There are three levels of police-initiated encounters. The second two—which are more serious—require a certain level of proof before the police can undertake them.

<table>
<thead>
<tr>
<th>Encounter</th>
<th>Level of Proof</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) conversation</td>
<td>none</td>
</tr>
<tr>
<td>(2) detention</td>
<td>reasonable suspicion</td>
</tr>
<tr>
<td>(3) arrest</td>
<td>probable cause</td>
</tr>
</tbody>
</table>

**CONVERSATION**

When the police are conducting an investigation, but don't have enough evidence to detain or arrest you, they'll try to get you to chat with them. They may call this a "casual encounter" or a "friendly conversation," etc. If you cooperate, you're likely to give them the very facts they need to arrest you.

If an officer tries to start a conversation with you, find out whether you're free to go. If you are, then you should leave immediately, without saying anything else.

Sometimes, an officer will ask you to come to the police station "to answer a few questions." Don't do it. There's a good chance you'll leave the station in handcuffs. Just tell the officer no. If you're outside, walk away; if you're inside, close the door; if you're on the phone, hang up. Then contact a criminal defense lawyer right away.

**DETENTION**

Detention is a short period of custody, often occurring while the police are deciding whether or not to arrest you. In order to detain you, the police are supposed to have a reasonable suspicion that you're involved in a crime. This suspicion must be more than a mere hunch, and the police must be able to put their reasonable suspicion into words. That's why it's sometimes called an "articulable suspicion." For example, if an officer stops an individual, it would not be enough for the officer to be thinking, "He looked like he was up to something." The officer's thoughts would have to be more specific, such as, "He kept looking in the window of the jewelry store, then walking away, then coming back and peering into the store again. And he wasn't from the neighborhood. He seemed nervous and agitated, so I thought he might be planning a burglary."

Usually, a reasonable suspicion is based on multiple factors, such as: the suspect matches the description of a wanted criminal; the suspect drops an object after seeing the police; the suspect runs away after seeing the police; etc.

Detention is supposed to last only a short time and should not involve changing location, such as going to the local police station.

It may be useful later on, when you're fighting the case in court, to have asked the officer why you're being held. If the officer cannot articulate his suspicion, you may be able to show that your detention was unlawful.

Obviously, this tactic works better if you have witnesses who will testify that the officer made an inadequate reply. (Without witnesses, it's just your word against the police officer's, if the officer lies about what he said.)

---

1. "Will you walk into my parlour?" said the spider to the fly. *The Spider and the Fly*, line 1, Howitt, Mary, [http://www.maryhowitt.co.uk/poems.htm](http://www.maryhowitt.co.uk/poems.htm).
During a detention, the police are entitled to pat the outer surface of your clothing, to check for guns, knives or other weapons. If you're detained while driving, the officers can look inside the car for weapons (but not in the trunk). A detention search is conducted only to ensure that the detainee has no weapon. While detaining you, once the police have patted you down and haven't felt anything that could be a weapon, they cannot then examine the contents of your pockets. However, they may try to trick you into "voluntarily" allowing them to search further than they're entitled during a detention. The officer will ask you to show him the contents of your pockets, bags, trunk, etc. The request will usually sound like a casual order, especially when the officer uses a commanding tone of voice:

- *Let's see what's in your bag.*
- *Want to pop open the trunk for me?*
- *How about showing me what you've got in your pockets?*

Never give permission to law enforcement officers to search. It's important to state your refusal clearly (rather than just shaking your head), so that the police can't misunderstand.

ARREST

You can be arrested by an officer or a citizen who sees you commit a crime. And even if they didn't see you, the police can arrest you if they have probable cause to believe that you're involved in a felony (or sometimes a misdemeanor, depending on the type of crime and the jurisdiction). The facts adding up to probable cause vary, according to the nature of the case. Say, for example, the police received a call from a store owner that someone matching your description had just spray-painted lots of graffiti all over the front of his store. The police drive to the area and notice you running down the street, about a block from the store, holding a can of spray paint in your hand. Under these circumstances, the police would have probable cause to arrest you. They don't need an
arrest warrant as long as they have enough facts for probable cause. Probable cause is more than a reasonable suspicion, but less than the level of proof required to convict you at trial (proof beyond a reasonable doubt).

Once you're under arrest, the police can search your clothes, your body, your bags, your car, etc. In addition, after arresting you, the police can search your "wingspan," the area within your immediate control. Your wingspan could include a whole room, if the room is small enough that you could lunge to any part of it.

A detention frequently turns into an arrest, particularly if you answer the officer's questions. Physically resisting the police will almost always turn a detention into an arrest—even gently touching a police officer can result in charges of assault or battery on an officer. If the police find a weapon or see drugs while detaining you, that's likely to provide the probable cause necessary to arrest you. For instance, the police might detain you to see whether you match the description of a particular crime suspect, and then discover an illegal knife while pat-searching you. Or the police might pull you over when you're driving and detain you to write a ticket, and then spot an open alcoholic beverage container in your car.

Once you're under arrest, the police are allowed to search your clothes and body and to go through your bag and/or vehicle.²

BASIC RESPONSES TO DETENTION AND ARREST

As soon as you perceive that you're not free to go, say the Magic Words: I'm going to remain silent. I would like to see a lawyer. By invoking your rights at the very outset, you make it much harder for the police to trick you into saying things that can be used against you in court.

Of course, remaining silent is hard to do. It's human nature to try to talk your way out of trouble. Nervousness makes people want to talk, too. Naturally, the cops are aware of these tendencies and use them to manipulate you into answering questions. It takes real self-control to exercise your right to remain silent, but it's the best possible thing you can do for yourself, in terms of criminal defense strategy.

The biggest mistake that people make is waiting for the police to prompt them. Since the cops' goal is to get you to provide information, they will carefully avoid giving you a cue that reminds you to be quiet. So as soon as you confirm that you're not free to go (by asking or by trying to leave), say the Magic Words: I'm going to remain silent. I would like to see a lawyer.

Do not wait for the police to say "You're under arrest." They do not always say it and they're not required to do so.

Do not wait for the police to read you your rights. They may not bother to do it (and they're not required to read you your rights unless you're under arrest and they want to question you).

Remember that the best defense is a good offense. Say I'm going to remain silent. I would like to see a lawyer, early and often. Don't worry if the police make fun of you for saying the Magic Words before they've formally announced that you're under arrest or before they've read you your rights. This teasing is merely another trick, to make you unsure of yourself.

² If you're arrested in your car, the police are allowed to search the passenger compartment, but not the trunk (unless they impound the car).
HOLD IT RIGHT THERE.
I'M GOING TO REMAIN SILENT. I
WOULD LIKE TO SEE A LAWYER.

YOU'VE BEEN WATCHING TOO
MUCH TV. I HAVEN'T EVEN TOLD
YOU YOU'RE UNDER ARREST.

I'M GOING TO REMAIN SILENT.
I WOULD LIKE TO SEE A LAWYER.

SILLY RABBIT.
TRICKS ARE
FOR KIDS.

Training yourself is critical. It's hard to have the right moves in an emergency—like an arrest situation—if you haven't practiced. Soldiers, during their training, are drilled so that they automatically give only their name, rank and serial number when they're being interrogated. You need to develop the same reflexes, because if you've been taken into police custody, you're definitely in enemy hands. Your job is to give only your name and address, then say the Magic Words and stop talking. Because in this situation, the police are not on your side. The officers may just be trying to find a reasonable suspect, or they may dislike your ethnicity or attitude. Whatever the circumstances, once you're not free to go, the smart thing to do is to say: I'm going to remain silent. I would like to see a lawyer.

WHY YOU SHOULD REMAIN SILENT AND ASK TO SEE A LAWYER

Of course, you've probably had encounters with the police in which you did explain everything and the police let you go...or at least the consequences (a traffic ticket or a misdemeanor conviction) were no worse than they would have been had you kept silent. And it's true that in some cases, it doesn't matter whether you talk to the police or not. However, on those occasions when your luck or skin-color or clothing or income or politics are against you, talking to the police is more likely to result in going to prison than in going free. And you can't necessarily rely on law enforcers to advance how much trouble you're in. You might think you're being pulled over for making an illegal left turn, when in reality the cops are planning to take you in on felony charges.

Also, even though you may be really clever, you're at a huge disadvantage in trying to maintain control over the conversation when you're being questioned by the police. It's an event that's relatively rare for most of us, and one in which we're generally anxious and distracted. By contrast, this situation is extremely familiar to the police. It's what they're trained to do, and they get more experience at it every day. So even the least talented cop eventually gets pretty good at questioning people. It's arrogant to think that you can win at word games with the police, no matter how good a talker you are. The smart money is on saying only the Magic Words: I'm going to remain silent. I would like to see a lawyer. These phrases operate as a verbal condom, adding a critical layer of civil rights protection during interactions with cops.

Many people worry that if they don't cooperate fully with the police and answer all their questions, the officers will increase the charges against them. This is a mistaken assumption. Higher charges are more likely if you give the police additional information. And in any case, the offenses that the police choose are mere suggestions. It's the prosecutor who actually decides what crimes to charge against you, based on the information in the police report. So, the less you say, the less material the prosecutor has for thinking up charges.

People also worry that if they remain silent and ask for a lawyer, the police will be annoyed and will take them to jail for sure, instead of releasing them on promise to appear. And it's true that refusing to answer questions and asking for a lawyer can be irritating to the police. But there are two reasons to remain silent and ask for a lawyer anyway:
(1) The police may not have the power to release you.
For example, warrants, probation violations, or immigration holds normally require the police to
take you to jail. And if you're arrested for a felony,
the police definitely can't release you. Yet you won't
know, while you're being questioned, whether the
police intend to file felony charges or misdemeanor
ones. And the police will encourage you to think
that you're only facing a misdemeanor, even if they
fully intend to charge a felony. That's what hap-
pened to Justin in Use a Pew, Go to Jail, page 46.

(2) Insisting on your rights may mean that the police
choose to keep you in custody, rather than releasing
you. But spending a few hours or even a few days in
jail (until you can bail out or get a judge to release
you), is better than spending a few years in prison—
and that's more likely to happen if you spoil any
chance of fighting your case, by answering police
questions without talking to your lawyer first.

It's harder in the short run to remain silent and ask for a
lawyer, especially when the police seem visibly aggravat-
ed with you, but it's much safer in the long run.

People in custody also worry that if they don't answer all
questions posed by the police, the officers will treat them
more roughly. But being afraid of the police isn't a good
reason for failing to use your constitutional rights. It's
true that the police sometimes beat people, but it's rarely
because the suspect refuses to answer questions. Police
violence is principally the result of racism, politics, and
just general aggression on the part of the police officer,
along with tolerance for such misconduct on the part of
the police department—not the result of the victim's
behavior. So, if you're dealing with aggressive police offi-
cers, you should still protect yourself by respectfully say-
ning, I'm going to remain silent. I would like to see a lawyer.

Using a humble tone of voice and facial expression, as
well as addressing the officer as "sir" or "ma'am," can be
very helpful because police officers tend to be extremely
alert to any sign of disrespect (real or imagined). If an
officer gets the idea that you're giving him attitude, he'll
want to teach you a lesson. Of course, speaking respect-
fully doesn't come naturally for everyone. Some people
speak arrogantly out of habit (and may not be aware of
how they sound). Others feel that being humble to a
police officer simply costs too much in terms of personal
pride or political integrity. And some just can't resist
baiting those in authority. It's worth practicing the
Magic Words with a friend, or in front of a mirror, so
that you develop enough control over your voice and
expression to say them properly under stressfull cir-
stances. If you're going to be provocative toward people
with guns and clubs, it should be because you choose to
do so, not because you can't help it.

WHAT TO WATCH OUT FOR, WHEN YOU REMAIN SILENT AND ASK TO SEE A LAWYER

When you're in custody, once you say I'm going to remain
silent, I would like to see a lawyer, the police are not
allowed to question you—but you actually have to
remain silent. You can't talk to the police about any-
thing, not the weather or sports or movies. You can't ask
simple questions, like "When do I get my phone call?"
Don't make small talk. Don't make jokes. Silent really
means silent.

The only exception to remaining silent is giving your
name and address. You will have to provide that infor-
mation if you want to be "released on promise to appear"
(the promise to appear is a document, usually a ticket,
telling you when to come to court—look at the exam-
ple on pages 31–32). Do not give any other informa-
tion, such as your social security number, the names of
family members, employment data, etc. This is impor-
tant, because one of the most effective police interroga-
tion techniques is to relax the subject by posing safe,
normal questions—the kind that come up on countless
forms and applications. The cop will seem bored and

3. It's important to remember that just because police misconduct is predictable, that doesn't mean you
derive it. Even if you fight or flee, the police are not legally or morally entitled to beat you up. They're supposed
to use only as much force as is necessary to restrain you. And they're not supposed to react to verbal provocation.
See Chapter 14, Reporting Police Misconduct.
4. My friend David Solnit, in custody at the King County Jail in Washington, was asked to sign a form dur-
ing booking. All he said was "no," but he said it with so much attitude that six cops promptly piled on him.
5. You should be allowed to make a phone call within a few hours of arrest, usually soon after you arrive at
the police station or jail. Normally, you're put in a holding cell that has a telephone in it, though these phones are
often rigged so that you can only make collect calls. The authorities are allowed to listen in on your calls from jail,
so you must not talk about the incident for which you were arrested or any other illegal activities in which you
might have been involved. It's best not even to talk about other people, because then they might be investigated
or questioned. The important thing to communicate is that your friends or relatives should get you a lawyer and/or
a bail bondsman. If you haven't been given access to a telephone, say: "I would like to call a lawyer." This has the
same legal effect as saying, "I would like to see a lawyer," so it doesn't wipe out the protection you get from say-
ing the Magic Words.
business-like, just “getting through all the paperwork.” An experienced officer will then move very gradually into questions about the people and incident under investigation, without any pause or change of tone. So don’t let them get you on a roll, obediently answering “safe questions.” Instead, mentally rehearse exactly what information you’re going to give; you’re going to say only your name and address, nothing else. If you don’t set that limit ahead of time, you’ll find yourself answering all sorts of questions, some of which are bound to hurt.

If you’ve been arrested and you break your silence to give your name and address, immediately follow up by repeating the Magic Words: *I’m going to remain silent. I would like to see a lawyer.* This restores your constitutional protection, making it illegal for the police to question you further.

There are two common misconceptions when it comes to remaining silent:

**Misconception 1:** Many people assume that if they say *I’m going to remain silent. I would like to see a lawyer* or “*I take the Fifth,*” then nothing they say afterward can be used against them. That’s a ghastly mistake. Saying the Magic Words merely keeps the police from questioning you after arrest, and only as long as you stay silent. If you break the silence by saying anything at all—whether it’s a statement or a question—your words can be used against you and you’ll have destroyed the effect of the Magic Words. You’ll have to say them again to be protected from questioning.

**Misconception 2:** Sometimes people get confused and think that informal conversation is okay, as long they don’t “make a statement” or “give a confession.” That’s dangerously wrong. Anything you say—anything at all—can be used against you, even questions, casual remarks, and jokes. It doesn’t matter whether your words are written down or spoken, or whether you’re in custody or free to go. And your statements can easily be twisted, taken out of context or misquoted. It’s impossible to predict all the things that could go wrong once you start talking. So the only safe course is to remain silent. Here is an example, based on real cases, of people who talked their way into prison:

**Example:** Sue and Sally were arrested together in a drug case. At the police station, they were kept in separate holding cells, out of earshot of each other. The detective investigating the case questioned them individually about the crime. Neither of them answered these questions. However, Sue chatted with the detective, just making small talk—she told him where she went for dinner the night before, where she was planning to go for vacation, etc. Later on, the detective went to Sally and fooled her into thinking that Sue snitched on her. Sally wouldn’t have believed the detective, except that he missed in the trivial information Sue had given him earlier, and that tidbit of truth made his story very convincing. Once Sally was persuaded that Sue had told on her, Sally angrily insisted it was all Sue’s doing. The detective then took Sally’s statements to Sue, who was outraged, and promptly ratted on Sally. So in the end, both suspects were suckered into snitching on each other.  

When law enforcement officers are questioning you, it’s completely legal for them to lie about the evidence and even create false documents in order to fool you into talking! Since you cannot be sure that the officers you’re dealing with are telling the truth, the only safe thing to do is to stay silent. As the saying goes, "a fish won’t get caught if it keeps its mouth shut."  

---

6. For another example of this technique, see *Hot Sauce*, page 63.
7. Attorneys have been giving this particular piece of advice for hundreds of years. Back in 1614, an English lawyer named John Hoskins (who was, at the time, locked up in the Tower of London for being disruptive) wrote to his young son:  
Sweet Benjamin, since thou art young,  
And hast not yet the use of tongue,  
Make it thy slave, while thou art free;  
Imprison it, lest it do thee  

WHY YOU SHOULD REMAIN SILENT AND ASK TO SEE A LAWYER EVEN IF YOU'RE INNOCENT

Remember that you should still say I'm going to remain silent. I would like to see a lawyer, even if you haven't done anything wrong. Innocent people are wrongly convicted of crimes all the time. This happens for a variety of reasons, such as:

- matching the description of a particular crime suspect
- being too near a crime scene (in the wrong place at the wrong time)
- hanging out with people who have been engaging in criminal activity, thus appearing to be their accomplice
- being framed by a lying witness (and sometimes the false witness is a law enforcement officer)

Example: Sam was arrested in connection with a shooting. The arresting officer asked him what happened, and Sam said, "Hey man, it wasn't me. I was there, but I didn't shoot anybody. There was this other guy. I don't know who he was, but he's the one who did the shooting." Well, it turns out that the police had also taken a statement from Willie, an eye witness. Willie didn't get a good look at anyone's face, but he was certain that there were only two men present—the victim and the shooter. So now Sam had a real problem. He'd admitted to being at the scene of the crime and, of course, that "unknown man who did the shooting" was nowhere to be found. Since Willie testified convincingly there was only one other man beside the victim, the jury concluded that the shooter was Sam—since Sam had already admitted that he was present at the incident.

If the legal system worked perfectly, these mistakes would be corrected in court—but the system is flawed. Judges, jurors, lawyers, law enforcement officers, and probation officers all have limitations stemming from racism, classism, sexism, homophobia, plain stupidity, etc. Moreover, in any court case, the parties' resources play a big part in the outcome. (Here in the United States, you get the best justice money can buy.) And money notwithstanding, even the best criminal defense lawyers can't always expose a witness who lies really well.

Don't make the mistake of thinking that the officer who's interviewing you is acting as an impartial judge, sorting out who's naughty and who's nice. The officer is building a case. That's his job. And if you answer questions, you're giving the officer building materials to construct a case against you. Contrary to popular opinion, truth is not your shield—at least not when you're being questioned and arrested. The time to "explain everything" is when you've got your attorney with you, so you can be sure you won't be misled, misunderstood or misquoted.


9. Consider David Harris, who murdered a cop. Harris, a good liar, got Randall Adams convicted and sentenced to death for this crime. The case was the subject of a documentary film by detective-director Errol Morris, who played a critical role in Adams's ultimate release: The Thin Blue Line, directed by Errol Morris (1988; Anchor Bay Entertainment, 2000). Unfortunately, for every wrongly convicted prisoner who is helped by people like Morris or by the network of Innocence Projects, many more unjustly convicted prisoners go unsolved.
SAFETY TACTICS

When you have an unexpected encounter with the police or with any other law enforcement agents, you will be safer if you pay attention to your body language.

• Do not make any sudden movements.
• Keep your hands in view and open (so it's clear that you're not holding anything or making a fist). Do not reach into pockets or bags, unless instructed to do so. If the police ask to see identification, tell them where you keep it before you start to get it out.
• Never touch the police or their equipment (vehicles, weapons, radios, flashlights, animals, etc.).
• Breathe deeply, speak slowly, and relax your shoulders and knees. This will reduce the officer's fear that you may be about to attack or run away. Relaxing under these circumstances is harder than it sounds, because our bodies usually produce adrenaline when we're confronted by law enforcement agents. Adrenaline makes us breathe more, and talk more quickly. So you have to concentrate to slow down, because you're probably going a bit faster than you realize.
• Make eye contact, to indicate sincerity. However, direct eye contact is sometimes perceived as a challenge, depending on gender, size, race, attire, etc. So maintain a respectful facial expression and speak politely. Again, this is harder than it sounds, because most of us feel angry and/or scared when we're dealing with law enforcement agents. If you're perceived as displaying "attitude," the officer will usually try to humble you—then you'll get angrier and so will the officer, a vicious cycle. Your best bet is to control your expression and tone of voice from the outset. Addressing the officer as "sir" or "ma'am" is good, too.
• If you're in a car and an officer indicates that you are to pull over, park as soon as it's safe. Keep both hands on the steering wheel, where the officer can see them. Do not reach into your pocket, bag, glove compartment or visor. Even though the officer will want to see your driver's license and other documents, do not reach for them until the officer asks to see them. When he does tell you to show him your license and papers, say where they are, and confirm that it's okay for you to get them out. For example, "Sir, my license is in my bag here—is it okay if I open it?" or "Sir, the car registration is in the glove box—should I get it out now?" Under no circumstances should you get out of the car—this will be perceived as a threat. If the officer is giving you commands over his loudspeaker, that means he's particularly nervous, so follow the directions carefully and then hold very still.
• If you're walking by police officers, it's best to pass in front, so they don't think someone's creeping up behind them. However, do not walk in front of an officer if doing so would interfere with the officer's access or aim.

DE-ESCALATING EXTREME DANGER

One exception to the rule against talking to the police is the situation in which an officer is extremely frightened, and you feel that a few soothing words may keep him from shooting you. The point is to keep the officer from panicking, not to make you feel better by indulging in nervous chatter. This de-escalation involves saying only one or two sentences. After that, you can use non-verbal communication, such as keeping your hands in view, making appropriate eye-contact, breathing slowly, etc.

Note: Do not focus on this exception and ignore the basic rule. You should only make calming statements when you're facing a cop who's about to panic and shoot. For all other circumstances, you should rely on saying: I'm going to remain silent. I would like to see a lawyer.
<table>
<thead>
<tr>
<th>What to say to a frightened cop</th>
<th>What not to say to a frightened cop</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hey, it's okay, no problem here.</td>
<td>What do you want with me?</td>
</tr>
<tr>
<td>It's all right, I'm just passing through.</td>
<td>Fuck you, I ain't done nothing!</td>
</tr>
<tr>
<td>I got my hands up.</td>
<td>Don't shoot— I don't have a gun.</td>
</tr>
</tbody>
</table>

It's a natural impulse to yell, "Don't shoot!" or "I don't have a gun!"—but what the police tend to hear is "SHOOT!" and "GUN!" That's because when people are distracted by strong emotions, or by events occurring in the background, they usually focus on the words that are emphasized or that come last in the sentence. Also, it's standard procedure for a cop to yell "gun" when he finds one during a search, in order to alert the other officers. So, referring to shooting or guns in an already tense atmosphere is likely to make things worse.

Once the initial danger is past, it's best to rely on the basic tactics:

- If you're free to go, leave immediately without saying anything else.
- If you're not free to go, say: I'm going to remain silent. I would like to see a lawyer.
THE MIRANDA RIGHTS

Most of us have watched enough TV to know the Miranda rights (also called the Miranda warnings) by heart:

- You have the right to remain silent.
- Anything you say may be used against you in a court of law.
- You have the right to an attorney.
- If you cannot afford an attorney, one will be provided for you by the court.

These rights are derived from the U.S. Constitution, so the protection they provide is particularly strong because the Constitution is the ultimate law in every jurisdiction in the United States.

The right to remain silent is also called the "privilege against self-incrimination." It means that you cannot be forced to say or write anything that might be used to prove you're guilty of a crime.

The right to an attorney means that you're entitled to have a lawyer present to help you during police questioning, line-ups, hearings, etc. Having your lawyer present during interrogation will help you use your right to remain silent.

When the court appoints an attorney for you because you can't afford one, that lawyer is usually a public defender or panel attorney (see page 166).

There is no one-and-only correct wording for the Miranda warnings—small changes are acceptable. For example, one officer might say "Anything you say may be used against you in a court of law," and another police officer might say "Anything you say can and will be used against you in a court of law." Both versions would be considered adequate. However, the officer can't make a change that alters the basic meaning. For example, it would be legally insufficient if an officer said "If you cannot afford an attorney, one may be appointed for you by the court." Many police departments instruct their officers to read the Miranda rights off a card, so that they're less likely to make a mistake.

If you invoke either of these two rights—the right to remain silent or the right to counsel—the police have to stop questioning you. It's best to invoke these rights together, because that provides both present and future protection from interrogation.

HOW TO INVOKE THE MIRANDA RIGHTS

The surest way to invoke your rights is to say the Magic Words: "I'd like to remain silent, I would like to see a lawyer." These two sentences completely invoke your Miranda rights. The reason for memorizing this particular formula is that it's easy to make mistakes.

For example, some people say, "I take the Fifth." That's good, but it doesn't remind you of what you're supposed to be doing: remaining silent and waiting for your lawyer. If you say, "I take the Fifth" and then keep on talking, you cancel the effect. Not only will the police be able to go on speaking to you, but everything you say to them will be used against you in court.

Another error is being too hesitant, as in "I think maybe I'd like to remain silent," or "Do you think I should talk to a lawyer?" Usually, people do this because they're nervous and they don't want to seem impolite. But the police immediately take advantage of this sort of shyness to talk the suspect into answering questions. Justin made this mistake in Use a Pen, Go to Jail, page 46.

Finally, some folks give in to the temptation to get fancy, saying things like, "I hereby respectfully invoke my constitutionally protected rights not to be forced to incriminate myself and to have adequate access to counsel, etc." Such long-winded versions are silly for two reasons. First, you're likely to contradict yourself or leave out something important. Second, it makes you sound

1. The Miranda rights got their name from a case decided by the U.S. Supreme Court in 1966, in which Ernest Miranda's conviction for rape and kidnapping was overturned because the police questioned him without adequately informing him of his opportunities to remain silent and to obtain legal advice. Miranda v. Arizona, 384 U.S. 436 (1966).

2. Occasionally, you'll read a superficial news story claiming, "the Miranda protections have been overturned." This is because every so often there's a new high court decision that redefines or adapts the use and effect of the Miranda warnings. Since most journalists aren't in a position to explain new legal technicalities, they end up oversimplifying the story—and then their editors compound the problem by adding a hystericized title like "Miranda Rights Abolished" (News is business and sensationalism sells.) So regardless of what the headlines say, don't panic before checking with a lawyer. Besides, the Miranda decision only says that, under certain circumstances, the police have to tell you about your constitutional rights. Even if the Miranda case were overturned, it would just mean that you've got to learn about your rights without input from the police—which, fortunately, you're doing at this very moment.

3. Voice samples and handwriting samples are exceptions to this rule.
stuffy, which annoys the police. It's best to keep it simple: I'm going to remain silent. I would like to see a lawyer. This gets the job done, legally speaking, and keeps you from getting the wording wrong or sounding like a wanna-be lawyer.

WHEN THE MIRANDA RIGHTS MUST BE READ TO A SUSPECT

Just because the arresting officer didn't read you your rights doesn't mean you can beat your case. Law enforcement agents are only required to read you your rights if both:

1. you're under arrest, and
2. they want to ask you questions

So if the officers haven't arrested you yet, they can ask you questions without reading you your rights, and your statements will still be used against you in court. For example, during a conversation or a detention (see page 4), the police don't have to read you your rights. As you can guess, a smart cop may try to get all his questions answered before officially arresting the suspect.

Sometimes, officers don't bother to read the Miranda rights, because they don't really need to question the suspect. There may be good eye witnesses or surveillance tapes. Or the suspect may just be babbling, as Kaitlin did in *Fine Finger Discount*, page 18. After all, why would an officer interrupt with questions if the suspect keeps on making stupid statements without any prompting?

The moral of the story is, don't wait for the police to read you your rights. They may not do it at all, or they may at least wait until you've already made lots of damaging statements.

WHO MUST READ THE MIRANDA RIGHTS TO A SUSPECT

Both state and federal law enforcement agents have to read you your rights before they can question you in custody. This includes:

- Police and highway patrol officers
- Sheriffs and U.S. marshals
- FBI, DEA, ATF, and other federal agents
- Park rangers
- Probation and parole officers

The only people likely to have you in custody who don't have to say the Miranda warnings are private security staff (security guards, rent-a-cops). These security guards sometimes have fancy uniforms and badges, and carry guns, so it's not always easy to tell them from real police.

You should always invoke your rights, whether or not you're dealing with a real law enforcement agent. It won't hurt you if you say the Magic Words to a private security guard. The worst that can happen is that he'll make fun of you. And you'll at least have reminded yourself of your own best strategy, by saying: I'm going to remain silent. I would like to see a lawyer.

HOW OFFICERS TRICK PEOPLE INTO GIVING UP THEIR MIRANDA RIGHTS

In 1966, when the U.S. Supreme Court ruled that officers must recite the Miranda warnings before questioning arrestees, police across the country were outraged. They were sure that suspects would never again confess or even make a few incriminating statements. However, a year or two later, the police had stopped fussing. They discovered that giving the Miranda warnings had very little impact on suspects' behavior. Instead of remaining silent or asking for a lawyer, most suspects whom the police arrested went right ahead and answered questions, completely ignoring the warnings.

Now, decades later, the public seems to feel that the Miranda warnings are just part of the arrest ritual, the stage that comes between being handcuffed and being put into the back of the squad car. After all, most officers read the rights in a bored monotone, without any emphasis. So an arrested person is likely to think that the Miranda warnings aren't very important (though this is actually the last best chance you have to help yourself). Some officers even refrain from saying, "Do you understand?" at the end, because they don't want people to stop and think. Immediately after reading the warnings, an experienced cop will start asking easy questions about age, marital status, employment, etc. Once suspects have been obediently answering a long string of these questions, they will find it very uncomfortable to stop in the middle, even though the inquiry has shifted from personal background information to pointed questions about the crime under investigation.

When a suspect doesn't immediately start babbling, law enforcement agents have very effective tricks for getting people to start talking. The following are common arguments the police use when they're trying to convince you to answer questions. Notice the false assumption in each one:
What's your problem? We're just trying to clarify what's happened here. And since you say you haven't done anything wrong, what are you got to be afraid of?

**FALSE:** If you don't answer questions, you must be hiding evidence of guilt.

**TRUE:** The constitutional right to remain silent would be useless, if exercising it branded you as guilty. That's why, if you invoke your right to remain silent, the police and prosecutor are forbidden to use it against you in court. In fact, during trial, if a prosecutor even implies that you've remained silent out of guilt, your defense attorney can object and call for a mistrial.

When we're done here, I'm going back to the station and write my report. That's what the DA's going to use to decide who to prosecute and for what charges. Right now, all I have for my report is how the other guy said it happened. Of course, you don't have to talk to me, but as far as my report's concerned, this is your last chance to tell your side of the story.

**FALSE:** If you don't tell your side of the story to the police, you'll lose your chance to talk your way out of being prosecuted.

**TRUE:** You cannot assume that police officers are neutral, listening to both sides and deciding who's at fault. It's their job to collect potential evidence against people. Prosecutors aren't neutral parties, either. It's their job to prove people guilty. So if you're a suspect and you tell your side of the story to the police and the prosecutor—who, by definition, are not on your side—you will be hurting yourself. The right person in whom to confide is your own defense lawyer. Your lawyer will then help you tell your story to the judge and/or jury, who are the only people whose job it is to listen impartially to you.

Look, you're busted. There's no way you're getting out of this. The best thing you can do for yourself at this point is tell the truth. If you take responsibility now, it'll look a lot better when you get to court.

**FALSE:** The prosecutor and judge will respect you if you confess immediately upon being arrested.

**TRUE:** Prosecutors will think you're pretty stupid if you confess to the police, but they'll be happy because it'll be much easier to win the case against you. Judges don't particularly care whether you confess to the police or not, as long as you accept a plea bargain before the case has to go to trial. From a strategic standpoint, admitting guilt is only valuable if you hold it in reserve, so that your lawyer can use it as leverage to cut a deal for you. Confessing before negotiating is like going to buy something you really want, putting all your money on the table and asking, "How much does this cost?" Above all, do not ask for or accept advice from the officers who have stopped you. They are not there to act as your advocate or judge. Remember that they've been trained to put you at ease, to get you to trust them. Their job is to find, arrest and help convict the suspect. And that suspect is you.

**HOW OFFICERS TRICK SUSPECTS WHO HAVE CHILDREN**

Police often manipulate suspects who have children into confessing or consenting to searches. The soft approach goes like this:

"Hey, I see you're alone here with your kids, and I don't want to make this any harder on you than necessary. I tell you what, if you'll sign this form and answer a few questions, we'll let you make some phone calls right now, to find someone who can come pick up the kids."

The hard approach sounds like:

"You know, I could put in a call to Child Protective Services and have a social worker out here within the hour. Do you know how hard it is to get your kids back, once the county takes custody of them?"

This is a really tough situation, but it's critical to say the Magic Words, "I'm going to remain silent. I would like to see a lawyer, no matter how frightened and upset you feel. In the short term, if you refuse to cooperate with the police, they may take your children for a little while—but in the long term, you stand a much better chance of beating the criminal charges and coming home. When you answer questions or consent to searches, you sabotage your chances of winning your case or negotiating a favorable plea bargain—which may result in your going to jail or prison, where you won't be available to your children for a long time. Remember that as long as there are relatives or a designated guardian who can take custody of your children, the authorities aren't going to put your kids in foster care. The county has no interest in spending resources..."
on caring for anyone's children, if it doesn't have to—and the authorities will be more than happy to turn them over to an appropriate guardian as soon as possible. You can shorten the amount of time your children have to wait to be rescued, if you designate a guardian in advance. To appoint a guardian, it's best to check with a lawyer or law clinic—the procedure varies from jurisdiction to jurisdiction, and you don't want your child's guardian to have to struggle to prove that she's properly authorized. If your children are old enough to understand, have them memorize their guardian's name and telephone number. While waiting to complete the arrangements to designate a legal guardian, you should prepare a letter giving certain adults permission to take care of your child in the event of an emergency. Such a letter is not a substitute for setting up a true guardianship, but it may convince the authorities to let the adults you've specified take temporary custody of your child. Sign and date the letter, and leave copies with your child's school, your child's doctor, and each of the adults named in the letter.

**ORAL CONFESSIONS AND WRITTEN CONFESSIONS**

Some silly people persist in imagining that it doesn't matter what they say to the police, as long as they don't sign anything. Yet the Miranda warnings specifically state, "anything you say can and will be used against you in a court of law." So this shouldn't be a mystery. However, just to be crystal clear, what you say to cops can be just as harmful as what you write or sign for them.

Here's how the police gather incriminating statements during a typical arrest:

1. At the scene of the arrest, the officer reads the Miranda warnings and the suspect fails to invoke his rights. Then the suspect answers the officer's questions. The officer takes notes and later quotes the suspect (accurately or not?) in the narrative part of the police report.

2. At the arrest location or at the police station, the suspect is invited to tell his side of the story in a written statement (see examples starting on page 37). Sometimes the suspect himself is asked to write the statement, but usually the suspect talks while the officer does the writing. Officers generally edit as they write, leaving some things out, suggesting in particular words, or just inserting their own words. Then the suspect is told to sign the statement. Usually the suspect doesn't bother to read it over, let alone make any corrections; or perhaps the suspect is too frightened or upset to disagree with whatever the officer wrote.

3. At the police station, if it's a serious case, officers will question the suspect again. This interview will normally be audio taped, though sometimes the police use videotape. The officer may also seek a longer, more detailed written statement from the suspect.

Naturally, statements on paper or on tape make it harder to defend the case than oral statements. Yet even brief oral statements can be impossible to deny or explain.

**TRAFFIC STOPS**

When law enforcement agents stop a car, they may simply be intending to write a speeding ticket—or they may be hoping to find evidence of a greater crime. It can be very hard to tell what the officer's up to, but either way, it's important to maintain careful control of what you're saying.

Even in a routine traffic stop, you can be polite and low-key without babbling. Normally, the first thing an officer says to you, after pulling you over for a vehicular violation is: "Do you know what you just did?" Unless you don't care about getting a ticket, it's silly to say, "Oops, I guess I ran a red light." So don't make damaging statements. Instead, ask: "Should I get out my license, sir?"

To offset the fact that you're not answering the officer's question, it's important to convey respect through your tone of voice and facial expression. An officer who believes you're being cocky is likely to indulge in unprofessional conduct.

---

4. It's wise to designate a guardian for your child even if you never expect to get in any trouble with the law, in case you're caught in an accident or other disaster.

5. One of my teenage clients was busted on the street and the cops dragged him over to a wall covered with graffiti. The officer demanded, "Did you write that?" My client carefully replied, "No, I did not." In his police report, the officer wrote: "I asked suspect, Did you write this graffiti?" and he responded, "Yes." In court, it was the officer's word against my client's—and we were in juvenile court, so there was only a judge and no jury. Bummer.

6. Also remember to stay in your seat and keep your hands on the steering wheel, where the officer can see them.
Unfortunately, it's perfectly legal for an officer to detain you for a minor vehicular violation, in the hope of turning evidence of some greater crime. This is called a "pretextual stop." (You can reduce the risk of pretextual stops by driving conservatively and keeping your car "right": no missing lights, no loose tail pipe, no overdue registration.) These pretextual stops begin as mere traffic tickets, but can become very serious indeed, for example:

An officer has a hunch that the driver of a certain car has recently purchased illegal drugs, but the officer doesn't have enough proof to detain or arrest the suspect. So the officer decides to make a pretextual stop, and pulls the car over on the basis that the car's left tail-light is broken. The officer checks the driver's license, starts writing a fix-it ticket, and then asks, "Do you have any drugs in your possession?" The driver says, "No, no way," The officer smiles and says, "Fine, then you won't mind if I have a look in the trunk?" The driver replies, "Uh, okay, I guess so." In the trunk, the officer finds a controlled substance.

The driver in this story did two things wrong. First, when the officer asked whether he had drugs, the driver should have said, "I'm going to remain silent: I would like to see a lawyer." Second, the driver should not have agreed to open the trunk; he should have said, "No, I don't consent to your searching the trunk." Clearly, the officer was already convinced the driver had drugs—he just didn't have enough proof to search or arrest. So the officer was trying to get the driver to say or do something that would provide probable cause. That's why the driver's best response would have been to refuse to answer questions and refuse to consent to a search—because invoking these rights cannot be used by the officer to justify arrest or search.

Passengers in a car that's been pulled over should get the officer to say whether or not they're being detained. When the officer comes up to the car, the passenger should ask, "Am I free to go?" It's possible that the officer might say "Yes," in which case the passenger should get out and walk away. More likely, the officer will say, "No, stay in the car." Making the officer specify this will help the passenger's lawyer argue that the passenger didn't voluntarily submit to investigation. Naturally, the passenger must also say, "I'm going to remain silent. I would like to see a lawyer, and then stay silent.

PRIVATE SECURITY STAFF

Private security guards, "loss prevention agents," and "asset protection agents," are making a citizen's arrest when they bust you, since they aren't really police. They typically keep you in custody and call the police to come pick you up. They're allowed to restrain you physically, while they wait for the police to arrive. They can grab you, handcuff you, lock you in a room, etc. Like police, security staff are not supposed to use more force than is necessary to ensure that you don't escape.

Naturally, private security staff are not required to read you your rights, since they're not really police. However, anything you say to private security can and will be used against you in a court of law. Some businesses instruct their security staff to note, in particular, the "subject's first words at time of detention" (because such statements won't have been well thought out). But all statements, from first to last, made to private security staff are dangerous and likely to be quoted or misquoted in their reports. And it's so very tempting to try to explain everything to the security staff. After all, once in a while this works. Some people have been caught engaging in a minor crime, and then talked and cried their way out of trouble. Obviously, this is more effective while you're still young and cute; and it may work better for girls than for boys. Unfortunately, on the occasions it doesn't work, you'll have sabotaged any hope of a legal defense, because what you've said will certainly be used against you court. That's what happened to Kaitlin in Five Finger Discount. Not surprisingly, for those who

7. In many instances, pretextual stops have been correlated with racial discrimination, such as detention or arrest for "Driving While Black.
8. One drawback to the winsome approach is that occasionally a corrupt security guard or cop will demand sexual services in exchange for letting you go, which many people find disquieting.
take this gamble, the odds always seem better than they really are. Both cops and casinos win big, betting on the gambler's optimism.

In addition to getting you to make damaging remarks, security staff may also persuade you to give a statement in writing or sign a statement they've prepared for you (see Merchant Confession Forms, page 43).

Most businesses with professional security staff also have clear policies about when and whom to arrest. For example, a store may have rules such as: the security staff must not arrest a suspect unless the agent has had an uninterrupted view of her; or juveniles and first-time shoplifters are let go with a warning. But most businesses that employ security staff have a policy of arresting every valid suspect. And if the suspect runs or fights, or doesn't have I.D., the security staff is virtually certain to arrest him. Security guards nearly always follow the store's policy; in deciding whom to arrest—it's just not worth it to the guard to risk getting reprimanded or fired for taking pity on a suspect. Besides, after a few weeks on the job, security staff find that they've heard all the excuses over and over. So when suspects talk to security staff, they only make things worse for themselves.

In a case involving theft, it doesn't matter whether or not the suspect leaves the premises. Once you've picked up someone else's property and taken it to keep, without being entitled to it, that's larceny. Usually, store security staff wait for shoplifters to leave before they grab them, so the suspects can't claim that they were intending to pay for the goods before exiting. But security staff may also arrest shoplifting suspects before they've left the store, since concealing the merchandise indicates that there was no intent to pay.

WHAT TO SIGN: PROMISE TO APPEAR

When you've been arrested, you're likely to be given all sorts of forms to sign. But there's only one kind of document that you can be sure is safe to sign: a "promise to appear" (see page 30). Anything else is probably a trap.

WHAT NOT TO SIGN: WAIVER OF RIGHTS, STATEMENT, PROPERTY RECEIPT, MERCHANT CONFESSION FORM

When law enforcement agents are asking you to sign something, the rule to remember is: don't sign anything other than a promise to appear, without consulting your lawyer. But as further protection, you might as well be familiar with the principal documents used to trick people:

- waiver of rights
- statement
- property receipt
- merchant confession form

These are each discussed in detail below, and you'll have no trouble recognizing them, once you've taken a good look at the samples. However, whether or not you can tell precisely what the officers are trying to get you to sign, you know it can't be any good for you unless it's a promise to appear. On the bright side, there's no need to make a decision in haste. If you've just been arrested and the officers are pressuring you to sign something, ask to telephone your lawyer to check whether you should sign. Of course, the officers are likely to claim that they don't allow phone calls until they've finished all their booking procedures—but don't just give up. Many people, upon being arrested, have persuaded the officers at the station to let them telephone their lawyers in the middle of booking. Some just politely asked to call their lawyer ("May I please telephone my lawyer?") and weren't allowed to do so. Some had to make the request over and over. And some had to refuse to provide even the most basic information—such as name and address—until the officers let them use the telephone.

If you don't have a lawyer yet, try the public defender's office or a criminal defense lawyer from the yellow pages. Keep your question short and focused:

"Hi, I've just been arrested and the police are telling me to sign a paper that says: Should I sign it?"

When you call a lawyer while you're in custody, the lawyer will doubtless remind you to invoke your rights. She will appreciate hearing that you've already told the police, "I'm going to remain silent. I would like to see a lawyer."
Once you’ve consulted with an attorney and carried out his or her advice about what to sign and what information to provide, re-protect yourself from questioning by saying the Magic Words again. After that, make sure you don’t say anything else to the officers, because if you break the silence, you will have waived your rights.

PROMISES TO APPEAR

A promise to appear is a document you sign when you’re being released from custody, guaranteeing that you’ll come to court. It normally specifies the courthouse, date, and time at which you’re to appear. The promise to appear may be issued by the police, if you’re being released at the scene of the arrest or at the police station. Or, if you were kept in custody, you may be issued one at the courthouse or jail, as part of the process of release on bail or release on your own recognizance. In some places the promise to appear is called a “citation,” and when you get one you’re “released on citation” or “cited out.” In other places, it’s called a “summons” or a “ticket.” (For more information on procedures for release, see Chapter 13, Getting Out of Jail While Your Case is Pending, page 131.) Promises to appear come in various shapes and colors. Sometime they’re printed on full-size paper (9 1/2” x 11”); but they can also be smaller, like traffic tickets. 10

In some jurisdictions, a promise to appear will clearly indicate that it’s not an admission of guilt. For example, citations in California have the following phrases above the signature line: “Without admitting guilt, I promise to appear...” However, in most locations, promises to appear don’t have such a useful signal to let you know they’re safe to sign. So you have to read carefully, to make sure that the document is nothing but a promise to come to court.

Note that if you fail to appear when you promised, the judge will likely issue a warrant for your arrest (a “bench warrant,” page 86).

10. Actually, a traffic ticket is a notice to appear, except you may be given the option of paying a fine instead of coming to court (unless you want to fight the ticket).
WAIVERS OF RIGHTS

Waiving your rights means giving them up—nearly always a mistake. In an encounter with law enforcement, the officers want you to waive your Miranda rights: the right to remain silent and the right to have a lawyer present to help you when you're being questioned. If you answer questions after law enforcement officers have recited the Miranda warnings to you, you've implicitly waived your rights. Even if you say the Magic Words, *I'm going to remain silent, I would like to see a lawyer*, but then fail to remain silent, you've waived your rights.

Although you waive your rights simply by talking, you can always make matters worse by signing a waiver of rights form. Prosecutors like it when the police persuade suspects to waive their rights in writing, because that makes it so hard for criminal defense attorneys to argue successfully that their clients were tricked or forced into making damaging statements. (The forms always say that the suspect understands his rights and knowingly gives them up.)

To get you to fall into this trap, most police departments present you with a waiver form at arrest or during booking. The officer generally pretends that it's just a formality. The waiver may be a separate document, or it may be included in a form for taking your statement (see page 36). Here are some lies the officer may tell, to get you to sign the waiver of rights:

- **Sign here. This confirms that we read you your rights.**
- **This is just an acknowledgment that you understand your rights.**
- **We're not legally allowed to write down your side of the story unless you sign this form.**
- **Look, this is just part of the booking process. Everybody has to sign this form.**
- **You're not going anywhere until you do sign it. You wanna sit here all night? That's fine with me.**

If an officer gives you a waiver of rights form, don't sign it. And don't try altering the form, by crossing words out or writing on it. Just give it back to the officer and say: *I'm going to remain silent. I would like to see a lawyer.*
STATEMENTS

Law enforcement agents start by trying to trick you into making an oral statement, that is, talking about what happened. If you do make the mistake of speaking to the police, the officer will then want to get your statement in writing. Typically the officer will write down the statement and try to get you to sign it, although sometimes the officer will ask you to write it yourself. If you sign a written statement, regardless of who wrote it, you'll have produced potential evidence that's likely to be extremely damaging.

Most police departments have a specific form for statements, that's part of the complete police report. Many statement forms include a waiver of rights section (giving the Miranda warnings), but some don't.

The officer may ask for a written statement at the scene of the arrest, or at the police station, or both. Just say no. Don't write anything at all on the form. And don't sign it.

11. Remember that what you say can be just as damaging as what you put in writing. See Oral Confessions and Written Confessions, page 27.
PROPERTY RECEIPTS

When you're arrested or searched, you're normally given a property receipt listing the items taken away from you. The reason you shouldn't sign a property receipt is that it's an admission that you knowingly possess whatever's on that list—and there may be things on the list that can be used against you in court. For example:

- drugs or drug paraphernalia
- weapons
- large amounts of cash (indicative of illegal business dealings)
- stolen property
- burglary tools (such as a screwdriver)
- vandalism equipment (spray paint or even just a marker)
- address book or other documents with the names of people who may be involved in criminal activities
- keys or documents (such as mail addressed to you) that prove you have ties to a place where criminal activity occurred
- computer or electronic storage media (containing files with incriminating statements or contact information)

Even if you believe that your pockets, bags, backpack and car don't contain anything damaging, you still shouldn't sign a property receipt. Just as it's hard to predict how your words might be used against you, it's equally hard to predict how your possessions might be used to prove guilt. Also, you may have something in your property that you've forgotten about (like the end of a joint in the very bottom of your backpack). And finally, someone else may have put an incriminating item in your bag or car—another suspect (trying to get rid of it) or a corrupt officer (trying to frame you).\(^\text{12}\)

The officer trying to get you to sign the property receipt may tell the following lies:

- If you don't sign it, you won't ever get your stuff back.
- If you don't sign it, you won't be released.
- Don't worry, it's just part of the procedures here—it doesn't mean anything.

The police don't need your signature to keep track of the items taken from you—they'll all be labeled with your name and the police report number.\(^\text{13}\) And your lawyer can always file a "motion for return of property" to get your things back—that's part of a lawyer's job—you just have to ask. Be sure in mind that some items may not be released until the case is concluded, because the prosecutor will claim he needs them for evidence. And some of your property may never be returned anyway. Your belongings can be confiscated if they're used during a crime (like burglary tools) or if they're contraband (like illegal drugs or weapons).\(^\text{14}\) Similarly, your money can be seized if the prosecutor claims it was illegally obtained (like drug money). The main thing is to talk to your lawyer, before signing anything that has to do with property.

---

12. A client of mine was arrested one afternoon and taken to the station. Following the arrest, police officers picked up two abandoned guns that were near the scene of the incident, but not in my client's possession. Many hours later, in the middle of the night, my client was being released from jail. The police told him to sign a variety of forms, including a property receipt. At the bottom of the list of items were the two guns. My client said, "These aren't my guns." The officer replied, "Oh, don't worry, it doesn't mean anything. We just had to list them somewhere. Besides, you have to sign this if you ever want to get your stuff back. And anyhow, you won't get released tonight if you don't complete all the paperwork." Now, my client had been wearing some very nice gold jewelry that he didn't want to lose. And he was extremely tired. So he signed the property receipt. Needless to say, it became a real problem in defending the case. There was very little chance of finding the officer who'd lied to him (we didn't know his name or badge number). And even if we could find the officer, it would be hard to prove in court that he told those lies, since we had no witnesses to the conversation.

13. The police don't keep track of your property as a favor to you. They do it in case the prosecutor wants to use it as evidence against you.

14. Also, some property gets lost in the system, through incompetence or greed on the part of law enforcement and correctional officers.
It's unlawful for the police to beat you into confessing, however, it's perfectly legal for them to sucker you into it. That's why interrogation doesn't usually involve bright lights and rubber hoses—more often than not, the officer sounds sympathetic or at least business-like. And that can leave you even more vulnerable to manipulation, because when you feel relieved that the officer isn't being really scary, you tend to let your guard down. Besides, it's truly difficult to overcome the natural urge to talk one's way out of trouble. That's why it makes so much sense to train yourself to say I'm going to remain silent. I would like to see a lawyer, under any circumstances. It's got to become a reflex you can rely on, the same way you know that you'd automatically start swimming if you fell into deep water, even if you were scared and disoriented.

**COMMON INTERROGATION LINES**

**You're not a suspect. We're simply investigating here. Just help us understand what happened and then you can go.**

If you answer questions, you're likely to become a suspect, if you aren't already.

**What are you afraid of? If you haven't done anything wrong, then you shouldn't have any problem answering my questions.**

What you should be afraid of is being lured into answering questions. You don't have anything to prove. Remember, in court you're "innocent until proven guilty"—and the thing most likely to prove guilt is an unplanned statement made when you're arrested. If the police are thinking of arresting you, answering their questions will make them more determined to do it, not less so.

**Look, if you don't answer my questions, I won't have any choice but to take you to jail. This is your chance to tell your side of the story.**

This is the commonest trick of all. The police consistently pretend that they're considering, letting you go, when they've already made up their minds to take you to jail. Remember, the time to tell your side of the story is when you're in court and have your lawyer helping you—not when you're alone with a cop who's busy building a case against you. See how a real police inspector uses this technique during an actual interrogation, in The Pie Go to Jail, page 46.

**Your friends have all cooperated and we let them go home. You're the only one left. Do you want to stay in jail?**

The police can lie about where your friends are, and what they've said. Take a look at Rat Jacket, page 63. Don't trust information given to you by the cops. Make sure to verify your facts through a lawyer or your friends and family.

**I'm tired of screwing around. If you don't answer my questions, you're going to be charged with obstruction.**

Well, you know this is garbage, because the Constitution guarantees you the right to remain silent—so refusing to answer questions can't be against the law. But some cops will still threaten you with "resisting an officer" or "obstruction of justice," just to see whether you'll fall for it.

1. The Fifth Amendment to the U.S. Constitution says that no one "shall be compelled in any criminal case to be a witness against himself."
2. This is not the time to launch into a political discussion of how the legal system is malfunctioning and can't be trusted to protect the innocent. Don't let yourself be drawn into any kind of conversation at all. Besides, this "what're you afraid of?" business is like a 12-year-old's dare ("If you're so tough, why don't you try getting across the tracks before that train comes?" or "You don't even know the first thing about how to drive—let's see you take your Mom's car around the block.").
Come on, I'm not asking you to sign anything. We're just talking. And you can stop any time you want to.

Remember, anything you say can be used against you in a court of law. You don't have to say anything to make it a real confession—the police will just quote you (and they may be taping you, too). The time to stop is before you ever begin—even a little time spent answering questions can completely screw up your case.

Look, we've got all the evidence we need to convict you, so you might as well confess.

Yeah, right. If the police really had all the evidence they needed, they wouldn't waste time talking to you. The only reason they're questioning you is because they don't have enough proof, and they're hoping you'll be kind enough to give it to them.

Basically, the case against you is really strong. It's not a question of whether you're going to jail—it's a question of what you're going to jail for. This is your last chance to get the right information to the DA before he decides on the charges.

This is not the time to give more information to the DA (the prosecutor). You can do that later, once you've got a lawyer helping you. After all, the DA can change the charges any time up to trial, and usually does—reducing or dismissing them as part of a plea bargain. But your lawyer can get you a better deal if you don't give away all your bargaining power by confessing to the arresting officers.

You know, there's only one person who can help you right now, and that's you. I can listen, but you've got to do the talking. This thing is going to eat at you; it's going to weigh you down for the rest of your life. If you don't get it off your conscience, things look pretty bad right now, and they are. But this is where you have to start from. You've got to get this stuff out now, so you can move forward. If you could talk to the victim right now, what would you want to say to him?

Confession may be good for the soul, but not when it's to the police. Talk about your feelings with a spiritual advisor such as a minister, priest, rabbi or imam, or with a licensed counselor such as a psychiatrist, psychologist, or social worker (but not a probation officer). They have the professional training to help you, and more important, they're prohibited by law from testifying about what you confide to them. Cops, on the other hand, will gladly testify about what you've "itten off your chest.

You got a choice here. Either you answer my questions, or you're going to jail. And I'd hate to see a nice white boy like you get punked by a bunch of nigs.

— or —

You can talk to me now, or you can go to jail. And let me tell you something, there's women in that jail who haven't been outside in months, women who haven't been with a man for a real long time. How'd you like to be raped by a bunch of lesbians?

Cops use this kind of race-baiting and queer-bashing pretty frequently to scare white people who haven't been to jail before. And the cops aren't particularly subtle about it. Don't let some bigot with a badge put his trash into your head.

TV and movies make rape-in-jail scenarios look more frequent than they really are. Most people in jail are there for drug or property crimes, not crimes of violence (much less sexual violence). If you behave reasonably, other prisoners really aren't likely to give you a hard time.

See Appendix C: Advice for Those Going to Jail for the First Time, page 183.
GENERAL INTERROGATION TECHNIQUES

You know the police are really trying to manipulate you when they offer a legal defense or moral justification for what you're accused of doing, or imply that what happened was due to an accident or to circumstances beyond your control. In applying this tactic, the interrogator frequently offers the suspect two choices, for example: a believable explanation or an unbelievable one—an honorable excuse or a dishonorable one. Of course, both choices are still damaging admissions—it's just that one sounds better than the other. Imagine the following lines said by a sympathetic, understanding police officer in a warm, reassuring tone of voice:

Legal Defense

- I understand what you're saying...be threatened you, and essentially you were acting in self-defense.

- Okay, we've got you for possession of marijuana. But what isn't clear to me is: were you just out to get stoned, or were you maybe using it for medical purposes?

Moral Justification

- What I'm wondering is whether you needed that money so you could take care of your kids and get them decent food and clothes and all—or did you just do it because you wanted drugs or new Nikes or whatever?

- Well, that's a perfectly normal reaction. When a man finds out that his wife is sleeping with another guy, he's going to want to go out and do something about it.

Accident or Circumstances Beyond Control

- Now, I wasn't there, so I don't know. Only you know what really happened. But I'm thinking that when two people get into it, when there's an argument, stuff can happen that nobody ever intended. I mean, you could've just been shoving each other around, and he could've fallen and hit his head by accident—just plain bad luck.

- Obviously there's a difference between being an active participant and being a bystander. It's one thing to be actually involved in selling the drugs, and it's another thing to just be in the house when some other guys are doing a deal there. But the way things look, you could be either one. And the only way we're going to be able to figure out what your real role was, is if you talk to us.

Another common aspect of Reid interrogation is minimization/maximization, contrasting the worst case scenario with the best possible outcome.

- You know, there's a lot of different ways this case could be charged. Anywhere from first-degree murder—that gets you life without parole—all the way down to involuntary manslaughter, for which people typically get probation. What we're doing right now is trying to understand what really happened, so we can make a decision which way to go...

Often the police will even say: "Look, I'm not making any promises..." and then imply that confessing will result in a better outcome in court: lesser charges, a more favorable sentence, etc. This is a lie. The police are not authorized to offer leniency in exchange for a confession. Only the prosecutor or judge can make a plea bargain.

All law enforcement officers are trained to question suspects. Very few civilians have any practice in spotting or withstanding the interrogation techniques police use against them. It's pretty stupid to play such lousy odds when your liberty is at stake.

6. John Reid codified these tactics, referring to them as the "Nine Steps of Interrogation." Reid and his partner Fred Taboas spent decades writing about and teaching interrogation techniques, and business is still booming at https://reid.com/. In U.S. police academies, their books have been the most popular text on this subject. Their work is full of sample scripts, generally involving a hapless suspect named Joe: "Joe, if this whole thing was your idea, that tells me that you have a criminal mind. But if you were just talked into doing this against your better judgment, that would be important to include in my report. Were you just talked into it, weren't you?" For examples of how such techniques get innocent people to confess to crimes, take a look at the work of Richard Okies, at http://sociology.berkeley.edu/faculty/okies/.

7. There's a difference between confessing and snitching. A law enforcement officer can't offer you a deal in return for a confession, but he can make a snitch deal. See Informants, page 79.
It's initially surprising that the Good Cop, Bad Cop routine works so well, since it's generally so obvious. You've seen it in hundreds of TV shows and movies, and most people consider it a cliché. Yet law enforcement officers use it in every city, every day... because it works nearly every time. And a big reason it works so well is that when you've just been arrested, you're extremely vulnerable. You're thinking of all the horrible things that are likely to happen: going to jail, disappointing your loved ones, being publicly disgraced, losing your job, failing school, etc. On top of that, if you've been in custody all day or all night, you'll be suffering from fatigue and hunger, and perhaps other physical stresses. So, psychologically, you're a sitting duck. And even though you know, intellectually, that the good cop is just trying to manipulate you, you cannot help having hope and trust in the one person in this awful situation who seems to be on your side. It's a tough problem, but there is a solution. The answer is to train your mind, so that you say, I'm going to remain silent. I would like to see a lawyer, no matter how upset you're feeling or how kind the officer seems. "Don't just practice until you can get it right, practice until you can get it wrong."*

Of course, sometimes the cops aren't pretending. The bad cop may, in fact, have lost his temper and be yelling at you for real. Or the good cop may truly want to help you, and may think that your answers will somehow benefit you. But whether or not the cops are sincere, your strategy remains the same. You should still say: I'm going to remain silent. I would like to see a lawyer. Because if the bad cop really does want to make trouble for you, your giving a statement will make it easy for him. And the good cop, in urging you to answer questions, is giving you bad advice. Some officers honestly think that if a suspect makes a statement, it will be helpful. But it doesn't work that way in court. Prosecutors can almost always find something in suspects' statements that can be used against them. That's why, when you do tell your side of the story, you should do it with the help of your defense attorney—so that your words can't be twisted or misquoted.

If you're arrested with friends, make an agreement that no one will make statements to the police until everyone's been able to talk to a lawyer and decide calmly what to do. Be aware of the paranoia that tends to set in after people have been separated. When a person's isolated, it's much easier for the police to lie and convince him that his friends have snitched. So make sure everyone understands: nobody talks, everybody walks.

Warning: Do not have a strategy discussion in the backseat of a police car! If you've been arrested with someone else, and the cops lock the two of you in their car and walk away, you can bet dollars to donuts that they're recording your conversation. So if you're in this situation, just remind the other person that the smart thing to do is to say: I'm going to remain silent. I would like to see a lawyer. And leave any further discussion until later.

When you're in jail, don't talk to your cell-mates about what happened to you or who was with you—because you really don't want them testifying at your trial or sentencing hearing. Don't even talk about mutual acquaintances, Stick to safe topics such as movies, music, sports, etc. You'll make it a lot harder for anyone to snitch on you, if you don't snitch on yourself.