of detention procedure, it increased and intensified the powers of the police to bring the suspects into police custody (Reiner, 1993:5; Bridges, 1994:69). Perhaps one of the most important changes that took place was detention for questioning. Before PACE, the Judges' Rules did not recognise the power of 'detention for questioning', even though the courts

7 In the case of the 'Tottenham Three' which occurred in 1985, three black men were convicted of stabbing and murdering a police officer during an inner-city riot. Their convictions were quashed by the Court of Appeal (Walker, 1993).

8 According to the 1999 AI report about the UK, deaths in custody are reported: In April 1999, a suspect named Christopher Alder died in custody in Hull. It was reported that, after being restrained, he was dragged from a police van and left lying motionless for about 10 minutes, face down, before officers attempted to give assistance. In another case in July of the same year, Nathan Delahuntly died, reportedly after being restrained by the police officers (AI, 1999).

progressively constructed a power to detain suspects for questioning (Dixon, 1992:6). Decisions in *Dallison v Caffery*[9] and *Holgate-Mohammed v Duke*[10] legitimised the police working practices of detention before charge and detention for the purposes of collecting evidence which had as an outcome the obtaining of a confession (Sanders and Young, 1994:99-100).

It appears that the legislator transformed the outcome of decisions in *Dallison v Caffery* and *Holgate-Mohammed v Duke* into PACE legislation by providing powers to detain suspects for questioning and other investigation between arrest and charge. As Sanders and Young stated, by providing this power to the police, the legislator in fact agreed that the police should be encouraged to arrest whenever they could, as this would promote efficient crime control (Sanders and Young, 1994:99). Thus, with a considerable clarity, PACE legalized the pre-charge detention procedure and detention for questioning; leaving little room for ambiguity that may have been caused by lack of regulation.

Police detention is defined in the Police and Criminal Evidence Act section 118(2) as being at a police station, having been arrested for an offence and taken to the police station or having been arrested at the police station after attending voluntarily. It does not include the position before arrival at the police station, nor the situation of a person attending at the station voluntarily. Legally, arrest and detention refers to different situations. Detention comes after arrest. As the Royal Commission reported, 'the primary purpose of arrest is to get the suspect into a police station where detention, questioning and other forms of investigation would follow' (RCCP, 1981a). However, arrest sometimes can be for preventive or protective purposes such as to prevent a breach of the peace or to protect a mentally ill person from danger (Lidstone and Palmer, 1996:238).

PACE permits that only an arrested person may be kept in detention and then only in accordance with the provision of Part IV of the Act and its associated Codes of Practice C. In an attempt to end the abuses, formerly associated with the practice of holding individuals without formal words of arrest, the Act stresses now that a person who attends voluntarily at a police station or at any other place where a constable is present, or who accompanies a constable to a police station or such other place without having been arrested, shall be entitled to leave at will unless he is arrested[11]. If a constable decides that a suspect is to be prevented

9 In *Dallison v Caffery,* Dallison was arrested in 1959. After a period of detention, the police were unable to find any evidence to prosecute him and his innocence was confirmed. Subsequently, Dallison took action for false imprisonment and for malicious prosecution. The Court of Appeal ruled in the case that when a constable has taken into custody a person reasonably suspected of felony, he can do whatever is reasonable to investigate the matter, and to see whether or not the suspicions are supported by further evidence.

10 Holgate-Mohammed was arrested and taken to the police station and questioned but not charged. The significance of this case was recognition of the power of the police to detain a suspect in order to get a confession. In *Dallison v Caffrey,* it was confirmed that the police could investigate an arrested person before charge, but it was not clear whether such investigation had to be intended merely to obtain evidence that would justify a charge. *Holgate-Mohammed v Duke* clarified this ambiguity by declaring that the greater likelihood of the suspect confessing if taken to the police station was a factor the police were entitled to take into account.

11 PACE, section 29.

from leaving at will, he/she is to inform the suspect at once that he/she is under arrest and bring him/her before the custody officer[12]. This provision aims to ensure that 'there will not be a 'halfway house' between liberty and arrest and the integrity of the system depends on the custody officer who is responsible for the supervision of the detention procedure' (Leigh, 1985:100).

Overall, the new procedure of pre-charge detention under PACE involves three stages: In the first stage a decision is made by the custody officers whether or not to detain someone who is under arrest or helping the police with their inquiries. If it is decided to detain, this proceeding is called authorisation of detention. The next stage is review of detention.

Following the initial authorisation of detention, the need to continue the detention is reviewed regularly by a review officer. In the third stage, either the detainee is charged with an offence and remanded in custody or released from the station with or without bail. After being charged, he may still be released on bail, which is the case on most occasions (Sparck, 1997:17). These three stages of detention - authorisation, review and outcome - involve two other elements: detention length and voluntary attendance at the police station, since they are carefully regulated by the new Act.

Authorisation of Detention

The decision about whether a suspect under arrest should be detained is called authorisation of detention, which is made by a custody officer who assesses whether or not there are reasonable grounds for believing that the suspect's detention is necessary 'to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him' (PACE, section 37/2). If detention is not necessary, the suspect must be released. Therefore, the decision on detention relies on the principle of necessity (Brown, 1997:51).

Reviews of Detention

Authorisation of detention is followed by three subsequent reviews at which a review officer of inspector rank or above who is not directly involved with the case examines the need for detention to continue[13]. The first review is made not later than six hours after the detention was first authorised, and subsequent reviews must take place at not more than nine-hourly intervals (15 and 24 hours) after the first review. At the 24-hour point, there must be a proper review by a superinten-

12 Code C, 3.9.

13 One of the new provisions which came with PACE is review of detention. Studies (Irving and McKenzie, 1988; MacKay, 1990) indicated that review of detention, particularly first review, has an impact on detention time, since before the first review suspects were released more quickly. The research of MacKay, for example, revealed that both pre- and post-PACE the majority of suspects were released within four hours of arrival (52 per cent and 53 per cent respectively), however, by the time of the first review at six hours 81 per cent of all suspects were dealt with since the introduction of the Act (MacKay, 1990:74). Irving and McKenzie confirm MacKay's finding that there may be a tendency to allow short-term custody drift up to the first review (Irving and McKenzie, 1988:83).

dent or higher rank for further detention. In some cases the reviews may be postponed, but cannot be cancelled. The reason for postponement must be recorded in the custody record (PACE, s. 40).

Detention Limit

Before PACE the length of detention was governed by the Magistrates' Courts Act 1980 which required that a person arrested for a 'serious' offence must be brought to the Magistrates' Court 'as soon as practicable' and for any other offence within 24 hours if the detainee had not been released on bail or otherwise before then. This loose definition of the terms 'serious' and 'as soon as practicable' were criticised as giving the police flexibility to interpret them and to enjoy the liberty of not being restricted by the law (Lambert, 1986:112; Gifford, 1986:98). PACE now stipulates that detention should not be unnecessarily lengthy without charge (Brown, 1991:38). The time limit for pre-charge detention, set by PACE, is now twenty-four hours in the case of ordinary offences, and thirty-six hours when 'serious arrestable offences' are being investigated, and an officer of at least the rank of superintendent is satisfied that the additional time is necessary to secure evidence or to complete questioning. After 36 hours, the police must apply to a Magistrates' Court for a warrant authorising continued detention, which may be extended for up to another 36 hours if the Justices are satisfied that the investigation is being conducted diligently and further detention is necessary to preserve or obtain evidence. The Magistrates may extend the warrant for yet another period, as long as the total time spent in police custody by the suspect does not exceed ninety-six hours (PACE, s. 41-44)[14].

Ending Detention: The Outcome

Within the allowed time limit, detainees may be released without any charge and unconditionally once the detention is no longer justified. However, if investigating officers consider that there is enough evidence for a successful prosecution, he/she may be charged by the custody officers in accordance with PACE section 37(7)[15]. In either of these cases the pre-charge detention period ends. After charge, the suspects may still be released with or without bail (PACE, section 38). If they were bailed, a condition of bail would be either to attend at the appropriate magistrates' court or the police station on a certain day to answer the charge that has been preferred against them (PACE, section 47). Usually the day named will be only a very short time ahead, but there is a growing practice to grant 'extended bail' as cited by Sparck (1997:14). Meanwhile it should be noted that suspects may be released without charge but this may be conditional on bail in ac-

14 The 'serious arrestable offences' which may cause a suspect to spend up to 4 days in police detention include murder, rape, incest, causing explosions, using firearms, kidnapping, and terrorism, plus the offences cited in Section 116 of the Act.

15 This procedure is described in Code C: 16.1 to 16.3.

cordance with the section 34(5) of the Act. In such case, the police may require a suspect to return to the station if there is a need for further inquiries into the offence or if matters connected with the investigation need to be undertaken.

Custody Officer

The supervision of detention as the responsibility of a custody officer emerged with PACE. The government when preparing the Act considered the Commission's proposal, and section 36 of PACE transferred the role of the station or duty sergeant to that of custody officer. The reasoning behind the institution of custody officers was to make one person feel formally responsible so that the system would work efficiently and be more reliable (Sanders and Young, 1994:108). Also as the Royal Commission (1981b) proposed there was a need to appoint an officer of at least the rank of sergeant to be in charge of looking after suspects, to answer questions about their detention, and to ensure that they are aware of their rights:

> *We take the view that where the number of suspects dealt with at a police station warrants it, there should be an officer whose sole responsibility should be for receiving, booking in, supervising and charging suspects (RCCP, 1981b:59).*

All designated police stations are required to have at least one custody officer who should hold at least the rank of sergeant, unless there is no officer of that or superior rank at the station to perform his functions (PACE, section 36). Custody officers have become an important element of police detention procedure, because it is they who decide whether detention conditions are satisfied before accepting someone into police custody (PACE, sect. 37) and make sure that suspects are treated in accordance with the requirements of the Act and Codes of Practice (PACE, section 39). Nonetheless, it is suggested by the studies that the role of custody officer as the independent supervisor of the whole detention procedure and suspect's rights has proved theoretical and not practical, as custody officers are still police officers at the end of the day (McKenzie *et al.* 1990; Morgan *et al.,* 1991; McConville *et al.,* 1991).

The Impact of PACE

In general, the regulation of pre-charge detention procedure by PACE was intended to safeguard the suspect more with the introduction of new provisions such as the establishment of the custody officer's post, the review of detention, and the tape recording of interviews (Sanders, 1997:1067). After PACE came into force, a considerable amount of research investigated whether or not the new rules had any impact when compared with the previous practices. When the complete pic-

ture of changes brought by PACE was taken into consideration, all researchers have agreed that PACE had a definite impact on police practices, although the consequences of this impact were evaluated differently (Maguire and Norris, 1994:82). The review of these studies suggests that PACE seems to have had a certain effect on the nature and outcomes of police handling of suspects, but integration of the rules into police culture and working practices was uneven and incomplete. Moreover, in some circumstances, the intentions of the Royal Commission, the predecessor of PACE, clearly failed. For example, it was hoped by the Act that the process for authorisation of detention by custody officers would filter unnecessary detentions. However, in quite the opposite to this, there was no decline in the number of pre-charge detentions and almost all arrest cases brought to custody officers resulted in the authorisation of detention (Sanders, 1997). Consequently, the role of the custody officer as an independent supervisor of detention procedure was seriously undermined.

Prior to the PACE period, it was widely disputed that there was a great 'dichotomy' between the legal theory and police practice (Koffman, 1985:11). There were many examples of this 'dichotomy': for instance, it was stated in the Judges' Rules that every person, even in custody, is entitled to consult privately with a solicitor at any stage of an investigation, however very few suspects received legal advice whilst in custody.

Following PACE, examples of the dichotomy between the rhetoric of the law and police practices can still be found easily. For example, PACE Code C para 10.1 requires that a person suspected of a crime must be cautioned before any questions are put to him/her regarding the possible involvement in that offence; but in trying to discover whether, or by whom, an offence has been committed, the police may put, without cautioning, a question to any person they think might provide information about the case (Code A, Note, 1B). This is the law in the book. However, beyond this, there is really nothing to prevent the police from questioning a person they suspect, without suggesting to the suspect that he or she is under suspicion of having committed a crime. Having not been told that he or she is under suspicion, the person may make a statement in response to questions, which statement would seem to justify his or her arrest, for which the suspect may then be taken to the police station and there be persuaded to repeat in a tape-recorded interrogation the damaging statements made before or at the time of arrest (Moston and Stephenson, 1993). Wolchover and Heaton-Armstrong (1991:242) found that there was a noticeable increase in these sorts of practices in the post-PACE period compared to the pre-PACE period. Hence, as Sanders (1993) pointed out, an officer's use of discretion had not altered, but the code of practice has changed the way in which they present their accounts.

Conclusion

In conclusion, it appears that the detention procedure under PACE still remains open to errors, although this is less likely than in the pre-PACE period. Indisputably, the PACE legislation was a brave and genuine attempt at tackling problems long entrenched within the police force; however, even with the guidelines and frameworks in place there are still 'ways' and 'means' to get around them (Maguire and Norris, 1992). As Maguire and Norris (1994:82) concluded, 'there is no simple way to ensure that police investigations are carried out fairly by the rules'. Even with all the procedures and conduct guidelines, in police stations, there will be those using, threats, repressive and exploitive questioning to take advantage of the nervousness and ignorance of the suspect in order to obtain a confession (Evans, 1992:2). It is evident that as long as these illegal practices continue, the likelihood of the Philips Commission's (RCCP, 1981a) recommendation for a 'fair, open, workable and efficient system', with the right balance between police powers and the rights of suspects will not get any closer.

Bibliography

Ashworth, A., (1994), *The Criminal Process*: *An Evaluative Study,* Oxford: Oxford University Press.

Benyon, J., (1986), "Powers and Proprieties in the Police Station", in Benyon, J. and Bourn, C. (eds.), *The Police: Powers, Procedures and Proprieties***,** Oxford: Pergamon.

Bottomley, A. K., Coleman. C., Dixon, D., Gill, M., and Wall, D., (1991), *The Impact of PACE: Policing in a Northern Force,* Hull: The University of Hull Press.

Bridges, L., (1994), "Normalizing Injustice: The Royal Commission on Criminal Justice", in Field, S and Thomas, P A (eds.), *Justice and Efficiency? The Royal Commission on Criminal Justice,* Oxford: Blackwell Publishers.

Brown, D., (1989), *Detention at the Police Station under the Police and Criminal Evidence Act 1984.* Home Office Research Study No. 104, London: HMSO.

Brown, D., (1991), *Investigation Burglary: The effects of PACE*. Home Office Research Study, London: HMSO.

Brown, D., (1997), *PACE Ten Years On: A Review of the Research*. HORS 155, London: HMSO.

Criminal Law Revision Committee (CLRC), (1972), *11th Report, Evidence (General),* Cmnd. 4991, London: HMSO.

Davies, M. and Croall, H. and Tryrer, J., (1998), *Criminal Justice: An Introduction to the Criminal Justice System in England and Wales,* Second Edition, London: Longman.

Dixon, D., (1992), *Detention for Questioning in Australia and England: A Comparative Perspective on the Legal Regulation of Policing,* Hull University Law School Studies in Law Publications.

Eddleston, J. J., (2000), *Blind Justice: Miscarriages of Justice in Twentieth-Centry Britain?* Oxford: ABC-CLIO Ltd.

Evans, R., (1992), *The Conduct of Police Interviews with Juveniles,* Royal Commission on Criminal Justice, Research Study No. 8, London: HMSO.

Fisher, Sir Henry, (1977), *Report of an Inquiry by the Honourable Sir Henry Fisher into the Circumtances Leading to the Trial of Three Persons on Charges Arising out of the Death of Maxwell Confait and the Fire at 27 Dodgett Road, London SE6*, London: HMSO.

Freeman, M., (1985), *The Police and Criminal Evidence Act 1984,* London: Sweet and Maxwell.

Gifford, T., (1986), *Where is the Justice: a Manifesto for Law Reform*, Penguin: Harmondsworth.

Home Office, (1978), *Judges' Rules and Administrative Directions to the Police*, London: HMSO.

Home Office, (1991), *Police and Criminal Evidence Act 1984 (s.66), (Codes of Practice Revised Edition),* London: HMSO.

Irving, B. and McKenzie, I. K., (1988), *Regulating Custodial Interviews: The Effects Of The Police and Criminal Evidence Act 1984,* Vol. 1, London: Police Foundation.

Jones, T., Newburn, T. and Smith, D. J., (1994), *Democracy and Policing*, London: Policy Studies Institute.

Koffman, L., (1985), 'Safeguarding the Rights of the Citizen', in: Baxtor, J. and Koffman, L. (eds.) *Police: The Constitution and the Community*, Guildford: Professional Books Ltd.

Lambert, J., (1986), *Police Powers and Accountability,* London: Croom Helm.

Leigh, L. H., (1985), *Police powers in England and Wales,* London: Butterworths.

Lidstone, K. and Palmer, C., (1996), *The Investigation of Crime: A Guide to Police Powers,* Second Edition. London: Butterworth.

MacKay, P., (1990), "Changes in Custody Practice since the Introduction of the Police and Criminal Evidence Act 1984", *The Criminologist*, 14/2: 63-82.

Maguire, M. and Norris, C., (1992), *The Conduct and Supervision of Criminal Investigations,* Royal Commission on Criminal Justice Research Study No 5. London: HMSO.

Maguire, M. and Norris, C., (1994), "Police Investigations: Practice and Malpractice", *Journal of Law and Society*, 21(1): 72-84.

McConville, M., (1985), "The Legal Impact of the Police and Criminal Evidence Bill", in Alves E. and Shapland, J. (eds.) *Issues in Criminological and Legal Psychology,* no. 7, London: British Psychological Society.

McConville, M., Sanders, A. and Leng, R., (1991), *The Case for the Prosecution: Police Suspects and Construction of Criminality,* London: Routledge.

McKenzie, I. and Morgan, R. and Reiner, R., (1990), "Helping the Police with their Inquiries: the Necessity Principle and Voluntary Attendance at the Police Station", *Criminal Law Review*, pp. 22-33.

Morgan, R., Reiner, R. and McKenzie, I., (1991), *Police Powers and Policy: A Study of Custody Officers*, Unpublished Final Report to the Economic and Social research Council.

Morgan, R. and Newburn, T., (1997), *The Future of Policing,* Oxford: Clarendon Press.

Moston, S. and Stephenson, G. M., (1993), *The Questioning and Interviewing of Suspects outside the Police Station,* Royal Commission on Criminal Justice Research Study No. 22, London: HMSO.

PACE, (1985), *Police and Criminal Evidence Act 1984*. London: HMSO.

Price, C. and Kaplan, J., (1977), *The Confait Confessions.* London: Marion Boyars.

Regan, D., (1993), *Are the Police under Control?,* Research Paper 1, The Social Affairs Unit.

Reiner, R., (1991), *Chief Constables,* Oxford: Oxford University Press.

Reiner, R., (1992), *The Politics of the Police,* Harvester: Wheatsheaf.

Reiner, R., (1993), "Police Accountability: Principles and Practices", in Reiner, R. and Spencer, S. (eds.), *Accountable Policing: Effectiveness, Empowerment and Equity,* IPPR.

RCCP, (Royal Commission on Criminal Procedure) (1981a), Chairman: Sir Cyril Philips. *Report,* Cmnd. 8092, London: HMSO.

RCCP, (Royal Commission on Criminal Procedure) (1981b), Chairman: Sir Cyril Philips, *The Investigation and Prosecution of Criminal Offences in England and Wales: The Law and Procedure*, Cmnd 8092-1, London: HMSO.

RCP, (Royal Commission on Police) (1962), *Report of the Royal Commission on the Police,* Cmnd 1728, London.

Sanders, A., (1997), "From Suspect to Trial", in Maguire, M., Morgan, R. and Reiner, R. (eds.) *The Oxford Handbook of Criminology,* Second Edition, Oxford: Clarendon Press.

Sanders, A. and Young, R., (1994), *Criminal Justice*, Butterworths: London.

Sparck, J., (1997), *Emmins on Criminal Procedure,* Seventh Edition, London: Blackstone.

Walker, C., (1993), "Introduction", in Walker, C. and Starmer, K. (eds.) *Justice in Error,* London.

Wolchover, D. and Heaton-Armstrong, A., (1991), "The Questioning Code Revamped", *Criminal Law Review*, April, pp. 232-251.

Zander, M., (1991), *The Police and Criminal Evidence Act 1984*, Second Edition, London: Sweet and Maxwell.