SINGAPORE ACADEMY OF LAW

FINAL REPORT

TAKING OF STATEMENTS BY LAW ENFORCEMENT AGENCIES

Sub-Committee for Criminal Procedure & Evidence

June 1991

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PART I

Introduction

1. The Sub-Committee on Criminal Procedure & Evidence ("the Committee") was formed on 1 April 1989. It is a Sub-Committee of the Law Reform Committee of the Singapore Academy of Law.

2. The members of the Committee are:—

Mr Glenn Knight (Chairman, 1 April 89-March 22 91)
A/P Chin Tet Yung (Acting Chairman w.e.f. 1 April 91)
Judicial Commissioner M P H Rubin
Judicial Commissioner Kan Ting Chiu
Mr. Chia Quee Khee
Mr. Ismail b Hamid (w.e.f. 18 May 1991)
Dr. S Chandra Mohan
Mr. Denis Tan
A/P V S Winslow
Ms. Rosalind Lazar (Secretary)

Mr. Glenn Knight was actively Chairman from 1 April 1989 till 22 March 1991. During this period, he was responsible for the Interim report and for organising and chairing the discussion sessions with the various agencies (see Annex A). The Committee wishes to record its appreciation to him for his contributions.

3. The Committee identified as a matter of concern the present law and practice on the taking of statements by law enforcement officers. It decided to consider whether reforms in the area are needed.

4. A Working Paper was prepared to identify the problem areas and propose solutions. This Working Paper was circulated on 6 December 1989 to the Minister for Law and Home Affairs and to agencies and organizations, many of which were involved in the taking of statements. They were asked to submit written representations. A list of the agencies and organizations consulted are set out in Annex A.

5. The Committee received written representations from the following agencies and organizations—

- the Attorney-General's Chambers;
- the Corrupt Practices Investigation Bureau (CPIB);

- the Customs and Excise Department;
- the Enforcement Unit of the Registry of Vehicles (ROV);
- the Judicial and Legal Officers' Association (JLOA);
- the Law Society of Singapore;
- the Ministry of Home Affairs;
- the Port of Singapore Authority (PSA).

6. The Committee met representatives of these agencies for discussion of their submissions. An Interim Report was prepared by 23 March 1990. This was again circulated to the agencies earlier consulted. Written representations were re-submitted by them and from the Ministry of Home Affairs which had within its aegis, the Police, Immigration and Central Narcotics Bureau. Given the voluminous nature of the Working Paper, the Interim Paper and the Written Submissions by various organizations, these are not attached to the main Report. (Requests for these may be addressed to the Secretary of the Law Reform Committee.)

7. New issues not previously mentioned in the Working Paper were raised during meetings. In particular, the problems relating to the length of time taken in determining the voluntariness of statements at trials were identified. The Report is now submitted to the Law Reform Committee of the Singapore Academy of Law for its consideration. A Summary of the Report may be found in Annex F.

CURRENT PRACTICES & THE STATUTORY CODES

8. A review of the practices adopted by various enforcement agencies in the taking of statements shows major divergences among them. Some of the reasons for the differences are: different subjects under investigation, different powers of investigation and questioning and different objectives of the investigation agencies. For example, under section 26 of the Prevention of Corruption Act (Cap. 241), CPIB officers may require potential witnesses or suspects to "give information on any subject", failure of which amounts to an offence. CPIB officers therefore rely on the provision to draw attention to the "requirement" before questioning a witness or taking a statement from him. The requirement is also written down at the top of the Statement form. A similar practice may also be found in the Customs—sections 90 and 91 of the Customs Act (Cap 70) also require persons to furnish documents and information.

9. A Customs or CPIB officer may opt to inform the person questioned to "tell the truth" and may further warn that it is an offence to give false information. Such an exhortation may be regarded as an "inducement, threat or promise" rendering the statement inadmissible if not otherwise sanctioned by statute.[1]

10. Normally, where police officers are investigating offences, they are, unless expressly authorized by specific statutes, subject to the provisions of the Criminal Procedure Code and the Evidence Act (Cap 97, 1990 ed.). The most important provisions in this regard are sections 121 and 122 of the CPC.

11. ***Section 121 CPC*** The section provides that a police officer may examine orally anyone acquainted with the facts and circumstances of the case under investigation. He is also under a duty to record the statement of such a person in writing, to read it to him and to ensure that it is signed by the maker. The section also provides that a person *"shall be bound to state truly the facts and circumstances of the case."* He may however *"decline to make with regard to any fact or circumstance a statement which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture."* The italicized words (the "caution") in fact appear at the head of the printed statement in the form used by the police to record such statements. When taking a statement, the "caution" is read and both parties sign to indicate that such a

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[1] Exhortations to tell the truth do not, in law, amount to "inducements, threats or promises" where they are statutorily sanctioned: *Seow Tai Keng v R* (1953) 19 MLJ 132; *Commissioner of Customs & Excise* v *Power* [1967] 1 AC 760. See now, the High Court (Singapore) decision of *PP v Ramasamy a/l Sebastian* [1991] 1 MLJ 75.

"caution" has been given. After the statement is recorded, it is read back and both the officer and maker sign the statement. The Committee is however aware that in practice, certain officers do not fill in the details of the offence or the acknowledgement.

12. It is also now known that police officers have used this provision and this form of statement to take further statements from accused persons in custody **even though they have already been charged**. It was held in *Tan Ho Teck* v *PP*[2] by the High Court that as regards this practice, there is no duty to administer the "caution" before the statement is taken. The Committee notes that while this decision is technically correct, it does mean that an accused person may not be aware of the privilege conferred by the section when giving a statement. In contrast to the somewhat formal forms that characterize section 122 statements, section 121 statements are taken on plain paper, sometimes with an endorsement at the top of the statement saying that the person has been "re-warned." In many cases, there is no reference to the section nor to the "caution" contained in that section.[3]

13. It appears to the Committee perplexing that after providing specially for accused's statements in section 122(5) and (6), section 121 should be used at this stage. More importantly, as a matter of policy, it must be asked whether it is desirable to the administration of justice to obtain statements from an accused person in this way when he is already in custody and charged.

14. *Section 122* This provision contains four subsections of particular application to a person who has either been officially informed that he may be prosecuted for an offence or that he has already been charged with an offence. Subsection (5) provides for the admissibility and use of statements made by suspects to police officers. These statements may have been taken at any time. They also need not be in writing. The statements must, however, be made to a police sergeant or an officer of higher rank. The proviso to this subsection contains the so-called "voluntariness" test and states that the court shall refuse to admit an involuntary statement.

15. Sub-section (6) to (8) were introduced in 1976, following some of the recommendations of the UK Criminal Law Revision Committee's Eleventh Report

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[2] [1988] 3 MLJ 264.

[3] This is a far cry from the Schedule E situation where it is provided that cautions are to be administered when a person is charged (r 2), when he is in custody (r 3) and even when he volunteers a statement (r 4).

on Evidence (the CLRC Report) in 1971. These provisions were said to limit the "right to silence" of the accused person for they require a statement from an accused person after a "warning" to mention any fact that he intends to rely on in his defence. It is also specifically provided that the "warning" cannot be treated as an "inducement, threat or promise" making the statement involuntary. It may be observed that this is the first time perhaps in any common-law jurisdiction, that there is a general statutory provision intended to motivate an accused person to make an exculpatory statement.

16. In terms of procedure and practice, this sub-section is applicable once a person is ***charged or officially informed that he may be prosecuted*** for the offence. The officer is then required to serve him with a notice containing a warning. There is also a duty to explain the notice to him. There appears to be no fixed practice, however, as to when such statements are taken. The reported cases reveal that sometimes, a section 122(6) statement may be the only one taken (as in *PP v Chia Chee Yeen*[4]). In others, it may be one of a series of statements taken either before or after it—the most striking example may be found in *PP v Vasavan Sathiadew & Ors*[5] where there were multiple oral statements, section 122(5) statements and section 122(6) statements.

17. The Committee notes that apart from section 122(6) that expressly requires a warning to be given, there is no other provision in the CPC that places such a duty on investigation agencies. This is in marked contrast to the position before 1976 when Schedule E to the CPC, containing the local version of the "Judges' Rules," applied. These Rules provided a series of cautions throughout the various stages of an investigation. When they were repealed, nothing apart from the warning in section 122(6) was enacted to take their place.

THE ADMISSIBILITY AND USE OF STATEMENTS

18. The attention of the Committee has been drawn to several problems concerning the admissibility and use of statements. These may be conveniently divided into two categories. The first category relates to conceptual difficulties concerning the concept of voluntariness and its relationship to another doctrine,

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4 [1990] 3 MLJ 457.

5 [1990] 1 MLJ 151.

oppression. The second category may conveniently be described as "section 122(6) problems."

"VOLUNTARINESS"

19. The requirement that to be admissible, statements must be proved to be voluntarily made is found in the proviso to section 122(5) and in section 24 Evidence Act. The latter provision relates to confessions[6] and the earlier, to statements made to police officers. The requirement in the proviso to section 122(5) is as follows—

> "... the court shall refuse to admit such statement or allow it to be used as aforesaid if the making of the statement appears to the court to have been caused by any inducement, threat or promise **having reference to the charge** against such a person, proceeding from a **person in authority** and sufficient, in the opinion of the court, to give such person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a **temporal nature in reference to the proceedings against him**."

20. The Working Paper identified several problems concerning this test. First, it queried the need for, and logic of, the requirement that the inducement, threat or promise must "have reference to the charge." The words in quotation marks mean that, a statement made, for example, after a threat against the family or girl-friend of the suspect does not render it inadmissible. This appeared illogical both to the House of Lords and to the Criminal Law Revision Committee that pointed out (at para. 59) that a threat relating to a matter unconnected with the proceedings may just as likely render the confession unreliable. Equally it is just as improper a method in obtaining a confession.

21. However, representations have been made to the Committee that the formula helps to limit challenges made on the voluntariness of statements. The Committee's view is that in the circumstances, it would not recommend a change to the formula: the judiciary is well-equipped to distinguish between a statement obtained under threats, whether having reference to the charge or not and one that is given voluntarily, that is, free from any "inducement, threat or promise".

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[6] For a definition of "confession", see section 17(2) of the Evidence Act and *Lemanit v PP* [1965] 2 MLJ 26.

22. Two other problems concerning voluntariness deserve mention. The first is the requirement that the inducement, threat or promise must be held out by a *person in authority.* Although some difficulty has been experienced in certain Commonwealth jurisdictions (Canada, England) regarding the definition of the phrase, *person in authority,* the issue does not seem to have raised much dispute locally. Consequently, the Committee does not recommend any change to it.

23. Similarly, though the Committee, in its Working Paper, raised the issue concerning the requirement that the evil to be avoided must be of a *temporal nature,* it recommends no change for the time being because there has not been any concern regarding it experienced locally by either prosecutors or defence counsel.

"OPPRESSION"

24. The common-law has developed the doctrine of oppression as an independent ground of inadmissibility. It has been suggested that the "voluntariness" test as presently defined may be inadequate in dealing with certain situations where pressure has been brought to bear on a suspect to give a statement, for example, prolonged hours of questioning and prolonged periods without rest and refreshment.

25. The courts are still in the process of developing the concept. In a Court of Appeal decision in England[7], one of the definitions of "oppression" found in the Oxford English Dictionary was adopted:

> "Exercise of authority or power in a burdensome, harsh and wrongful manner, unjust or cruel treatment of subjects, inferiors, etc., the imposition of unreasonable or unjust burdens."

26. In a recent decision, *PP v Tan Boon Tat*[8], Thean J (together with Yong Pung How J) was prepared to hear the defence on the claim that "the circumstances in which he [the accused] made the statement were so oppressive that his will was sapped or broken with the result that the statement was not one made on his own free will." In the circumstances, however, the accused did not succeed in his plea. In another High Court decision, *PP v Lim Kian Tat*[9], Lai Kew Chai and Chan Sek Keong JJ refused, *inter alia,* to admit a statement that was obtained "during an 18-

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7 *R v Fulling* [1987] 2 All ER 65.

8 [1990] 2 MLJ 466, at p 472.

9 [1990] 2 CLJ 128.

hour interrogation, with an hour's break." There was also evidence that the accused did not have adequate sleep for four nights in a row. The learned judges rejected the statement, *inter alia,* on the ground that it was obtained in circumstances where there was oppression.

27. These decisions show that in Singapore, a statement may now be rejected as evidence on the ground that it is obtained in oppressive circumstances. This is a development of the common-law in Singapore that the Committee welcomes and does not wish to fetter in any way. What is perhaps unclear is whether the judges in both these cases regarded the plea of "oppression" as an independent ground of inadmissibility or as a ground "implied" in the test of voluntariness. Whatever the theoretical basis, there is now little doubt that courts in Singapore are inclined to disapprove of certain forms of oppression and to exclude statements obtained in such circumstances.

28. The Committee acknowledges the difficulty of defining "oppression" and the diversity of circumstances in which such a claim can be made. Although the Police & Criminal Evidence Act 1984 (UK) makes it a primary ground of inadmissibility and defines the term to include "torture, inhuman or degrading treatment, and the use of threat of violence (whether or not amounting to torture)," the Committee is of the view that no real advantage may be gained from recommending that the term be defined statutorily. The open-textured nature of the word "oppression" will continue to attract and require judicial consideration and definitions of the type contained in the 1984 Act are unlikely to settle disputes other than in very clear cases. For example, the definition does not seem particularly helpful when one considers the treatment of the accused persons in *Tan Boon Tat* or *Lim Kian Tat*. The definition also seems to turn the enquiry away from the state of the accused's mind to the impropriety of the officers' conduct, a development that may require further examination.

THE RELATIONSHIP BETWEEN THE CPC AND THE EVIDENCE ACT

29. For the record, the Committee notes that as the majority of investigations are conducted by police officers, section 122(5) and (6) are the main provisions governing the admissibility of statements. The provisions of the Evidence Act however should not be ignored because they apply to statements that may be

admissions or confessions taken by law enforcement officers who are not police officers, for example, CNB officers or CPIB officers.

30. In *Tan Boon Tat*, Thean J noted that the admissibility of a section 122(6) statement taken by narcotics officers is governed by the Evidence Act and not the CPC. Presumably this means that any statement amounting to a confession will attract the requirement of "voluntariness." Where such a statement does not amount to a confession, the position is unclear whether the "voluntariness" test applies to it or not. The statement will probably be regarded as an admission and admitted accordingly. It is possible, though no local authority is yet available, that the Singapore courts may follow the line taken in the House of Lords' decision, *Commissioners of Customs & Excise v Harz and Power*[10] where it held that insofar as the voluntariness test is concerned, there should be no distinction between admissions and confessions.

31. If the Committee's views on the use of standard rules to all law enforcement agencies are accepted, this may not be a serious problem since the voluntariness test is intended to cover all statements, whether they amount to confessions or not. If the standardization is not accepted, then section 24 of the Evidence Act may need to be amended to include admissions as well as confessions. This may be done simply by adding the words "or admission" to the section at the appropriate place.[11]

32. As mentioned above, the "voluntariness" test is the same in both codes. However, the Act also includes a provision (section 27) allowing for information (usually contained in a statement) to be admitted where such information is confirmed by facts subsequently discovered. The Committee proposes no change be made to this provision.

33. Section 29 of the Evidence Act is also worthy of note because it limits the challenges that may be made to the admissibility of confessions. The following circumstances do not render a confession inadmissible if it is otherwise voluntary in the sense defined in section 24:-

- Promises of secrecy;
- Drunkennness;
- Deceptions practised on the accused;
- The fact that the accused answered questions he need not have answered;

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10 [1967] 1 AC 760.

11 See Annex E.

- The fact that the accused was not warned.

34. These factors (apart from drunkenness) appear to be based on the view that procedural irregularity not affecting the reliability of the confession should not lead to the exclusion of the confession. The policy consideration here is whether it is inimical to the administration of justice that officers should be allowed to perpetrate tricks or fail to follow proper procedure. One argument of course is that such improper conduct should be dealt with in disciplinary proceedings and the like and not by making statements obtained through such means inadmissible so long as they are reliable. The Court of Appeal in *Cheng Swee Tiang v PP*[12] dealt with a case of entrapment and adopted the principle found in the Privy Council decision, *Kuruma v The Queen*[13] that a court has a discretion to exclude evidence that may operate unfairly against the accused. Given these considerations, the Committee is of the view that it would not recommend a change to the provision. Again, the interests of the accused are likely to be sufficiently protected by the exercise of judicial discretion. Improper conduct on the part of the officers may be dealt with adequately by disciplinary institutions.

THE OBLIGATIONS REGARDING THE NOTICE

35. When considering the obligations to warn, it is material to recollect that the repeal of Schedule E was prompted by the concern that the number of cautions that had to be given to a person charged with an offence adversely affected the taking of statements. Another objection to Schedule E was the form of the caution that was said to discourage accused persons from speaking. The crucial words were "You are not obliged to say anything, but anything you say may be given in evidence." To correct the situation, the Schedule E rules were repealed and in their place, the solitary warning contained in section 122(6) of the CPC was enacted.

36. No substantial problems concerning the warning came before the courts in the first few years after 1976. However, in recent years, the reported cases on the provision have sharply increased. Much of the judicial attention has been drawn not so much to the content of the warning as to the officers' obligations concerning it.

37. It is interesting first, to note that even in relation to the content of the warning, judicial views may differ. For example, Grimberg JC in *Vasavan Sathiadew*

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12 (1964) 30 MLJ 291.

13 [1955] AC 197.

opined that the warning "contains a fair smattering of 'legalese'"[14] while Thean J in *Tan Boon Tat* said that the warning is couched in "simple language that is easily comprehensible to those who read English." The truth of the matter is that the warning will appear more puzzling to those who are non-English speaking or poorly educated.

38. The main controversy regarding the warning in section 122(6) has been the scope of the obligation to serve and explain the warning. In two decisions, *Chan Sway Beng v PP*[15] and *PP v Vasavan Sathiadew (supra)*, the High Court held first, that a failure to explain (as distinct from "interpret") the warning to the accused may be fatal to the admissibility of the section 122(6) statement and second, where the officer is not punctilious in the recording of the statement or if the officer gave a perfunctory warning or failed to find a competent interpreter to explain the warning, the court may, in its discretion, exclude the statement.

39. However, the Court of Criminal Appeal has now declared in *Tsang Yuk Chung v PP*[16] that non-compliance with the warning procedure in section 122(6) does not affect the admissibility of the statement. It only affects the extent to which a judge may draw adverse inferences from the accused's failure to mention extenuating circumstances, as provided for under section 123. This is no doubt correct under the present provisions.

40. Since the section 122(6) warning is the only provision imposing a duty to serve and explain a warning, the decision of the Court of Criminal Appeal, in effect, means that at present, a failure to warn or otherwise follow correct procedure in the taking of statements does not affect the admissibility of statements. This position is augmented by Thean J's decision in *Tan Ho Teck (supra)* that section 121 statements taken from an accused person in custody (after a section 122(6) warning and statement) are admissible, even though no further warning was given. The decision is again technically sound, as section 121 does not **require** the warning provided in the section to be given.

41. The net effect of these decisions is worth emphasizing: that the admissibility of statements is now not affected by procedural irregularity regarding warnings,

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[14] The judge made this remark in considering the reading of the warning to an accused person who was illiterate and who spoke a peculiar dialect of the Thai language.

[15] [1988] 2 MLJ 405.

[16] [1990] 3 MLJ 264.

even in the case of a failure to discharge the obligation to warn under section 122(6). The thin line of authority (found in *Vasavan Sathiadew*) that a court may exercise its discretion to exclude statements obtained by officers who did not follow correct procedure will need to be supported in the higher court if it is to develop further.

42. The nature of the obligation to "explain" the warning in section 122(6) has also been judicially scrutinized. In *Chan Sway Beng*, Grimberg JC was not prepared to accept an interpretation (*ipsissima verba*) of the warning to a non-English speaking accused as sufficient to discharge the obligation under the section. His decision was not followed in *Tan Boon Tat*, where Thean J (delivering the judgment), said:

> "To explain' is to make one understand. If an accused is made to understand the substance of the charge and the adverse implication of not stating any fact which may or might exculpate him, then that subsection would have been complied with."

43. He went on to say that when an accused can read and speak English, and "both the charge and the warning are read to him and are shown to him and *the accused is made to understand the substance of the charge and the implication of the warning, we do not see what else there is that ought to be explained to him.*" Though the first part is clear, the words italicized are, with respect, enigmatic. He followed this statement with the view that it was not intended that the officer should explain the *ingredients* of the charge to the accused. He noted that the warning is simply worded and that any attempt to further simplify it may convey the wrong meaning to the accused.

44. Perhaps the best clue to the idea of "explain" in this decision may be obtained from the *dictum* on warnings to non-English speaking accused persons. As regards a person who cannot read or speak English, where a charge and notice of warning are both "accurately interpreted to him in a language which he understands," that would amount to an explanation. "He would have understood from the interpreter the substance of the charge and the implication of the warning."

45. The stricter view of "explain" in *Tan Boon Tat* appears now to have the support of the Court of Criminal Appeal. The Court in *Tsang Yuk Chung v PP (supra)*, while acknowledging the protection afforded by the words, "shall be explained," pointed to the problems that could arise if the word "explain" is taken to be anything other than a synonym for "read." The Court's analysis is worth

quoting in extenso as it reveals the troublesome nature of the present position to the fullest:—

> "Should the explanation of the charge and of the warning involve an explanation of the law relating to the offence which is the subject matter of the charge, as counsel for the appellant tried to argue before us? If so, are police officers competent to give such explanations? What is the effect if they err in their explanations? Can the police officers or interpreters remember what explanations they gave to the accused since such explanations are not recorded in writing? Can an accused waive the requirement that the charge and notice be explained? If he does not understand the explanations, is he under a duty to let the police officers know so that further explanations can be given or can he keep mum, sign a note that he has understood the charge and the notice and complain at the trial that they have not been explained or sufficiently explained to him? Can the charge be always explained to someone of low intelligence?
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> A second possible problem is that, unlike the notice in writing, the mandatory explanations do not seem to be exempted by section 122(7) from being any inducements, threat or promise as is described to the proviso in section 122(5) This will become important if the explanations are challenged as being inaccurate, or even outright wrong."

46. These are doubtless serious problems that have to be addressed in revising this part of the law. This list of problems as searchingly raised by the Court is without doubt a compelling reason for looking again at the whole setup of the post-1976 rules relating to the taking of statements. In the meantime, the Committee would support the guideline provided by the Court on this matter:

> "the requirement is satisfied if an accused person is told in general terms what the charge and warning mean. Since accused persons differ in background, what form the explanation should take must ultimately depend on the facts of each case."[17]

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17 *Ibid* at p 267.

47. As the review of the present law show, from the Schedule E position of having too many cautions, the law has moved to a situation where no warning is in law necessary in relation to the issue of admissibility. The other possibly unintended consequence of the section 122(6) procedure is that statements meant for the exculpation of the accused have in fact turned into inculpatory statements to be used by the prosecution. Finally, as mentioned above, the current problems discussed above reveal an unsatisfactory situation that, if not rectified, may lead to continuing uncertainty in this crucial area where public confidence in the administration of justice is most important.

THE USE OF "EXCULPATORY" STATEMENTS IN COURT

48. A review of the admissibility and use of statements would not be complete without mentioning the recent decisions on the use of exculpatory statements by accused persons. The problem may be simply stated: where an accused person makes a statement that is favourable to him, is this statement admissible and operate in the same way as an inculpatory statement, that is, as evidence of facts stated?

49. The whole subject was reviewed recently in the Court of Criminal Appeal decision in *PP v Chan Kim Choi,*[18] where the relevant local and English authorities were considered. The area is a perplexing one because of fine distinctions drawn at common-law between 'mixed' statements and purely exculpatory statements and between using statements as evidence of the truth of its contents and using them as showing the reaction of the accused.

50. First, the theoretical basis against the use of purely exculpatory statements stems in part from the exclusion of hearsay generally. The House of Lords in *R v Sharp*[19] remarked that the reason for rejecting such out-of-court statements is "the fear that juries may give undue weight to evidence the truth of that could not be tested in cross- examination, and possibly also the risk of an account being distorted as it was passed from one person to another." The exclusion of self-serving statements is an application of this rule. It does not apply to confessions because where an accused makes an incriminating statement voluntarily, "it was so unlikely

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[18] [1991] 1 MLJ 260. The report in MLJ is wrong: the name of the accused is Chan *Kim* Choi and not *Kin* Choi.

[19] [1988] 1 All ER 65.

that he would confess to a crime he had not committed" that the statement may be safely admitted. This view is also apparent in the Evidence Act: section 21 generally only allows proof of admissions where they are against the person who makes them. There are only three exceptions to this rule,[20] none of that appear applicable here.

51. Second, as explained in *Sharp*, the reason why self- serving statements contained in admissions are admitted is because "it would be unfair to admit the admission without admitting the explanation." In English law, the real issue turns not so much on admissibility as on the way the jury is to be directed concerning the exculpatory parts of a statement. As this is the part requiring closer scrutiny, the views of the House of Lords should be noted *verbatim*:

> "The view expressed in *R v Duncan* is that the whole statement should be left to the jury as evidence of the facts but that attention should be drawn, when appropriate, to the different weight they might think it right to attach to the admission as opposed to the explanation or excuses. The other view, which I might refer to as the 'purist' approach, is that, as an exculpatory statement is never evidence of the facts it relates, the jury should be directed that the excuse or explanation is only admitted to show the context in which the admission was made and they must not regard the excuse or explanation as evidence of its truth." [21]

52. The House of Lords, after a review of the authorities, concluded that the weight of authority and common sense supports the *Duncan* view. This means that the whole statement, both incriminatory and exculpatory parts, may be evidence of facts stated although the incriminating parts may be entitled to more weight. This distinction is based on the principle that persons do not on the whole make statements against their interests unless they are true. Contrariwise, persons would often lie to protect their interests. To echo Lord Lane in *Duncan* "it is not helpful to

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[20] The first is where the statement is relevant under section 32, assuming the maker to be dead; the second, where the statement is used to show the existence of the state of mind or body of the maker (which is confirmed by conduct) and the third, where the statement is relevant otherwise than as an admission.

[21] *Ibid.* at p 68.

try to explain to the jury that the exculpatory parts of the statement are something less than evidence of the facts they state."[22]

53. Although the judicial decisions have emphasized that the law in Singapore is similar to the common-law of England. it is pertinent to note that section 122(5) of the CPC does not distinguish between "inculpatory" and "exculpatory statements" – in other words, both types of statements may be admitted as evidence. The Committee is also of the view that as section 122(6) warns the accused to make known exculpating facts and circumstances, it is only fair that his statement be allowed due consideration as evidence. Finally, in contradistinction to English law, it should be noted that section 159 of the Evidence Act provides that a previous statement of a witness may be used to corroborate his testimony.[23]

54. Turning back to the local decision of *Chan Kim Choi*, the Court of Criminal Appeal has now endorsed the *Duncan* position that, in effect, means that the trial judge has to take the exculpatory parts of the statement into account even if the accused does not give evidence. There is, however, no direct local authority yet on the status of a purely exculpatory statement. Since the judges appear to prefer English law in this area, it may not be presumptuous to think that they may also adopt the English position that provides for the admissibility of such statements if they are relevant to showing the reactions of accused persons when first confronted by incriminating facts.[24]

55. The evidential value of a purely exculpatory statement is stated in *Cross on Evidence*[25] to be that

> "if admitted, it is still, unlike a confession, not evidence of the facts stated in it, and the judge need neither take it into account in deciding whether or not there is a case to answer, nor draw it to the jury's attention, if the accused fails to testify at his trial."

56. A caution should however be entered with respect to the use of English law as precedent. As mentioned in paragraph 53, there is no English equivalent of section 159 of the Evidence Act that allows for the use of previous consistent state-

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22 (1981) 73 Crim App R 359, at p. 365 (cited with approval in *Sharp*).

23 See, *PP v Teo Eng Chan & Ors.* [1988] 1 MLJ 156.

24 See, *R v Storey* (1968) 52 Crim App R 334. Section 8 of the Evidence Act makes such statements "relevant".

25 7th ed., at p 292-3.

ments to corroborate a witness's testimony. The way, it is submitted, seems to be open for an accused to put in his statement to corroborate his testimony. In English law, previous consistent statements may be tendered to rebut a charge of "recent fabrication"[26] but they are not generally available for corroborative purposes.[27]

57. The Committee considers that the present position concerning exculpatory statements is satisfactory or, at least, does not require legislative attention. No recommendation is therefore made to codify the present position as this area is better left to be developed in the courts.

END OF PART I

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26 *Cross on Evidence* (7 ed., 1990), p 290-292.

27 In fact, the *Baskerville* definition of "corroboration" envisages that corroborative evidence must be independent of the source to be corroborated.

PART II

PROPOSALS FOR CHANGE

The Approach of the Committee

58. The Committee's approach to revising this area of the law may best be described as one of attempting to balance the interests of the State in the effective and efficient investigation of crime with the interests of the individual who may be suspected of committing a crime. An additional interest that may be applicable to both parties (the State and the accused) is that of ensuring a fair and expeditious trial.

59. The phrase "effective and efficient investigation of crime" suggests to us, in the context of the taking of statements, a procedure that is relatively easy to comply with. A law enforcement officer is not trained as a lawyer and should not be expected to advise or instruct suspects in the niceties of the criminal law and evidence. He should be given clear guidelines as to his powers and duties.

60. Protecting the interests of a person suspected of committing a crime involves informing that person of his rights. He should also be placed in a position to exercise such rights. The Committee acknowledges that even in the 1976 amendments to the CPC, the Government never intended to abolish the right to silence in all situations.[28] It sought to put the right of silence in a common-sense context: adopting the reasoning of the CLRC,[29] the view is that the right to silence is the refuge of the guilty and to warn people not to speak is simply to provide an avenue of escape for the guilty. The Committee respects this view and wishes to preserve it.

61. The Committee also believes it to be only fair to the person under investigation that if he remains silent, he is aware of the consequences of that silence. The reported cases do not reveal a cohort of hardened criminals taking

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28 The Minister of Law, in moving the *Criminal Procedure Code (Amendment Bill) 1975* on 19 Aug, 1975 said that "The accused will still have the 'right to silence' in the sense that it is no offence to refuse to answer questions or tell his story when interrogated. . . ."

29 The CLRC in fact adopted the Benthamite comment that "Innocence claims the right of speaking, as guilt invokes the privilege of silence." (*Treatise on Evidence*, p 241, quoted in CLRC Report, para. 31.)

advantage of the legal system. Instead the profile of the accused is usually one of low education and social standing. Increasingly, accused persons are nationals from other countries. They know no English and are unfamiliar with Singapore's criminal justice system. The system must be flexible enough to distinguish between the experienced criminal trying to take advantage of the system and the unfortunate person suspected of crime, coming into contact with the system infrequently.

62. In *Lim Kian Tat*[30] the officers were found to have treated the accused "oppressively" through prolonged questioning without allowing the accused a proper break. The Committee feels that, if left unchecked, similar conduct by law enforcement officers may adversely affect public confidence in the enforcement of criminal justice. It is emphasized however, that on the whole, such cases are few and far between. The present review is conducted with these policy considerations in mind.

PROCEDURE RELATING TO THE TAKING OF STATEMENTS

63. The increase in the cases concerning the section 122 procedure is symptomatic of unease regarding it. The present law as summarized in para 41—that the admissibility of statements is now no longer affected by a failure to warn—is unsatisfactory and probably unintended. It is unsatisfactory because the procedures do not now involve any caution in a meaningful sense. To say that a court cannot draw adverse inferences where there is a failure to warn does not count for much when an incriminating statement is nevertheless admitted. It is probably an unintended consequence because it appears illogical for Parliament to have provided an elaborate warning procedure under section 122(6) (concerning the drawing of adverse inferences) and not to have provided for any duty at all to warn in the much more serious matter of recording incriminating statements.

64. The Committee notes that even under existing law, Parliament has given to persons who are called as witnesses under section 121 CPC, a privilege against self-incrimination. This privilege would not be meaningful to those who do not know of its existence. The Committee therefore recommends that the procedure involving

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[30] Five statements made by the accused were rejected in this case at the trial. The first oral statement was rejected because it was only reduced to writing almost three years after it was allegedly made. The second was rejected because the prosecution accepted that the accused was tired and confused at the time it was made. The third was rejected on grounds similar to the second. The fourth and fifth statements were rejected because they were obtained after prolonged questioning - in one instance, over a period of 18 hours, with an hour's break.

"warnings" in the investigation of "serious crimes"[31] be clarified in specific statutory rules so as to enable officers to follow the proper procedure consistently in their investigation of serious crimes.

65. The warning procedures should cover two other situations besides the one provided for in section 122(6)—first, where a person is first questioned about a crime that is under investigation and second, where a suspect is questioned after the section 122(6) warning has been given. These rules may be enacted in Schedule E of the CPC. The Committee wishes, at this juncture, to record that a system of rules providing for warnings is supported almost unanimously by the institutions consulted.[32]

66. The Committee also wishes to emphasize that it has taken into account the view that the Schedule E rules may mean more challenges and hence more time spent in trials-within-trials. In response to this, it has to be said that the Committee's recommendation on the Schedule E rules must be taken together with the Notice of Objection procedure that is also recommended.[33] It may be true that there will be challenges that the rules have not been complied with. However, by the Notice of Objection procedure, the defence must inform the prosecution of such challenges and this will enable the prosecution to determine the truthfulness of the challenge. This means that accused persons and their counsel will be more circumspect in their challenges, the prosecution will be better prepared to meet them, the issues will be better focussed because of the advance notice required and finally, there will be less frivolous allegations. All these consequences may offset the perception that because of the increase in the number of rules, there will also be an increase in the challenges available to the accused. The proposed rules and the Notice of Objection procedure will, in the Committee's view, have the effect of reducing trial time instead of increasing it.

67. In determining the scope of the Schedule E rules, the Committee recognizes that certain agencies such as the CPIB operate under enhanced powers conferred specifically by statute. In the case of the Prevention of Corruption Act (Cap 241), for example, section 26 requires persons to give information to CPIB officers, whether

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31 See fn. 35 below for a definition of "serious crime". .

32 In particular, support for the warning system at this early stage came from the Attorney-General's Chambers, the Judicial & Legal Officers' Association, the Law Society, and the Ministry of Home Affairs.

33 See below, "Service of Statements & Notices of Objection".

such information tends to incriminate them or not. *The Committee accepts that such exceptions to the general rules are defensible, especially where the Legislature has manifested this through specific legislation.* The proposals for standardized procedures do not apply to those agencies such as Customs that are given statutory powers similar to those conferred on CPIB officers to demand information and that expressly exclude the "caution".

68. In deciding the point at which a warning should be first given, the Committee accepts that in Singapore, there is already a social culture of avoiding involvement in the criminal justice process. People are uneasy about becoming witnesses. To require an officer to warn every potential witness at such a juncture may seem premature, ill-advised and counter-productive. It would be bad policy to scare off potential witnesses who may already be apprehensive about being drawn into the investigation. On the other hand, if a person being questioned is not warned, and he turns out to be the prime suspect, he may complain that he has not been properly informed of his rights. These divergent considerations make it very difficult to decide the issue under consideration.

69. The timing of the first warning may eventually turn on the content of the "warning" or "caution." An appropriately worded "warning" may serve to remind the person questioned of his civic duty to tell the truth and, at the same time, inform a would-be suspect of his privilege against self-incrimination. Such a "warning" may be found in section 121 of the CPC.

70. Under section 120, persons acquainted with the circumstances of a case may be ordered to present themselves before investigating officers. Section 121 then authorizes the officers to examine the witnesses orally and to record their statements in writing. The section also provides that such a person "shall be bound to state truly the facts and circumstances with which he is acquainted concerning the case" subject to the exception that the person may decline to make a statement on any fact or circumstance "which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture."

71. The Committee is of the view that the "caution" as contained in section 121 is innocuous enough to be used for all witnesses before they are questioned. In its present form it ought not to scare off anyone and it contains a caution that should be enough to warn a potential accused of his rights. The only reservation is in the rather legalistic formula, "tendency to expose him to a criminal charge or to a

penalty or forfeiture." Officers, witnesses and even lawyers may be baffled by the fine distinctions between penalties or forfeitures and it may be too much to expect an officer to explain the significance of the formula to witnesses. Perhaps it is enough to change the formula to "criminal charge or other penalty", a term that may be easier to understand, and also to translate or interpret. The section 121 "caution" is also useful in the sense that it reminds those being questioned of the duty to tell the truth.

72. Another possibility as to the time when a warning should be given is when the officer questioning the person has reasonable cause to suspect that the person being questioned is somehow involved, that is, as a participant, in the crime being investigated. At that stage, the officer should administer a warning.

73. However, the Committee is of the view that this may create confusion and discrepancies in practice as it depends on an assessment by the investigation officer as to whether he has "reasonable suspicion." Many challenges may be made at trial as to whether the warning ought to have been given earlier. Therefore, however defensible the concept of "reasonable suspicion" may be in principle, it is perhaps, an impractical solution.

74. The next stage at which a different warning may be appropriate is that set out in the existing section 122(6) procedure, namely, when the person questioned is charged or officially informed that he will be charged with an offence. It is important to recognize the nature of the statement required from the accused at this stage. The statement to be taken from the accused is purportedly an exculpatory one. The reason for taking a statement at this stage is obviously to obtain information from the accused so that the case may be properly investigated and to prevent the fabrication of defences at a later stage. In the nature of things, however, section 122(6) statements have also been useful as inculpatory statements. It is therefore important that the accused be made aware of the consequences of making a statement at this stage. The problems concerning the warning procedure that have surfaced, and discussed above,[34] will also have to be resolved.

75. The "warning" must be simple in content so that interpreting it would not give rise to difficulty. At the same time, the obligation on the officer should be one requiring him to *read* and not to *explain* the warning or charge to the accused person. This change is suggested to avoid the problems raised by the Court of Criminal

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[34] Part I, paras. 35-47.

Appeal in *Tsang*'s case. It should not be unfavorable to the accused as an adverse inference against him may only be drawn if it is shown that he understood the charge and the warning. It should be up to the accused to show that he did not understand the warning as read and interpreted to him.

76. With the concerns expressed in the foregoing paragraph in mind, the Committee took pains to examine the issue whether the warning needs to be redrafted. Diverse opinions were received from the agencies and institutions consulted as well as from the members of the Committee themselves. The present "warning" in section 122(6) is as follows:

> "You have been charged with/informed that you may be prosecuted for —
>
> (set out the charge).
>
> Do you wish to say anything in answer to the charge? If there is any fact on which you intend to rely in your defence in court, you are advised to mention it now. If you hold it back till you go to court, your evidence may be less likely to be believed and this may have a bad effect on your case in general. If you wish to mention any fact now, and you would like it written down, this will be done."

77. Two issues about the content of the warning were raised during the Committee's discussions: first, should the warning contain the "caution" as found in section 121 about not having to give incriminating answers? Second, should it contain a question to the accused asking him whether he needs further explanation of the warning?

78. The "warning" in its present form is distinguishable from the "caution" in that it qualifies the right to silence that existed at common-law and which may still exist in situations prior to that contemplated in section 122(6), namely before the accused person is charged or officially informed that he will be prosecuted for an offence. This being the case, the "caution" cannot be re-introduced unless the policy regarding the drawing of adverse inferences is reversed.

79. The arguments for reversing the policy may be summarized in three main propositions: first, the practical effect of drawing adverse inferences is minimal in the proof of crime; second, the procedure is unlikely to improve the clear-up rate of offences, and third, the provisions run counter to a central principle of the

accusatorial system, that is, that the burden of proof is on the prosecution and that it ought to be discharged without any assistance from the accused.

80. An appraisal of the validity of these reasons is difficult due to a lack of data on the effectiveness of the procedure. In England, the Royal Commission on Criminal Procedure has doubted its usefulness. Its view is that the practical effect is minimal because,

> "For such inferences would be drawn only in that very small minority of cases in which the accused does not plead guilty, has not made a damaging admission or confession to the police, and attempts for the first time to offer a defence at trial which he could have offered earlier."[35]

These observations appeared to have been confirmed locally in a study published in 1983.[36] Yet, those who made representations told the Committee that the procedure is useful. Or at least, the majority view appears to be that it is counter-productive to return to the "caution" where the accused is told that he need not say anything against his interests.

81. As to the argument that the procedure may be contrary to the principle that the burden of proof is on the prosecution and that the accused is entitled to remain silent and demand that the prosecution proves its case, it may only be partially valid. The Committee would not question the fundamental principle that the burden of proof remains on the prosecution. At the same time, it is doubtful that the right to remain silent (in the form as found in the CPC) may be said to be "fundamental" to the accusatorial system. The right appears to be at its weakest when an accused person is confronted with a charge and asked to make his defence: many triers of fact are inclined to think that remaining silent at this point can only be indicative of guilt and may tacitly draw an adverse inference. It is perhaps better to have this general inclination to draw adverse inferences expressed and the accused warned about the consequences.

82. The Committee has already declared that it accepts as valid the policy behind the enactment of section 122(6) (in paragraph 60 above). This being the case, there can only be one answer to the first issue, namely, that a "caution" cannot be

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35 HMSO Cmnd 8092, Jan 1981, para. 4.48.

36 Stanley Yeo, [1983] 1 MLJ lxxxiii; see also, S. Chandra Mohan, **Police Interrogation & the Right of Silence in the Republic of Singapore**, [1986] 2 MLJ xxviii.

introduced at this stage because to insert such a "caution" would mean that no adverse inference can be drawn from the accused's silence. This is so, as the accused person may argue that he only took advantage of the right of silence and therefore no adverse inference ought to be made regarding the matter on which he was questioned.

83. For the record, it is noted that submissions have been received that would have re-introduced the "right to silence" again by incorporating a caution to the accused that he does not have to say anything that may be against his interests. However, the same agencies have informed the Committee that the present section 122(6) has worked well and that they did not wish to see a repeal of the section or of section 123. This being the case, it is important to state here that it would be incompatible to have both the "caution" and the "drawing of adverse inferences" together. It is significant to note here that no complaints have been received from any of the agencies (including the Law Society) that such a procedure has led, or may lead, to unsafe verdicts. The Committee therefore is of the view that no such "caution" be re-introduced

84. It may be useful, however, to include in the warning, a statement that anything said by the accused may be used in evidence. This is declaratory of the present law and it ought not to be a controversial matter. The proposed amended warning therefore should be as follows—

> "You have been charged with/informed that you may be prosecuted for —
>
> (set out the charge).
>
> Do you wish to say anything in answer to the charge? If there is any fact on which you intend to rely in your defence in court, you are advised to mention it now. If you hold it back till you go to court, your evidence may be less likely to be believed and this may have a bad effect on your case in general. A written record will be made of anything you say or of your refusal to say anything. The record of any statement that you wish to make or of your refusal to make a statement may be used in evidence."

85. Turning now to the issue whether the warning should be explained to the accused, the difficulties with the word "explain" in section 122(6) have already been discussed above. Some of the draft warnings submitted to the Committee did in-

volve asking the accused person whether he *understood* the charge and warning and whether he *needed a further explanation.* For example, the Attorney-General's Chambers submitted a draft notice of warning that required the accused to confirm that the warning had been read and *explained* to him.

86. The Committee is of the view that neither the section nor the rules should require the officer to "explain" the charge or warning to the accused. In all but the simplest cases, requiring the officer to "explain" a charge and warning may be too exacting a duty on officers with a basic training of criminal law and procedure. It will give rise to a wide diversity in the quality and content of explanations that will give rise to challenges at trial that somehow the explanation misled the accused. This should be avoided and, in the view of the Committee, it can be avoided by only requiring the officer to read or, where necessary, accurately interpret the warning to the accused.

87. Taking out the word "explain" from the warning has important forensic consequences. No adverse inference may be properly drawn where it is shown that the accused person did not understand the charge or the warning. In determining whether the adverse inference may be properly drawn, it is likely that the court will have to consider the circumstances of each case. In this regard, the following factors may be of particular relevance: the accused's educational level, his physical and mental condition at the time the warning was read to him, the competency of the officer (or interpreter) in the language of the accused, the nature of the offence, the type of defence, and the reasons for non-disclosure of the facts.[37]

88. There is one more stage insofar as the taking of statements is concerned, namely, the custody and charge phase. Here, the accused person would have already been warned and charged. He would normally be in custody unless bail is granted. At this stage, the question has been raised whether any further statements ought to be taken or, for that matter, whether questioning ought to continue. A further issue would be whether the accused should be further warned before any new statements are taken.

89. It is noted that under the former Schedule E, rule 3, "persons in custody shall not be questioned without the usual caution being first administered." However, under the present law, no warning is required whether the accused is in

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[37] See further, S Chandra Mohan, *Admissibility & Use of Statements made to Police Officers: A Re-examination*, [1977] 1 MLJ lxxxiv, at p xc.

custody or not and whether he has been charged or not. The Committee also regards the present position as lacking in guidance to officers. The procedures at this stage must be seen to be fair to the accused. At the same time, officers should be guided as to what is proper procedure so as to avoid allegations of mistreatment of prisoners and suspects. It is for these reasons that the Committee recommends that before any questioning of the prisoner or suspect commences at this stage, a further warning should be given.

90. The warning during this phase could be another version of the former two (specimen Form B3, Annex B): it should be enough for the officer to remind the suspect that he has a duty to tell the truth if he wishes to give a statement and that any statement made by him may be used in evidence in court. Again, such a warning should be read and, if necessary, interpreted to the accused. As it is reasonably short, it should not be too onerous for the officers to administer it every time they begin an interview session. As a matter of prudence, they may also wish to remind the accused of the "warning" after a sufficiently long break in between interview sessions, say, of a day or two. In any event, the suspect should be warned just before a statement is taken.

91. In conformity with the policy of ensuring that law enforcement officers are clear about proper procedures and that accused persons should be informed of their rights and the effects of giving statements or remaining silent, it is the view of the Committee that there should be general rules which should once again form part of the Criminal Procedure Code—a new Schedule E. Without such general rules and principles, law enforcement agencies may employ divergent practices that could give rise to charges of inconsistency and injustice. The procedures for the taking of statements in "serious crimes"[38] should be standardized, that is, applicable to all law enforcement agencies unless otherwise provided for in specific legislation, such as the Prevention of Corruption Act or the Customs Act. It is worth mentioning here that almost all of the investigation agencies who gave representations preferred a regime with rules in the recording of statements than the uncertain and unregulated one which prevails at present.

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38 As to what amounts to a "serious crime", the Committee's view is that it should be offences which are punishable by a term of imprisonment of three years and above, or an offence punishable by mandatory punishment. The Committee also suggests that the Minister may prescribe any offence to be a "serious" one in the Schedule.

92. The redrafted rules are reproduced in Annex B. They envisage a three-stage process: the investigation stage, the charge and custody stage where the accused is asked for his "defence" and the post-charge stage. Three types of "warning" are used, one for each stage and the appropriate "forms" (A, B2, B3) administered. It must be emphasized that these are general rules and that it is anticipated that there will be more detailed field orders for the various agencies to be drafted by them as advised by the Attorney-General's Chambers.

93. An issue that came up for discussion is the type of statement that should be obtained. It is suggested by the Committee that the statement should be taken in question-and-answer format. However certain agencies like the CPIB have indicated that this may be too restrictive and that there is no reason why a narrative type statement should not be taken if the suspect wishes to give such a statement. On the other hand, a "narrative" statement may be the officer's summary of the suspect's replies and this may be less accurate. At the least, it assumes that the officer understands what the accused is saying and that his command of the language is of a sufficiently high level to ensure that all the facts are faithfully recorded.

94. The Committee's view is that a faithful recording of the questions-and-answer type of statement may be more accurate although it may be more onerous for the officer to keep such a record. However, with the increasing use of electronic recording devices, the task ought to be made easier. The Committee therefore recommends that in general, all statements should be taken in question-and-answer format unless the accused person volunteers to make a narrative statement.

95. The attention of the Committee was brought to the issue of whether statements obtained through cross-examination during interrogation ought to be admissible. There is authority for the proposition that there should be no cross-examination of the suspect and that where a statement is obtained by cross-examination, it ought not to be admitted.[39] In *Sim Ah Cheoh*'s case the Court suggested that cross-examination "connotes sustained questioning that is directed at calling into question the credibility of the person questioned." With respect, this seems to be too narrow a view of what cross-examination is. Perhaps it is better to accept the Court's citation and presumably, approval of the definition of "cross-examination" contained in the Oxford Companion to Law that states,

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[39] See the decisions of *PP v Sim Ah Cheoh (Unreported, Crim Case No. 28/86)* and *Cheng Seng Heng & Ors v PP* (1949) MLJ 175.

> "Cross-examination is intended to cause the witness to alter, qualify, amend or retract evidence given, to discredit his evidence, and to elicit from him evidence favourable to the party questioning."

This definition involves much wider considerations—it would amount to "cross-examination" if the questions are attempts to cause the witness to change his story in ways adverse to his case and to adopt the answers suggested by the questioner. This type of questioning ought not to be allowed.

96. One final comment may be appropriate here: in general, the questioning at the post-charge stage should be for the purposes of clarifying statements made earlier. The law enforcement officers should proceed on the basis that they must have enough evidence to charge a person before so doing. *Ex hypothesi*, after the person has been charged, further questioning should only be for the purpose of clearing up ambiguities and uncertainties.

Service of Statements & Notices of Objection

97. Turning to the procedure for determining the admissibility of statements in court, the view of the Committee is that it must be refined to cut down the time taken in "trials within trials." The Attorney-General's Chambers in particular has addressed this issue and the Committee accepts that recently, too many protracted "trials-within-trials" have taken place. This is attributable in part to the prosecution not serving statements from the accused until the day of the trial and in part, to the defence for making new allegations of "involuntariness" as the trial progresses.

98. The Committee has therefore taken some care to consider whether the proposals already made above would cut down the time taken in "trials-within-trials". There is little doubt that where the rules are clear and where the officers' duties are clearly defined, the scope for challenges to the voluntariness is likely to be less. What is needed is a pre-trial procedure to make both sides aware of the nature of challenges made. In this connection, a **Notice of Objection** procedure is recommended.

99. Under the proposed "Notice of Objection" procedure, there will be a mandatory requirement that statements by the accused (that the prosecution intends to rely on) should be served on the defence within a prescribed period before the trial. A corresponding duty would then be placed on the defence to lodge a Notice of Objection against the use of any of the statements. Where the

prosecution fails to serve such statements within the period, it will not be allowed to rely on them unless special leave is obtained from the Court. In determining this matter, it is expected that the Court would take into account the effect that this may have on the defence. Where the defence fails to lodge a Notice of Objection, it will not be allowed, in the normal case and without leave of the Court, to object to the admissibility of these statements.

100. It is anticipated that this procedure would reduce the element of "surprise" that had hitherto resulted in unnecessary adjournments and exacerbated uncertainty and unpreparedness in trials. It is noteworthy that the organizations, including the Law Society and the Judicial & Legal Officers' Association, regard such a move as timely and useful.

101. The Committee is of the view that the new procedure should apply to trials both in the High Court and District Courts. With experience gained in these courts, the extension of the procedure to other courts may be practicable. Such a step may be implemented by agreement between the parties to other court hearings.

102. **SERVICE OF THE STATEMENT** The prosecution will be required to serve copies of all the accused's statements it intends to use or tender in evidence on the defence at least six weeks before the commencement of a District Court trial. In the case of High Court trials, the statements should be served within six weeks from the date of receipt by the Public Prosecutor of the records of the proceedings of the Preliminary Inquiry under section 150(1) of the CPC. This would assist the Registrar of the Supreme Court to determine the number of days required for the trial when he conducts pre-trial conferences.

103. **THE NOTICE OF OBJECTION** Where the defence wishes to challenge the use or admissibility of a statement that has been served on him, it should within fourteen days of the receipt of the statements, lodge a Notice of Objection stating, *inter alia*:—

(a) the nature of the objection, including any allegation of threat, inducement, promise or oppression;

(b) the name or a description of each person from whom the threat, inducement, promise or oppression is alleged to have emanated;

(c) the address or a description of the place where the threat, inducement, promise or oppression is alleged to have taken place;

(d) a general account of the nature of the alleged threat, inducement, promise or oppression;

(e) particulars of any injury or other detriment, if any, arising from such alleged threat, inducement, promise or oppression;

(f) with reference to the Schedule E rules, particulars of any alleged breach of them.

104. **DISCRETION OF THE COURT** Under the proposed procedure, where the defence fails to lodge the Notice of Objection, it should not, without leave of the Court, be permitted to challenge the use or admissibility of the accused's statements at the trial. The early disclosure of the grounds of challenge will undoubtedly narrow the issues at a trial within a trial. At the least, adjournments will be avoided.

105. The Committee recognizes that there may be special circumstances where the court may permit the use of statements (in the case of the prosecution) or to the making of challenges (in the case of the defence) even though the procedures are not complied with. The prosecution may choose not to serve a particular statement where juveniles or young persons are concerned. Similarly, where the accused, through no fault of his own, only discovers evidence of involuntariness just before the trial, he should be allowed to challenge the admissibility of such statements. There may also be cases where the court may, on its own volition, require the prosecution to strictly prove the voluntariness of a statement or require the defence to offer evidence of involuntariness where such a burden is not in law placed on the prosecution.

106. To ensure that this general discretion is kept within proper control, it is recommended that the trial judge should be required to state the reasons in writing where a departure from the procedure is allowed. Therefore, the court will be careful not to allow deviations except in the rare instances. Further, it is expected that the appellate courts will be better able to review and regulate the use of such discretion where trial judges are asked to give their reasons in writing.

107. In recommending the novel procedure, the Committee is mindful of two vital matters to be taken into account in order that the interests of the accused be protected. First, as with the alibi provisions under the CPC, the Committee is of the view that the accused should be granted leave to challenge the statement where he is unrepresented before the trial and where he is unaware of the Notice of Objection procedure. Second, as disclosure of the defence is made before the trial, it may be

thought that this will give an opportunity for unscrupulous officers to collaborate on falsifying stories or worse, fabricating evidence to discredit the challenges. On this matter, the Committee is of the view that the full force of the law relating to false evidence (Chapter XI, Penal Code, especially sections 191-196) should be brought to bear on any such miscreant officers.

108. Sections 122 and 123 have also been redrafted to reflect the recommendations of the Committee. The redrafted provisions are reproduced in Annex C. The suggested amendments to the CPC to implement the new "Service of Statements" procedure are to be found in Annex D.

Miscellaneous matters

109. For the sake of completeness, it is useful here to document the minor changes that the Committee is recommending in relation to some of the provisions in the Evidence Act dealing with the accused's statements and which were discussed in Part I.

110. In para 31, Part I it was suggested that the words "or admission" be added to section 24 that should now read as follows:–

> "**24.** A statement, whether amounting to an admission or confession, made by an accused person, is irrelevant in a criminal proceeding if the making of it appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding before him."

The amendment is unlikely to be controversial. In the experience of members of the Committee who are in criminal practice, the challenges on the voluntariness of admissions are already commonplace. The amendment would place beyond doubt the legal validity of the practice.

111. The language of the Evidence Act is kept to reduce consequential amendments to the minimum. The use of the words "admission or confession" is therefore justified for both words are defined in section 17 of the Act. The amendments to the Evidence Act are contained in Annex E.

112. The Committee however is of the view that there is no reason to retain section 25 of the Evidence Act. The matters within its scope are already dealt with in the CPC. Another section that may similarly be repealed is section 26. The section is already subject to other written laws that of course include the CPC.

113. It is worth recording that apart from one organization, those who submitted written representations were in favour of including "oppression" in the concept of "voluntariness". However, in paras 24-28 Part I, the Committee has taken the view that there are serious difficulties in attempting to codify this area of the law. Special provisions have to be introduced to define the term and to allocate the burden of proof on the issue. It may be best, at this time, to leave it to the Courts to apply common-law, as they have so far done.

114. The provisions that have worked well in the past and that require no amendments are sections 27 to 30. It was mooted in the Committee that all these provisions should be re-enacted in one piece of legislation, namely the CPC. This was also supported by the organizations consulted. However, given that this move may be regarded as merely cosmetic, the view of the Committee is that it may serve no useful purpose to transfer the sections to the CPC. The courts, legal profession and the law enforcement agencies are familiar with the two codes and this should, perhaps, not be changed unless there is a move to unify the codes of procedure. This would probably entail a substantial revision exercise which is beyond the terms of the present Committee.

115. The Committee recognizes that the reforms suggested in this Report will introduce new rules and principles both at the investigation stage and at the trial stage. It is hoped that all parties concerned will co-operate to ensure that the new system will work in the interests of criminal justice.

END OF PART II

ANNEX A

LIST OF AGENCIES & ORGANIZATIONS

ATTORNEY-GENERAL'S CHAMBERS

COMMISSIONER OF POLICE

CORRUPT PRACTICES INVESTIGATION BUREAU

CUSTOMS & EXCISE DEPARTMENT

IMMIGRATION DEPARTMENT

JUDICIAL AND LEGAL OFFICERS' ASSOCIATION

LAW SOCIETY OF SINGAPORE

MINISTRY OF HOME AFFAIRS

MINISTRY OF LAW

PORT OF SINGAPORE AUTHORITY POLICE

REGISTRAR OF THE SUBORDINATE COURTS

REGISTRAR OF THE SUPREME COURT

REGISTRY OF VEHICLES

ANNEX B

Proposed Schedule E, Criminal Procedure Code

RULES FOR THE TAKING OF STATEMENTS FROM WITNESSES & SUSPECTS

General Principles

Powers to question and take statements

a. An officer investigating into the facts and circumstances of an alleged offence may question any person whether that person is a suspect or not, in custody or not, or is under charge or not. He may also take statements from such a person.

The Voluntariness of Statements

b. For statements to be admissible as judicial evidence, they must be made voluntarily, that is, without inducement, threat or promise as defined in the proviso to section 122(5) of the Criminal Procedure Code.

Compliance with Rules

c. The following rules govern the taking of statements and compliance with the procedures is necessary to ensure that the statements are voluntarily made and thus admissible in evidence.

Scope of Rules

d. These rules apply to cases involving serious offences, that is offences that are punishable by a term of imprisonment for three years or above, or offences punishable by mandatory imprisonment or such other offences as may be prescribed by the Minister in the Schedule to these Rules.

RULES

A. *PREPARATIONS FOR QUESTIONING*

1. When a person appears before an officer, the officer shall first ask the person the language (including "dialect") that he wishes to use. The officer shall record the choice in a printed form (Form A of the Schedule to these Rules, hereinafter, "the Schedule").

2. The officer shall proceed to question the person in the language of his choice and where an interpreter is necessary, a certificated interpreter shall, as far as possible, be appointed. In the case where a certificated interpreter is unavailable, an officer proficient in the chosen language and otherwise unconnected with the investigation shall be appointed. The investigating officer shall ensure the proficiency of the appointed interpreter in the relevant language.

3. Before questioning begins, the officer shall inform the person of that person's rights and duties by reading out to him the provisions of section 122(1) CPC as contained in the Notice (Form A). Where appropriate, the interpreter shall provide the person with an interpretation of the Notice as read out by the officer.

4. The officer shall then obtain the particulars of the person and record them in Form A.

5. The officer and the person shall confirm the fact that the person has been informed of his rights and duties as provided for in Form A. Where the person refuses to confirm, his refusal shall also be recorded as provided.

B. *QUESTIONING AND RECORDING STATEMENTS*

6. After ascertaining the appropriate language and after informing the person of his rights and duties as provided in the previous rule, the officer may begin questioning. The questions and answers shall be recorded faithfully. The time at which the questioning begins shall be recorded.

7. When the recording of the statement is completed, the statement shall be read back to the person. The person shall also be asked to confirm the fact that the statement is given voluntarily and that it is true and correct.

The confirmation shall be evidenced in writing at the end of the statement and shall be signed by the person and the recording officer.

8. The officer shall then ask the person whether he wishes to add to or alter the statement and where the offer is taken up, the additions or alterations shall be recorded below the entry setting out the offer. Both the officer and the person shall acknowledge the alterations in writing at the end of the statement. The time at which the statement is concluded shall then be entered.

9. Where a person refuses to answer a question, he shall be informed that he can only refuse if the answer may tend to incriminate him. The officer shall then record the refusal to answer.

C. *RECORDING A STATEMENT IN DEFENCE TO THE CHARGE*

10. If at any stage of the investigation, the officer is satisfied that the person has committed an offence, he shall officially inform the person that he may be prosecuted or charged with that offence and shall warn the person as specified in Form B2.

11. The officer may, at this stage, also prepare the charge (according to Form B1) and fill in the relevant information. He may then read out the charge and the warning as provided in Form B2.

12. The officer shall then invite the person to mention any fact that he intends to rely on in his defence and if he wants to make a statement, such a statement shall be recorded.

13. The person shall then be asked to confirm the accuracy and voluntariness of the statement and to sign it.

14. The person shall then be asked whether he wishes to alter the statement in any way and the procedure in rule 8 shall be followed.

15. Where a person refuses to give a statement after the warning, such a refusal shall also be recorded in the appropriate form and the person shall be asked to acknowledge his refusal to make a statement.

16. Where an officer wishes to clarify ambiguities contained in this statement by questioning the person, he shall record faithfully both the questions asked and the answers given, including refusals to answer specific questions, if any.

17. At the end of this procedure, the officer shall invite the person to confirm that the answers are true and correct and that they are given voluntarily, that is, without inducement, threat or promise. The statement shall then be signed by the officer and the person and the time of conclusion entered.

D. *TAKING FURTHER STATEMENTS FROM THE PERSON*

18. If at any time after a statement referred to in Part 3 has been taken and it becomes necessary to record further statements from the person, the warning as prescribed in Form B3 shall be read and, if necessary, interpreted to him.

19. The questions and answers forming the statement shall be faithfully recorded and any refusal to answer shall be recorded in the form prescribed. A person making a voluntary statement at this stage must not be cross-examined, and no questions shall be put to him except for the purpose of removing ambiguity in what he actually said in previous statements.

E. *RECORDING STATEMENTS IN DIFFICULT CIRCUMSTANCES*

20. If for any reason, a person wishes to make a statement and it is not possible to record the statement in the forms prescribed, the officer shall make a record of the statement in writing or in another recording medium such as a tape or cassette. The reasons why the officer has not followed the prescribed procedures shall be recorded by him in the statement.

Schedule E Specimen Forms

FORM A

IP/Case No: _____

Statement of: _____

I confirm that I wish to speak in the English/_____ language/dialect.

_____ _____

(signed by the person) (signed by Interpreter) if applicable

Age: ____ Sex: ____

Nationality & Language (Dialect): _____

NRIC/Passport No: _____

Employment: _____

Address: _____

_____

Tel. No(s): _____ (H) _____ (O)

Language Spoken: _____

Interpreted by: _____

Recorded by: _____ Rank: _____

Time when recording commenced: _____(a.m./p.m.)

Date: _____

Notice to Witnesses

I am conducting an investigation into an offence of *[nature of offence]* under section _____ of the _____ Act, Cap. _____ alleged to have been committed in Singapore on or about _____. You are bound to state truly the facts and circumstances of the case with which you are acquainted except only that you may decline to make a statement about any fact or circumstance which would have a tendency to expose you to a criminal charge or to a penalty or forfeiture.

_____

(Signed by Officer conducting interview)

I confirm that the above notice was read (or interpreted, as the case may be) to me.

_____

(Signed by person interviewed)

_____

(Signed by Interpreter, if any)

[Questions & Answers recorded]

Statement concluded at: _____ (a.m./p.m.)

I confirm that the above Statement which comprises _____ page(s) and _____ page(s) of attachments/exhibits was recorded from me voluntarily, that is, without any inducement, threat or promise. I have read the above **statement or had it read back (and, where applicable, interpreted) to me.**
I confirm that I have made amendments/do not wish to make amendments to the Statement.

I confirm that the Statement is true and correct to the best of my knowledge/recollection.

_____ _____

(Signed by maker of statement) (Signed by Interpreter, if any)

_____

(Signed by officer(s) conducting interview)

FORM B1: THE CHARGE

You are hereby charged/officially informed that you may be prosecuted for following offence:–

(Set out Charge)

I confirm that I was charged/officially informed that I may be prosecuted on the abovementioned charge. I also confirm that the charge was read and, where applicable, interpreted to me.

_____ _____

(Signed by the person charged) (Signed by the Officer)

_____

(Signed by the Interpreter, if any)

Date: _____ Time:_____(a.m./p.m.)

Form B2

Warning to Persons Charged

"You have been charged with/informed that you may be prosecuted for —

(set out the charge).

Do you wish to say anything in answer to the charge? If there is any fact on which you intend to rely in your defence in court, you are advised to mention it now. If you hold it back till you go to court, your evidence may be less likely to be believed and this may have a bad effect on your case in general. A written record will be made of anything you say or of your refusal to say anything. The record of any statement that you wish to make or of your refusal to make a statement may be used in evidence."

I confirm that the above warning was administered to me and that it was read (or interpreted, where applicable) to me.

_____ _____

(Signed by the person) (Signed by the Officer)

_____ Date/Time: _____(a.m./p.m.)

(Signed by the interpreter, if any)

FORM B3

Notice to Accused

[Reference: Schedule E, rules 18, 19]

I am continuing an investigation into an offence of [*nature of offence]* under section _____ of the _____ Act, Cap. _____ alleged to have been committed by you in Singapore on or about _____.

You are bound to state truly the facts and circumstances of the case with which you are acquainted except only that you may decline to make a statement about any fact or circumstance which would have a tendency to expose you to a criminal charge or to a penalty or forfeiture. Any statement which you make may be used in evidence.

_____ _____

(Signed by Officer conducting interview) (Signed by Interpreter)

I confirm that the above notice was read (or interpreted, as the case may be) to me.

_____

(Signed by person interviewed)

[Questions & Answers recorded]

Statement concluded at: _____ (a.m./p.m.)

I confirm that the above Statement which comprises _____ page(s) and _____ page(s) of attachments/exhibits was recorded from me voluntarily, that is, without any inducement, threat or promise. I have read the above statement or had it read back (and, where applicable, interpreted) to me.

I confirm that I have made amendments/do not wish to make amendments to the Statement.

I confirm that the Statement is true and correct to the best of my knowledge/recollection.

(Signed by maker of statement)

(Signed by Interpreter, if any)

(Signed by officer(s) conducting interview)

Annex C

Sections 122-123, Criminal Procedure Code (proposed amendments)

SECTION 122

(1) Except as provided in this section, no statement made by any person to an officer in the course of an investigation shall be admissible in evidence other than a statement admissible under section 141.

(2) When any witness is called for the prosecution or for the defence, other than the accused, the court shall, on the request of the accused or prosecutor, refer to any statement made by that witness to an officer in the course of an investigation and may, if the court thinks it expedient in the interests of justice, direct the accused to be furnished with a copy of it, and the statement may be used to impeach the credit of the witness in the manner provided by the Evidence Act.

(3) Nothing in this section shall be deemed to apply to any statement made in the course of an identification parade or falling within section 27 or 32(a) of the Evidence Act.

(4) When any person is charged with any offence in relation to the making or contents of any statement made by him to an officer in the course of an investigation, that statement may be used as evidence in the prosecution.

(5) Where any person is charged with an offence any statement, whether it amounts to a confession or not or is oral or in writing, made at any time, whether before or after that person is charged and whether in the course of an investigation or not, by that person to or in the hearing of any officer shall, subject to sections 385A and 385C, be admissible at his trial in evidence and, if that person tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit:

Provided that the court shall refuse to admit such a statement or allow it to be used as aforesaid unless the prosecution proves to the satisfaction of the court that there is substantial compliance with the prescribed rules as set out in Schedule E in the recording of the statement made by the accused person.

(6) Notwithstanding subsection (5) and the proviso contained therein, the court shall not admit a statement otherwise admissible by virtue of that subsection if it appears to the court that the statement is caused by any inducement, threat or promise

having reference to the charge against such person, proceeding from a person in authority and sufficient, in the opinion of the court, to give such person grounds that would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

(7) Any reference to an "officer" in this section and section 123 means a police officer of or above the rank of sergeant or any other person, not being a police officer, who is officially charged with the duty of investigating offences or charging offenders.

SECTION 123

(1) Where any person is charged with an offence or officially informed that he may be prosecuted for it, a notice (in printed form or in writing) as prescribed in Schedule E shall be served on him and shall be read and, if necessary, interpreted to him.

(2) No statement made by an accused person in answer to a written notice served on him pursuant to subsection (1) shall be construed as a statement caused by any inducement, threat or promise as is described in section 122 (6), if it is otherwise voluntary.

(3) Where the accused person has been warned pursuant to subsection (1), his failure to mention any such fact, being a fact that in the circumstances existing at the time he could reasonably have been expected to mention when so charged and informed, the court may draw such inferences from the failure as appear proper; and the failure may, on the basis of those inferences, be treated as, or as capable of amounting to, corroboration of any evidence in relation to which the failure is material.

Provided that where the accused person can show that he did not understand the notice given to him, such inferences shall not be regarded as proper and his failure to answer also shall not constitute corroborative evidence.

(4) Where the accused person has made a statement after a warning pursuant to subsection (1), the statement shall be admissible at his trial in evidence and may be used for any purpose as specified in section 122(5), subject to the same proviso in that subsection and to subsection (6) of that section.

(5) In subsection (1), "officially informed" means informed by an officer as defined in section 122(7).

(6) Nothing in sub-section (3) or (4) shall in any criminal proceedings -

(a) prejudice the admissibility in evidence of the silence or other reaction of the accused in the face of anything said in his presence relating to the conduct in respect of which he is charged, in so far as evidence thereof would be admissible apart from those subsections; or

(b) be taken to preclude the drawing of any inference from any such silence or other reaction of the accused that could be drawn apart from those subsections.

EXPLANATORY NOTES

1. Section 122 and 123 are separated, with the original section 122(6) transferred to section 123. The intention is to drive home the message that the accused's exculpatory statement should be treated differently from section 122(5) statements especially in terms of its evidential effect.

2. Section 122(5) puts into effect the view of the Committee that the prosecution has to prove substantial compliance and that once it has done so, the statement is *prima facie* admissible. This is complemented by subsection (6) that places on the accused a persuasive burden to show that there is no substantial compliance or that the statement is otherwise involuntary. If the view of the Committee is that the accused should shoulder only an evidential burden, then the word "prove" should be changed to "show". This would have the effect of placing on the prosecution a burden to disprove the allegations of the defence. The stronger version of *prima facie* case can be used because it may not be so onerous to prove lack of substantial compliance or involuntariness on a balance of probabilities. Another reason is that the Evidence Act does not recognize the weaker form of *prima facie* evidence. The stronger sense (i.e., shifting the persuasive burden) is also more easily understood and supported by judicial authority.

3. The definitions of prima facie evidence as given by **Cross on Evidence** (3rd. Australian edn., pp. 88-9):

> "Prima facie evidence: first sense": Where a party's evidence in support of an issue is sufficiently weighty to entitle a reasonable man to decide the issue in his

favour, although, as a matter of common sense, he is not obliged to do so.

"Prima facie evidence: second sense (presumptive evidence)": Where a party's evidence in support of an issue is so weighty that no reasonable man could help deciding the issue in his favour in the absence of further evidence.

This second sense is accepted as being the "usual" sense in that the phrase is used. It is accordingly implemented in the section. Its effect is that on proof of substantial compliance, the statement will be admissible unless the accused can prove on a balance of probabilities that there is no such compliance or that it is otherwise involuntary.

4. Subsection (9) defines "officer" as a sergeant if a police officer. Other officers are not "ranked" as it may be difficult to do so. The section reflects the current position.

5. Section 123 has been re-drafted to form a coherent whole on its own. The exculpatory statement may be used, as under the present section 123, for (a) drawing of inferences and (b) using silence as corroborative evidence. The statement may also be used for the purpose of incriminating the accused in the normal way: this is again declaratory of the present position.

Annex D

Service of Statements & Notices of Objection
(Draft statutory provisions)

SECTION 385A

(1) At a trial before the High Court or District Court, the Public Prosecutor shall not use or tender in evidence any statement which has been previously recorded from the accused, other than a statement under section 371 or section 376 of this Code, unless he has, at least six weeks before the commencement of the trial, served on the accused a copy of the statement:

Provided that where the accused has been committed to stand trial in the High Court after a Preliminary Inquiry, the Public Prosecutor shall serve the statement on the accused within six weeks from the date of receipt of the recording of the proceedings under section 150(1) of this Code.

(2) Within fourteen days of the receipt of a copy of his statement, the accused shall, if he wishes to object to the admissibility or use in evidence of the statement, lodge with the Public Prosecutor a written Notice of Objection as is prescribed under section 385B of this Code.

(3) If the accused fails to lodge a Notice of Objection concerning any statement made by him as specified in the above subsection, he shall not, without leave of the Court, challenge the admissibility and use of his statement in evidence at his trial.

(4) The Court shall grant leave under this section if it appears that no advocate has been instructed to act for the accused at any time before the trial and if it is satisfied that the accused has no knowledge of the obligations under this section.

(5) Notwithstanding anything contained in this section, the parties may agree that the prescribed period for the service of the statement on the accused by the Public Prosecutor or the lodging of the Notice of Objection by the accused be extended, reduced or otherwise altered or that the provisions of this section may apply to any trial or inquiry before any Court.

SECTION 385B

(1) Every Notice of Objection under section 385A shall include:–

(a) the nature of the objection including any allegation of threat, inducement promise or oppression;

(b) the name or description of any person from whom such threat, inducement, promise or oppression allegedly emanated;

(c) the address or description of the place where such threat, inducement, promise or oppression allegedly took place;

(d) a general narrative account of the events concerning the alleged threat, inducement, promise or oppression;

(e) particulars of any injury or other detriment, if any, arising from the threat, inducement, promise or oppression;

(f) with reference to Schedule E, particulars of any breach or non-compliance of any of the rules contained therein.

(2) Any notice purported to be given under this section on behalf of the accused by his advocate shall, unless the contrary is proved, be deemed to have been given with the authority of the accused.

(3) Any notice required by this section to be served on the Public Prosecutor may be served by delivering it personally to him or by leaving it at his office or by sending it to him by registered post.

(4) If the Public Prosecutor or any officer acting on his behalf interviews the accused, pursuant to a Notice of Objection which has been served on the Public Prosecutor, the accused's advocate shall be entitled to be present at the interview.

SECTION 385C

Notwithstanding that a statement has not been served on the accused by the Public Prosecutor or a Notice of Objection not lodged with him by the accused as required by section 385A or section 385B, the Court may, for reasons to be recorded in writing, permit the Public Prosecutor to use or tender in evidence a statement of the

accused or permit the accused to challenge the use or admissibility of the statement so tendered.

EXPLANATORY NOTES

1. The requirements of draft section 385B(1) as to the contents of the Notice of Objection are cumulative. As such, partial compliance is deficient, unless certain of the requirements are inapplicable in the circumstances of the case. An accused would therefore not be allowed, without leave of the court, to challenge the use or admissibility of his previous statement if he has only partially complied with the provision.

2. The Notice of Objection scheme is intended for challenges based on the "voluntariness" of statements, including oppressive treatment or a failure to comply with the Schedule E rules. It does not preclude, for example, defence arguments that the statement should be excluded by the exercise of judicial discretion to exclude evidence which would operate unfairly against the accused.

3. There should be no bar to the accused or his advocate serving more notices of objection, or supplements his notice which has already been served, provided he does so within the stipulated period.

4. Subsection (4) of the draft section 385B refers to "any officer acting on his behalf." This phrase is intended to include any law enforcement officer acting at the instance of the Public Prosecutor. It must be emphasized however that the interview should be restricted to matters raised in the particular notice. The purpose is not to obtain a further incriminating statement. Also, the "interview" officer should not be the same officer who conducted the investigation of the crime with which the accused is charged.

ANNEX E

Consequential Amendments to the Evidence Act

"**24.** A statement, whether amounting to an admission or a confession, made by an accused person, is irrelevant in a criminal proceeding if the making of it appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient in the opinion of the court to give the accused person grounds that would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding before him."

25. [Repealed]

26. [Repealed]

Annex F

Summary of Report

116. The Committee reviewed the current law and practice on the taking of statements by law enforcement officers because of the following circumstances:–

(a) dissimilar practices on the taking of statements have appeared among the law enforcement agencies;

(b) confusion has arisen over the nature of obligations on officers interviewing suspects as the rules contained in Schedule E of the Criminal Procedure Code were abolished in 1976;

(c) conceptual uncertainty has appeared regarding the test of "voluntariness" and, in particular, whether it includes the doctrine of "oppression";

(d) "trials-within-trials" have become more protracted;

(e) the number of cases on appeal concerning the taking of statements has clearly increased;

(f) adverse judicial comments have been made about the conduct of investigations in a number of cases.

117. The Committee's approach is based on the need to balance the interests of the State (effective crime control) and the interests of the individual (protection from being falsely accused or harassed). The administration of criminal justice should also be efficient and fair. Trials should be conducted fairly and expeditiously.

118. The recommendations of the Committee are as follows:–

(a) A new set of rules should be provided in a re-enacted Schedule E of the Criminal Procedure Code. These rules should clearly define the powers and duties of officers and the rights and liabilities of persons being interviewed. Such rules should apply to all law enforcement agencies investigating serious crimes unless otherwise provided for in other written laws.

(b) The recommended rules envisage a three-stage process in the course of an investigation: the pre-charge stage, charge stage and post-charge stage. Warnings (as distinct from "cautions") should be used at each stage. (The specimen rules and warnings may be found in Annex B.)

(c) At the pre-charge stage, the person interviewed should be reminded of the duty to tell the truth. There should also be a caution that the person interviewed need not say anything if it would incriminate him. This approach is sanctioned by section 121 of the CPC as it now stands.

(d) At the charge stage, the present section 122(6) warning (with minor amendments) should be given. However, the Committee recommends that the warning need only to be *read* or *interpreted* to the accused. *There is no need to explain.*

(e) At the post-charge stage (and especially if the accused is in custody), all further statements to be taken from the accused should be prefaced with a warning that he has a duty to tell the truth and that his statements may be used in evidence.

(f) Where there is substantial compliance with the rules in Schedule E, the statement is *prima facie* admissible unless there is evidence of some other element of "involuntariness" as provided for in the CPC and the Evidence Act.

(g) In order to cut down the time taken in "trials within trials" the Committee recommends that the prosecution formally provides the defence with the statements of the accused that it intends to use in evidence. By serving the accused with his statements, he is forewarned about the statements that may be adduced against him. The accused should then within a reasonable period file a notice of objection which would stipulate the nature of the challenge to be made to any of the statements.

(h) By stipulating that Notices of objection be given, the prosecution is able to ascertain whether the statements may be used in evidence. Such Notices would contain details of the circumstances of the alleged improperly taken statement. These details would include: the nature of the challenge, the circumstances of any inducement, threat or promise or oppression, and the particulars of any breach of the rules in the proposed Schedule E. This would allow the prosecution time to assess whether the allegations are true in which case such statements may be withdrawn or if not, the prosecution would be able to attempt a rebuttal of the allegations by ensuring that the relevant evidence is available at the trial. Through this procedure, it is expected that there will be no sudden adjournments, no "surprises" and both prosecution and defence will be able to focus their attention on the issues raised in the Notices.

(i) Some consequential amendments to the Evidence Act (sections 24-26) are also included to clear up some uncertainty in the present law on "voluntariness" and the relationship between the Act and the CPC.

(j) It is expected that if these recommendations are adopted, law enforcement officers would have a clearer idea of their powers and duties in the investigation of serious crimes; also, both prosecution and defence will be more prepared for their respective cases in court and trials should be conducted more expeditiously than they are at present.