



BEWARE OF THE CELL.

Making a Statement to Gardai.

Some Gardai have developed ingenious methods of bypassing the law to secure confessions writes PATRICK HORAN.

A TYPICAL GARDA station cell is frequently located some distance from the public office, along a corridor, the entrance to which is often through double-doors. Along this corridor are usually between 4-6 cells, each with a huge steel door.

It is a dark place. Illumination is usually only provided by lighting fixtures overhead. Some years ago, steel doors were fitted to all Garda station cells in place of the old steel and timber variety because some prisoners had come close to kicking their way through them.

It is quite common for some prisoners to spend 4-5 hours repeatedly kicking the cell door, in various stages of alcohol or substance-fuelled excitement, demanding to be released.

The reason why the public office is usually so far from the cells is partly because the noise emanating from them is frequently deafening, and partly because the cell area smells revolting.

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The doors to the cells are usually always kept closed even if they are not occupied. There is a good reason for this.

Decades of odours -alcohol, urine, bodies caked in filth- have fused together in these windowless pens and have created a sort of perpetual pall that seems impervious to cleaning agents of any strength.

When the steel door to the cell is open, ahead of you is a raised concrete bench upon which a blue flame-retardant mattress often lies, assuming of course that the mattress is in the cell and not in fact removed because it has been either soiled or set alight from a cigarette lighter smuggled in.

Sometimes there is a blanket, sometimes not.

The walls are usually painted in a sort of dark off-greenish colour. They are covered in graffiti, names of people who have passed through over the decades, denunciations against other criminals accusing them of being informers (“rats”), and various condemnations of the Gardai. Spelling mistakes are de rigueur.

In the corner of the cell, moulded into the floor, is a sloped rectangular steel plate with a yawning hole to one side. This is the toilet.

It is often dirty and always, always, foul-smelling. On quiet nights (Monday to Thursday) you’re likely to have the cell to yourself. At weekends, you share the cell with others. Sometimes the toilet has been blocked because a prisoner has tried to stuff the blanket down the hole.

The cable-flusher which hangs from the ceiling is usually broken. There is no toilet paper.

The Criminal Justice Act of 1984 introduced the novel concept of Garda

interviews being tape recorded, presumably to protect the rights of those under arrest, many of whom began developing the annoying habit of turning up to Court charged with serious crimes and complaining of having been mistreated in Garda custody.

But successive governments had no stomach to implement the legislation enacting the recording of interviews because to do so might leave them open to the label of being “soft on crime”. So, the legislation wasn’t enacted and interviews went unrecorded. Complaints of abuse continued unabated.

And there were abuses. Talk to older solicitors and they will tell you of a time (late ‘70’s, early ‘80’s) when they would arrive at a Garda station to consult with a client, only to be told that their client was no longer there and had been spirited away to another station.

When they arrived at this new station, they were told that they had “*just missed him*” and that he was in fact en route to a new station. All the while the prisoner was being interviewed in the back of a moving police car and would only be booked into a Garda station once a confession was extracted.

This ballet was not uncommon, but it began the growth of the phenomenon of interviews being conducted not in formal interview rooms, but in the backs of cars, back yards, houses, streets, anywhere where there was no oversight.

This raised the ire of High Court Judges who began to condemn such practices. The courts would no longer tolerate confessions being obtained outside of Garda stations. The Gardai took notice: “*outside of Garda stations*”. They are nothing if not resourceful.

Since the Recording of Interviews Act was enacted in 2001 all interviews of persons under arrest must be recorded.

I can still recall the sound (pre era of recorded interviews) of loud voices coming from an interview room, followed by the sound of tables being upended and chairs being hurled against a wall. I am also aware that kicks to the shins, slaps to the face and rabbit-punches to the back of the head do not leave marks. I’m not certain when

I became aware of all this but I'm assuming that it was something well known and discussed¹.

To many detectives who lacked any formal interviewing style other than a bleak resort to shouting and threats, this posed a real dilemma.

Now that interviews were being recorded, what was to stop prisoners remaining silent for the duration of the interview and just frustrating an investigation? The fact that the right to silence never seemed to enter the brains of some of these detectives is a testament to the mindset.

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¹ Interview chairs are now bolted to the floor.

The solution was the cell, or rather a conversation *in* the cell, rather than the interview room. Interviews conducted in interview rooms had to be recorded. But “conversations” conducted in Garda cells did not. By visiting the prisoner in the cell for an informal “chat” the parameters could be gauged for the structure that would be placed on the interview recorded later.

This phenomenon is not specific to An Garda Síochána. The Justice Department’s investigation into the activities of the New Orleans Police Department after Hurricane Katrina in 2005 revealed systematic breaches of the rights of those under arrest.

They noted the endemic practice amongst detectives of conducting a “conversation” with the accused person before the formal interview took place. In this informal conversation, deals were made, and it was agreed what the outline of the formal interview would be like.

All of the things that are prohibited -threats, promises, inducements- would now take place off-camera. The result was frequently an interview devoid of the cadences and iterations of normal conversational speech.

When the formal interview took place between the detective and the arrested person, its contents often resembled nothing so much as a pair of old stage actors reciting a stale part.

The lesson? If the Gardai want to “chat” to you off camera in a Garda station, no matter how this request is framed, it is not for your benefit. It is to invoke promises or inducements that they could never make under camera in the hope that you might confess before the formal interview.

If they’re not allowed to make promises or inducements during an interview, be very wary of why they’re doing it off-camera. The Gardai’s job is to prosecute. Always. That’s worth remembering.

Do you have to make a statement to the Gardai? No.

That’s worth remembering too.

- **Patrick Horan, 2020.**