METROPOLITAN POLICE

The Royal Commission on Criminal Procedure

Part I of the Written Evidence

of

The Commissioner of Police of the Metropolis

New Scotland Yard
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THE ROYAL COMMISSION ON CRIMINAL PROCEDURE

PART I OF THE WRITTEN EVIDENCE

OF

THE COMMISSIONER OF POLICE OF THE METROPOLIS

COMPRISING

THE POWERS AND DUTIES OF THE POLICE IN THE INVESTIGATION OF CRIMINAL OFFENCES AND THE RIGHTS AND DUTIES OF SUSPECTS AND ACCUSED PERSONS AND THE MEANS BY WHICH THESE ARE SECURED

1978

Resume of Part I of the Written Evidence of The Commissioner of Police of the Metropolis

Introduction. All necessary police powers must be clearly within the law.

CHAPTER I Police powers of search and other powers of obtaining evidence

Additional powers

(1) To stop search and detain persons and vehicles in public places for articles which may cause injury or damage to persons or property (pp 8-9).

(2) To seize property found in a public place believed to be of evidential value (pp 10-11).

(3) To search persons and possessions in a public place if by reason of a person's presence at a particular location an officer believes that such search may assist in the prevention of a serious crime or danger to the public (pp 11-13).

(4) To set up road blocks authorized by a senior officer for specific purposes (pp 13-14).

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(6) To obtain a Bankers' Books Evidence Act 1879 order at any stage in an investigation and the definition of 'bank' and 'books' in the Act to be widened (pp 16-18).

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custody by a medical practitioner if the officer has reasonable grounds for believing such examination might provide evidence of an offence if that person consents or an order has been obtained from a magistrates' court (pp 137-141).

(6) A similar power as at (5) for obtaining body samples by a medical practitioner from a person in custody but with an additional provision that in cases of urgency where delay might result in the total or partial reduction of the value of such sample the authority of a police officer not below the rank of Superintendent can be given in lieu of an order from a magistrates' court (pp 137-141).

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The guidelines set out by the Attorney General following the Devlin Report and the subsequent guidance given by the Court of Appeal in R v Turnbull

and subsequent cases now provide a sensible and realistic approach avoiding as far as humanly possible the dangers of miscarriages of justice. The position would not be bettered and probably unhelpfully restricted if dealt with by statutory enactment (pp 144-155).

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No system can guarantee the rights of suspects but they are made effective because every officer is subject to the sanctions of civil, criminal and disciplinary proceedings in respect of any breach of his duty with regard to suspects (pp 156-162).

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It is too early to evaluate the effects of the Bail Act 1976 although it is thought likely that the unsatisfactory position which existed prior to the Act with regard to the professional criminal will be exacerbated. No specific recommendation is made beyond the need to review the situation in the near future (pp 163-166).

I N D E X

Royal Commission on Criminal Procedure

Memorandum of First Part of Evidence of the Commissioner of Police of the Metropolis

I set out below my views on the questions raised by the terms of reference of the Royal Commission in relation to the powers and duties of the police in respect of the investigation of criminal offences and the rights and duties of suspects and accused persons, including the means by which these are secured. My evidence on the process of and responsibility for the prosecution of criminal offences will be submitted later. Before doing so, however, I wish to refer to the philosophy behind the evidence which I am putting forward.

In the past, the police in England and Wales have been dealing with a population which, in the main, was ignorant of its civil rights. Because Parliament had become very reluctant to face up to the necessity of giving the police adequate powers to deal with crime, officers have been expected to rely upon this ignorance when making the necessary enquiries and tests for the solving of crime. The judiciary have accepted this position. As recently as 1970 Lord Denning, in his Judgment in Ghani v. Jones (1970) 1 Q.B. 693, said:

> "No magistrate - nor judge even - has any power to issue a search warrant for murder. He can issue a search warrant for stolen goods and for some statutory offences such as coinage. But not for murder. Not to dig for the body.

> Nor to look for the axe, the gun or the poison dregs. The police have to get the consent of the householder to enter if they can; or, if not, do it by stealth or by force. Somehow they seem to manage. No decent person refuses them permission. If he does, he is probably implicated in some way or other. So the police risk an action for trespass. It is not much risk."

I shall give examples later where Parliament has been willing to give very wide powers to police to deal with cruelty to animals, taking of birds' eggs and similar offences, subjects which are popular with the Press and the general public, but has given no such wide powers to police to deal with violence or threatened violence to the public. The effect of this is that many police officers have, early in their careers, learned to use methods bordering on trickery or stealth in their investigations because they were deprived of proper powers by the legislature. They have risked civil actions frequently when doing so, but until the last decade the number of civil actions brought against police officers was extremely small. One fears that sometimes so-called pious perjury of this nature from junior officers can lead to even more serious perjury on other matters later in their careers. I consider that it is quite wrong that police officers -

to use the words of Lord Denning - should be expected by stealth or by force, and at the risk of an action for trespass, to exercise necessary powers in the investigation of crime. The paramount duty of any Commissioner of Police is to ensure that his officers are men of the highest integrity. A requirement to use stealth or force illegally is obviously a powerful embarrassment to any Commissioner who is seeking to achieve this objective. I take the view that I should be considering not just the situation in London as it is at present, but as it is likely to be over the next few decades. The general public is becoming far more conscious of its rights and more apathetic about its responsibilities. The greatest growth in work in my Solicitor's Department at the moment is on the civil side. Actions against my officers and myself arising out of arrests, searches etc., have risen from 16 in 1967 to 73 in 1977. The experience also of investigating officers makes it quite clear that the days when they could expect to bluff their way into obtaining consent to take body samples, or enter premises, are numbered.

It is, of course, a matter for society at large to determine what kind of police service it wants and what reasonable constraints must be placed, in the interests of civil liberty, on police action, but at the same time society must recognise that Utopian measures introduced to ensure excessive protection of the individual citizen also lessen the chances of criminals being caught and convicted, which increases the risk of further rises in

crime. Society must also realise that it is not right to expect police to obtain the necessary powers by stealth and force. All the necessary powers must be clearly within the law. No one, least of all I, disputes the need to safeguard the individual's civil liberties, but we must always seek to ensure that the scales of justice are correctly balanced. If not, other fundamental rights such as the right to live peacably in the security of one's home and the right to go about one's business unmolested, may be seriously threatened. I am therefore asking the Commission to give the police the powers and facilities necessary to do their job in the interests of the public.

CHAPTER I

Police powers of search and other powers of obtaining evidence

1.1. The Report of the Royal Commission on Police Powers and Procedure published in 1929, in its reference to offences for which police could apply for search warrants, said at paragraph 31, "Taken together these offences appear to be a somewhat haphazard and illogical collection, several serious offences not being included". Paragraph 32 dealing with the power to search arrested prisoners and describing that as "a necessary and obvious precaution not merely to obtain possible evidence bearing on the charge but to deprive the arrested person of any means of injuring himself or others while in custody", noted the absence of an express power so to search. Paragraph 33 dealt with the risk of a possible action for trespass against police following the search of premises of a person arrested with or without warrant. Despite those observations the present position almost fifty years later is little changed.

1.2. It is essential both for the protection of the rights of the individual and in order that police can carry out their duties effectively for the benefit of the public on whose behalf police are acting that the power of search given to police should be adequate and clearly defined.

1.3. The powers possessed by police are in some instances wholly inadequate. I repeat the words of

Lord Denning, in his Judgment in Ghani v. Jones (1970) 1 Q.B. 693, "No magistrate - nor judge even - has any power to issue a search warrant for murder. He can issue a search warrant for stolen goods and for some statutory offences such as coinage. But not for murder. Not to dig for the body. Nor to look for the axe, the gun or the poison dregs. The police have to get the consent of the householder to enter if they can; or, if not, do it by stealth or by force. Somehow they seem to manage. No decent person refuses them permission. If he does, he is probably implicated in some way or other. So the police risk an action for trespass. It is not much risk." It seems quite wrong that police are on occasions compelled, if they are to carry out their duty effectively, to step outside the law and act "by stealth or by force" and as a result risk an action for a civil wrong whether the risk be big or small and possibly now be themselves committing the criminal offence of using violence to secure entry (Section 6, Criminal Law Act, 1977). In considering this topic it is intended to split the subject into four parts, namely:

(1) Powers of search without warrant or arrest.

(2) Powers of search by warrant.

(3) Powers of search on arrest.

(4) Other powers of obtaining evidence.

(1) <u>Powers of search without warrant or arrest</u>

1.4. There is no common law power but a variety of statutory powers of a haphazard nature and differing in extent from statute to statute. Thus by Section 10,

Badgers Act 1973 a constable has a power to search if he has reasonable grounds for suspecting that any person is committing or has committed an offence under that Act and that evidence of the commission of the offence is to be found on that person or any vehicle or article he may have with him. That Act is designed for the preservation of and protection from cruelty to badgers. A similar power may be found for the protection of certain birds' eggs in Section 11, Protection of Birds Act 1967. However, no similar power exists in the Prevention of Crime Act 1953 which is aimed at preventing the carrying of offensive weapons for use against human beings. Under that Act there is no power of search, which power only arises at common law following arrest. Similarly, no power of search short of arrest exists under the Criminal Damage Act 1971 despite the fact that that Act deals with such serious and dangerous offences as arson. Other examples of statutory powers of search without warrant short of arrest are to be found in:

<u>Schedule 3 Part II Prevention of Terrorism Act 1976</u>

<u>Section 47 Firearms Act 1968</u>

<u>Section 23 Misuse of Drugs Act 1971</u>

A further power to search without a warrant is to be found in Section 26(2), Theft Act 1968, which replaced a similar provision of Section 42(2) Larceny Act 1916 and authorises a police officer not below the rank of Superintendent to give a constable written authority to enter premises occupied within the preceding twelve months by persons convicted of certain offences within the last five years

to search for stolen goods. In view of the ready availability of justices of the peace in the Metropolitan Police District to whom applications can be made under Section 26(1) of the Act, the Metropolitan Police Force makes almost no use of Section 26(2) although it is understood that provincial forces in areas where magistrates' courts do not sit with such frequency, of necessity have to make use of Section 26(2).

1.5. The present position therefore is that except for these and other haphazard statutory provisions there is no power of search other than on arrest or by warrant however grave the offence or however strong may be a police officer's suspicion. An obvious example of the inadequacy of police powers in this connection is in attempting to prevent football hooliganism. Police officers on occasions search football supporters for offensive weapons, whether on foot or in coaches approaching a football ground, and frequently at the ground before entry through the turnstiles. Such searches often reveal the possession of such weapons and even when they do not, certainly assist in discouraging supporters carrying them if they know that such a search is a possibility. A police officer, however, possesses no power to carry out such search without the consent of the person searched.

1.6. In order to overcome this lack of power of search an extension of the provisions of Section 66, Metropolitan Police Act 1839 both as to the section itself and also to extend its operation to the whole

of England and Wales would give statutory authority to police to do what is at present hopefully done by consent. That section is a provision which applies only within the Metropolitan Police District but similar provisions exist in some other parts of the country under enactments having localised application. The relevant part of the section for this purpose reads as follows:

> "[A] ... constable may ... stop, search and detain any vessel boat cart or carriage in or upon which there shall be reason to suspect that anything stolen or unlawfully obtained may be found and also any person who may be reasonably suspected of having or conveying in any manner anything stolen or unlawfully obtained ....."

That provision relates to offences in relation to <u>property</u> where the offence (e.g. theft) has <u>already taken place</u>. The following suggested extension of that section is intended as a <u>preventive</u> recourse for the protection from injury to <u>persons</u>. Accordingly <u>I RECOMMEND</u> that that right of search should be extended beyond "anything stolen or unlawfully obtained" to include also any article which has been or is intended to be used to cause injury to the person or damage to property. <u>I ALSO RECOMMEND</u> that this provision should apply throughout the whole country.

1.7. A further absence of an essential power necessary to police relates to the seizure of evidence and was highlighted by R. v. Waterfield (1964) 1 Q.B. 164 where the Court of Appeal held that police officers were not acting in the execution of their duty in attempting to detain as evidence a car which had been driven dangerously and in which two men had made off after committing offences of assault. In commenting on that decision in Ghani v. Jones (1970) 1 Q.B. 693 Lord Denning instanced examples where police might require against the wishes of the legal owner to examine the "borrowed" car used by bank robbers or the saucer used to feed the cat in the train robbery case and expressed the view that it would be unreasonable that police should not be able to retain such property for examination. The fact remains that at present police have no power to seize and retain such articles for examination. A similar problem exists where police, having power to search premises, by virtue of a person's arrest or under a search warrant, also wish to search a vehicle used by that person or other goods in his possession outside or away from the premises searched. In the absence of the person's consent to such a search it is difficult, if not impossible, to argue under the present law that a lawful search of the premises can extend to such vehicle or goods. The practical justification for such search of premises almost always extends to such vehicle or goods outside and would in law clearly extend to them if, for example, the vehicle by chance happened to be in

a garage within the premises and not parked in the public road outside. This could be overcome by a provision enabling a police constable who had reasonable grounds for believing that an offence was about to be or had been committed to seize any property found in a public place reasonably believed by him to be evidence of that offence or intended offence. It would be necessary to provide that any property so seized could be retained for no longer than was necessary for the proper examination of the property and its production in any court proceedings. Accordingly, I RECOMMEND that police should be given such a power to seize and retain such property found in a public place for evidence.

1.8. It is sometimes necessary for police to stop and search a member of the public in the case of the commission or anticipated commission of a serious crime where every member of the public is in potential danger. The person is stopped and searched not because he falls into the category of a suspect but because the likelihood is that such a check might reveal some essential information which would assist police in preventing a serious crime endangering the public or might lead to the arrest of a suspect or have a useful deterrent effect. Two examples will suffice. If a series of bomb attacks have occurred in railway trains and police information is that such attacks are likely to continue, spot searches of members of the public entering railway stations might reveal a suspect and would certainly have a deterrent effect, both to the benefit of the public. Or a

dangerous prisoner, a person kidnapped, or a seriously mentally deranged patient may be thought to be travelling from one location to another hidden in the boot of a car of which police have no description. In the latter instance, although an officer in uniform has power to stop a vehicle under Section 159 Road Traffic Act 1972 and to require the driver to produce his driving licence (Section 161) and his insurance and give his name and address (Section 162) that is the limit of his power and answers to any other questions or a search of the vehicle depend wholly on the co-operation of the person stopped. Usually, but not always, innocent members of the public are prepared to co-operate but as the law is at the present a refusal to co-operate is nothing more than the exercise of a legitimate right which of itself can hardly be said to justify an officer's suspicions to the point of the exercise of a power of arrest. Yet the legitimate non-co-operation of one member of the public can wholly remove the benefit to the police and to the public of the co-operation of willing members of the public. Accordingly I RECOMMEND that provision should be made that if a police officer believes that a serious offence endangering life or causing bodily harm or serious damage to property has been or may have been or might be committed and that any person by reason of his presence in a particular location in a public place may be able to assist a police officer in his investigation of such an offence or in preventing such an offence occurring, that officer may stop and detain that person

only for so long as may be necessary to search that person and his personal property including any vehicle, aircraft, boat or animal in possession of that person.

1.9. By careful reading of local crime trends by police it is frequently possible to detect routes of motorized criminals, particularly in relation to burglary offences. The normal procedure in these cases is for police to set up an informal road block in order to detect offenders. Frequently, these road blocks result in arrests for burglary, possession of stolen goods and/or possession of housebreaking implements. Whilst there is an existing power under Section 159, Road Traffic Act 1972 to stop motor vehicles on a road and under Sections 161 and 162 of the same Act to require the name and address of the driver and the production of his driving documents there is no power for subsequent search. However, when acquainted with the reasons for police action, law abiding members of the public almost always without exception permit search. Such procedures are invariably quickly accomplished causing as little inconvenience to innocent members of the public as possible. In order to give police involved in such an operation the full backing of the law I RECOMMEND that where a senior police officer considers that the stopping and searching of motor vehicles at a particular location may prove a fruitful source of the discovery or prevention of criminal offences he may authorise and it shall be lawful for a police officer to stop and search motor vehicles at or about that location on a day or days

specified by him such operation to be carried out with as little inconvenience as possible to those persons stopped.

(2) Powers of search by warrant

1.10. The powers of search by warrant are statutory. Where such powers exist the extent of those powers differs from statute to statute. There are serious offences for which there is no power to apply for a search warrant (e.g. murder) and less serious offences for which there is a power (Section 51, Betting, Gaming & Lotteries Act 1963). Some examples of the existing powers are to be found in:

Section 26 Theft Act (stolen property).

Section 14(8) Prevention of Fraud (Investments) Act 1958 (circulars advertising schemes rendered unlawful by Section 3(1) of the Act).

Section 19 Protection of Depositors Act 1963 (search for books and papers of which production required by Board of Trade).

Section 16 Forgery Act 1913 (bank notes etc., implements of forgery and forged documents, seals and dies).

Section 11(3) Coinage Act 1936 (counterfeit coins or machinery).

Section 6(1) Criminal Damage Act 1971 (article has been or is intended to be for use to destroy or damage property).

Section 46 Firearms Act 1968 (with minor exceptions offences under that Act).

Section 3 Obscene Publications Act 1929 (obscene articles).

Section 43 Sexual Offences Act 1956 (woman detained for immoral purposes).

Section 43 Gaming Act 1968 (illegal gaming).

Section 9 Official Secrets Act 1911 (any offence under the Act).

Section 23 Misuse of Drugs Act 1971 (possession of a controlled drug).

1.11. The disparity of the existing provisions is indicated, for example, by the provisions in Section 26, Theft Act 1968 which entitle police to seize not only the goods described in the warrant but any other goods which they find and believe to be stolen as compared with the provisions in Section 16, Forgery Act 1913 which entitle police to seize only the items described in the warrant. On the other hand, on the authority of Ghani v. Jones (1970) 1 Q.B. 693, Chic Fashions v. Jones (1968) 2 Q.B. 299, Elias v. Passmore (1934) 2 K.B. 164, Garfinkel & Others v. Metropolitan Police Commissioner (1972) Crim. L.R.44 and Frank Truman (Export) Ltd. v. Metropolitan Police Commissioner (1977) 2 W.L.R. 257, if police enter property legally (e.g. in exercise of a search warrant) they can seize any property of evidential value in connection with the crime they are investigating and property of evidential value in any other crime.

1.12. The present powers to obtain search warrants where they do exist usually relate to searches for the proceeds of crime rather than extending to a search for evidence of crime. For example, vital information by way of evidence might be contained on computer tapes. Those tapes would be covered by a warrant to search for evidence but not a warrant to search for the proceeds of crime. This need for a warrant to search not only for proceeds but also for evidence is highlighted by Lord Denning's judgment in Ghani v. Jones (1970) 1 Q.B. 693 referred to above.

1.13. With a view to covering offences not dealt with by the existing statutory provisions and to take into account the common law authority referred to above while maintaining the control of a justice of the peace, I suggest that it should be possible to obtain a warrant to search for evidence. Accordingly I RECOMMEND that a provision be enacted so that if it is made to appear by information on oath before a justice of the peace that there is reasonable cause to believe that an offence has been or is intended to be committed and that the object or proceeds of that offence or evidence to prove the commission or intended commission of that offence is to be found in premises named in that information the justice of the peace may grant a warrant to a police constable to search any such premises for such object, proceeds or evidence and to seize property whether it relate to that or any other offence provided that any property so seized may be retained for no longer than is necessary in the circumstances.

1.14. Police powers to investigate the more sophisticated forms of fraud, in particular those perpetrated through the medium of incorporated companies, registered business names and trading partnerships are wholly inadequate. Particularly in the realms of international fraud and company stripping operations vast sums of money are involved with rapid transfers of capital from country to country and one bank account to another. As the law now stands police have no power during their investigations to apply for an order under the Bankers Books Evidence Act 1879 to assist them in their investigations until criminal

proceedings have been instituted by way of charge or summons. Even at that stage it has been held (Williams v. Summerfield (1972) 56 Cr. App. R. 597) that an application for an order cannot be granted for "fishing expeditions". These dual restrictions considerably hamper the proper and full investigations into fraudulent financial transactions to the benefit of no one other than the criminal. The Royal Commission on Standards of Conduct in Public Life under the chairmanship of Lord Salmon considered, as expressed at paragraph 80 of its Report, that police powers in this context needed to be increased.

1.15. Accordingly I RECOMMEND a procedure whereby at any stage in an investigation a police officer could make an application to a justice of the peace (who could if he saw fit refer the application to a Judge of the Crown Court sitting in chambers) explaining the nature of his enquiry, the relevance of the bank accounts in question and the information he hoped to be able to obtain from an inspection. If the justice or Judge considered the application founded on reasonable grounds he would then order the bank to disclose all bank accounts and other documents relevant to the investigation. This provision could be framed in such a way as to overcome two existing difficulties which arise under the present Bankers' Books Evidence Act. The existing definition of 'bank' in Section 9 is too narrow in that the Bank of England and many merchant banks are excluded from its definition. Moreover, the present Act refers only to 'books' whereas

the records of banks today are largely unbound or computerized. Accordingly I RECOMMEND that the definition of 'bank' be widened and that an order to a bank to disclose information should cover all correspondence and documents in whatever form held by a bank relating to the relevant accounts including records which can be produced by a computer used by the bank and that for this purpose the definition of 'books' be widened.

(3) Powers of search on arrest

1.16. It was said in Ghani v. Jones (1970) 1 Q.B.693 that it is settled law that a person may be searched on arrest; the extent of that right and the property which can be seized is by no means clear, although the police must report the taking of such property to the Court (Section 39 Magistrates Courts Act 1952). Thus even a search of the arrested person for a weapon or other object with which he may do himself or others injury was said not to be an automatic right but a right which arises only if circumstances justify it (Leigh v. Cole (1853) 6 Cox CC 329). The difficulty here is that circumstances may well be misleading so that an apparently calm and unsearched prisoner may suddenly produce a weapon to the danger of police officers who effected his arrest as well as himself.

1.17. There are authorities which suggest that a search on arrest must be restricted to property relevant to the offence for which the arrest was made and property must not be seized unless it is connected with the offence for which the arrest was made (Dillon v. O'Brien & Davis

(1887) 16 Cox CC 245: R. v. O'Donnell (1835) 7 C. & P. 138). It is suggested that the matter be put beyond doubt by providing that the right to search on arrest should be extended to include property which may be of evidential value in respect of offences or intended offences other than that giving rise to the arrest and that such other property be retained for such time as in the circumstances would enable police to make investigations, as is already the case in respect of property seized by virtue of a search warrant (see paragraph 1.11 above).

1.18. At present it is considered that the police have a right to search the home of an arrested person if he is arrested at his home. The right to search on arrest, it would seem, extends to a search of the home of an arrested person away from which the arrest is made if the search is relevant to the offence for which the arrest was made (Dallison v. Caffery (1964) 2 A.E.R. 610; Ghani v. Jones (1969) 3 A.E.R. 1700; and Jeffrey v. Black (1977) 3 W.L.R. 895). But a search of the home of an arrested person, even if it is not strictly relevant to the specific offence for which he was arrested, can prove extremely helpful in the fight against crime. For example, a man may be arrested in the act of stealing from a shop; a search of his home following his arrest might at present be difficult to justify because it is unlikely that further evidence would be found there in respect of the specific offence for which he was arrested. On the other hand a search of his home might

disclose a large quantity of stolen property being the proceeds of previous shoplifting expeditions. It is clearly desirable that following a person's arrest police should have the power to search the home and business premises of the person arrested whether or not the arrest was made there. Moreover, unless police have an immediate power to search such premises upon arrest the arrested person's friends or his co-criminals have ample time in which to remove or destroy incriminating evidence before any application for a search warrant can be made even if such search warrant can be applied for under the existing law.

1.19. To overcome these problems I RECOMMEND that where a person is arrested by a police officer for an offence police should be entitled to search him and his personal property (including any vehicle, boat, aircraft or animal in his possession) and any premises where he resides or carries on business and to seize as a result of such search:

(a) any property which may provide evidence of the commission or intended commission of the offence for which he was arrested or any other offence,

(b) the object or proceeds of such offences, and

(c) any article which might be used by the person arrested to cause damage to himself or to another or which he may use to effect his escape.

I emphasize that what I am seeking in this recommendation is a power to search home and business premises whether or not an arrest was made there. There would be many instances where police would not wish to exercise that power. As with so many powers which police possess it would be exercised with restraint only if it was felt that the particular circumstances justified it, because it is as much in the interests of the conservation of police time as in the interest of an arrested person that unnecessary searches should be avoided. It is of interest to note that at paragraph 121 of the Report of the 1929 Royal Commission on Police Powers and Procedure it was recommended that police should be authorised by statute to search without warrant the premises of persons who have been arrested.

1.20. Many statutory provisions authorising the issue of search warrants expressly provide for entry "if need be by force", others do not so provide. This has given rise to an argument that where a statute is silent on the question of force, force may not be used. The contrary argument is that if there is an inability to use force if resistance is made to the execution of a search warrant such a warrant loses its purpose and is no more than a warrant to search with consent. To resolve this question beyond doubt I RECOMMEND that provision be made (on similar lines to that authorising the use of reasonable force in making lawful arrests in Section 3, Criminal Law Act, 1967) that whenever a

police officer makes a lawful search whether with or without warrant, and not being a search solely justified by consent of the person searched he may use such force as is necessary in the circumstances to effect the search.

(4) Other powers of obtaining evidence

1.21. There have been occasions in the past where serious crimes such as multiple rapes or murder have been committed and the police investigation has been greatly assisted by the willing participation of the inhabitants or category of inhabitants of a particular area supplying their fingerprints for the purposes of elimination when police investigation has indicated that it is highly likely that one of those inhabitants is responsible for the offence. The usefulness of such an exercise is even greater when the urgency of police investigation is emphasized by the fear of similar serious offences being committed by the perpetrator of the initial offence. However, the success of such a fingerprinting exercise depends upon the co-operation of all the inhabitants and it follows that the co-operation of the majority in such an operation can be wholly wasted by the unwillingness of the minority to co-operate. Accordingly, I RECOMMEND that a police officer not below the rank of Chief Superintendent should be able to make written application on oath to a Judge of the High Court sitting in chambers for the compulsory fingerprinting of every person or category of person living or working in the area described in such application. The Judge should have the

power to grant such an order provided that he is satisfied that it would be likely to be of significant assistance to a police investigation into a specific crime or series of crimes involving death or serious bodily harm. It would be necessary to provide that any person who failed to comply with such an order committed an offence and that police had a power of arrest in respect of such an offence. It could be provided that the fingerprints of any person so taken and copies of them would be destroyed unless proceedings were commenced against such person in respect of the offence or offences for which the order was sought or offences connected therewith.

1.22. It is the duty of a police officer to take all steps which appear to him necessary for preventing and detecting crime and to bring offenders to justice (Rice v. Connolly (1966) 2 Q.B. 414) and Rule I, Judges' Rules specifically provides that a police officer has a right "to question any person, whether suspected or not, from whom he thinks useful information can be obtained". On the other hand, as was said in Rice v. Connolly referred to above, "The whole basis of the Common Law is the right of the individual to refuse to answer questions put to him" (although) "it is quite clear that every citizen has a moral or if you like social duty to assist police". That latter duty is repeated in the Notes to the Judges' Rules where it is said that the Rules do not affect the principle "That citizens have a duty to help a police

officer to discover and apprehend offenders". Police officers arriving at the scene of a major crime may need to question bystanders very briefly, for example, as to the direction of escape of the suspects and to question such potential witnesses in greater detail after the general picture has become clearer and for this reason to obtain their names and addresses. However, police have very limited power to obtain names and addresses; where they do have power it is sometimes provided that failure to supply a name and address amounts to an offence and on occasions gives an officer a power of arrest. Examples are to be found in Sections 162, 165 and 168, Road Traffic Act 1972 (certain road users); Section 13(1) Children & Young Persons Act 1933 (certain offences against children); Section 50(3) Firearms Act 1968 (persons in possession of firearms) and Section 1 Public Service Vehicles (Arrest of Offenders) Act 1975 (persons suspected of offences in relation to Public Service Vehicles).

1.23. It is essential to an understanding of this problem of questioning to realise that if the right to question is to be effective it must have a sanction on a refusal to answer, because without such a sanction a police officer is in no better position than a street corner market research questioner or a general busybody who is able to put a question but is powerless to stop the person questioned walking past ignoring it. The position of suspects will be dealt with later but I wish to deal here with this problem with regard to the potential witness.

A witness can at present legitimately refuse to give his name and address to police and frequently refuses to do so because he does not want to "get involved". Sometimes the witness genuinely but mistakenly believes that what information he can give is of no assistance to police. This refusal by witnesses to "get involved" is becoming increasingly more common and means, of course, that the proper investigation of crime is greatly hindered and on occasions completely frustrated. Parliament has seen fit to empower both prosecution and defence to apply for a witness summons or warrant to compel the attendance of witnesses at a Crown Court (Sections 2 and 4, Criminal Procedure (Attendance of Witnesses) Act 1965 as amended) and at Magistrates' Courts (Section 77 Magistrates Courts Act 1952) but unless the name and address of the witness is known these statutory powers are, of course, useless. Indeed, police are sometimes criticised in court for failing to obtain particulars of witnesses despite the fact that they have no power to obtain those particulars. It will be appreciated that the absence of such a power can be of as great a hindrance to the defence as to the prosecution, bearing in mind the duty on the prosecution to reveal to the defence particulars of a witness not being called by the prosecution (R. v. Bryant & Dickson (1964) 31 Cr. App. R. 146). Accordingly, I RECOMMEND that where a police officer believes that a person may be able to assist him in his enquiries in connection with an offence which has been, may have been

or might be committed, the officer may (a) require that person to give his name and address and (b) ask questions of that person to ascertain that the name and address given are correct. If such a person should fail to supply his name and address or to answer any questions at (b) above he shall be liable on summary conviction to a fine. A constable suspecting that a person has committed an offence under the section should have a power to arrest without warrant.

1.24. At Common Law indictable offences committed outside England and Wales on British ships on the high seas anywhere in the world fall within the Admiralty jurisdiction and are triable in England. Similarly, by virtue of the Territorial Waters Jurisdiction Act 1878 offences committed outside England and Wales but in English territorial waters are triable in England. Although such offences fall within the jurisdiction of English courts there is no clear general power for police officers to exercise their powers of arrest and search (which they possess for offences committed in England and Wales) for offences committed on British ships on the high seas or within territorial waters because such offences are committed outside England and Wales and Section 19(1) Police Act 1964 provides that a member of a police force shall have all the powers and privileges of a constable throughout England and Wales. The wording of Section 7 of the Territorial Waters Act 1878 would permit an officer to arrest if a warrant for arrest had been issued in respect of territorial waters offences but not otherwise.

This lack of the powers and privileges of police officers was both recognised and dealt with only in one respect, that is in the legislation dealing with offshore oil and other mineral installations. Thus Section 3, Continental Shelf Act 1964 provides that any act or omission which takes place on an installation in an area designated by an Order in Council or waters within 500 metres of such installation and would if taking place in the United Kingdom be an offence, shall be treated as if taking place in the United Kingdom. Section 11(3) of the same Act provides that a constable shall on any installation in a designated area have all the powers, protection and privileges which he has in the area for which he acts as constable. By Section 8, Mineral Workings (Offshore Installations) Act 1971 this is so whether the offshore installation is in territorial waters or in a designated area. To overcome this difficulty I RECOMMEND that there be added to Section 19, Police Act 1964 an additional sub-section to the effect that the powers and privileges which a member of a police force possesses by virtue of section 19(1) shall in addition extend to any place or area outside England and Wales over which any court in England and Wales has or is deemed to have jurisdiction.

1.25. To summarize my recommendations they are:

(1) Power for police to stop, search and detain persons and their vehicles in a public place for articles which may cause injury to the person or damage to property.

(2) Power for police to seize property found in a public place and believed to be of evidential value.

(3) Power for police to search a member of the public and his possessions in a public place where, by reason of such a person's presence at a particular location, an officer believes that such search might assist in the prevention of a serious crime dangerous to the public.

(4) Power for police to set up road blocks in certain circumstances.

(5) Power for police to apply for a warrant to search for evidence of an offence.

(6) Power for police to apply for an order under the Bankers' Books Evidence Act 1879 at any stage in their investigation and that such order should relate to all records held by a bank and further that the definition of 'bank' should be widened.

(7) The clarification and widening of the power of search on arrest.

(8) The clarification of the use of necessary force when a power of search exists.

(9) Power for police to apply to a Judge of the High Court for a fingerprinting order for persons or category of persons in a particular area.

(10) Power for police to obtain names and addresses of witnesses.

(11) That the powers and privileges which a member of a police force possesses by virtue of Section 19(1) Police Act 1964 shall extend to any place or area outside England and Wales over which any court in England and Wales has or is deemed to have jurisdiction.

CHAPTER II

Police powers of arrest

2.1. The existing powers are powers of arrest with or without warrant.

2.2. With warrant. A warrant can only be applied for if the offence is indictable or imprisonable or if the alleged offender's address is not sufficiently established for service of a summons.

2.3. Without warrant.

(1) Common Law

(a) Anyone an officer sees causing a breach of the peace or so conducts himself that a breach of the peace is reasonably apprehended. (North v. Pullen (1962) Crim. L.R. 97).

(b) When a breach of the peace is ended an officer may only arrest if he is in fresh pursuit of the offender or if he reasonably apprehends its renewal. (R. v. Light (1857) Dears & B. 332; Price v. Seeley (1843) 10 Cl. & Fin.28).

(c) Not for a specific offence but for conduct constituting or likely to constitute a breach of the peace with a view to the person being dealt with under Section 91, Magistrates Courts Act 1952. (Beatty v. Gillbanks (1882)

9 Q.B.D. 308; Duncan v. Jones (1936) 1 K.B. 218.

(d) Obstruction of an officer if it is such as to be likely to cause a breach of the peace or is calculated to prevent the lawful arrest or detention of another. (White v. Edmunds (1791) Peake 123; Levy v. Edwards (1823) 1 C. & P. 40).

(2) By Statute

(a) Arrestable offences (Section 2, Criminal Law Act 1967).

(b) Indictable offences being committed between 9 p.m. - 6 a.m. (Prevention of Offences Act 1851).

(c) Specific offences under various statutory enactments.

(d) Not for offences but for protective purposes (e.g. Sections 135-6, Mental Health Act 1959).

2.4. Under 2(c) above there are a great number of statutes giving powers of arrest. An examination of those powers reveals a considerable variety in the grounds necessary to justify an arrest. Broadly, those grounds are arrest on view of commission of an offence, arrest on suspicion of the commission of an offence, on view of the commission of an offence where the identity of the offender is unknown or where it is feared he may abscond. Even within those broad categories the precise powers of arrest differ from statute to statute. The

result is that a police officer acting, not as a lawyer surrounded by legal authorities in the quiet of an office or as a Judge after carefully considered argument, but often at times of great commotion and stress on the street, has to decide, hopefully correctly, from a tangled mess of law whether or not he has a legitimate power of arrest; if he has then he has to recall what are the precise limitations on the particular power of arrest in the existing circumstances.

2.5. To some extent an officer's difficulties were lessened by the provisions of Section 2, Criminal Law Act 1967 when, following the abolition of the distinction between felonies and misdemeanours the opportunity was taken of codifying powers of arrest for offences for which the sentence is fixed by law or for which a person (not previously convicted) may under or by virtue of any enactment be sentenced to imprisonment for a term of five years and to attempts to commit any such offence. As a result of that provision there are now a large number of offences for which identical powers of arrest are clearly laid down in a single statute. But that leaves many offences still governed by the differing powers of arrest provided for by numerous statutes. However, by far the greater majority of imprisonable offences do carry a right of arrest whether by virtue of (a) Section 2, Criminal Law Act 1967 or (b) by virtue of individual statutes, or (c) because the circumstances of the commission of the offence give rise to the operation of an officer's common law powers of arrest.

2.6. My complaint on the existing provisions is not the absence of powers of arrest where such powers are required, although there are some such absences where a power of arrest is required, e.g. Section 3, Public Order Act, 1936 - organizing a procession in contravention of an order; Section 25(2) Immigration Act 1971 - knowingly harbouring an illegal immigrant; Section 13, Sexual Offences Act 1956 - gross indecency between men both over 21; Section 14, Sexual Offences Act 1956 - indecent assault on a woman unless the female is under 13 or the provisions of Section 13 and Schedule I, Children & Young Persons Act 1933 apply; conspiracy to defraud. The difficulty lies in the great variation in the powers that do exist.

2.7. Accordingly, in an attempt to bring some order into the existing chaos I RECOMMEND as follows:-

(i) Section 2 Criminal Law Act 1967 be amended by a new definition of "arrestable offence" as any offence punishable by imprisonment;

(ii) that the common law powers of arrest listed above be codified into statute form;

(iii) that an officer be empowered to arrest without warrant any person whom he with reasonable cause believes is committing or has committed any offence if

(a) the name and address of that person are unknown to and cannot be ascertained by him; or

(b) he is not satisfied that a name and address furnished by that person as his name and address are true;

(iv) that the existing powers of arrest for non-imprisonable offences where such powers exist be retained.

2.8. As I have indicated above the majority of imprisonable offences already carry a right of arrest by virtue of Section 2, Criminal Law Act 1967 or by virtue of the statute creating the offence or because the circumstances of the commission of the offence give rise to the operation of an officer's common law powers of arrest. Although the first of my recommendations at paragraph 2.7 above would have the effect of giving a statutory power of arrest for that minority of imprisonable offences that do not at present carry such a power it would have the benefit of providing an identical power of arrest for all imprisonable offences. It seems not unreasonable to give police officers a statutory power of arrest in respect of offences which Parliament considered to be sufficiently serious to make imprisonable offences. Moreover the number of such imprisonable offences is likely to decrease if Parliament maintains its tendency to reduce imprisonable offences; for example, there was a total of 37 imprisonable offences referred to in Schedule 4, Road Traffic Act 1972 which by amendment to that Schedule has been reduced to 9 of

which only 2 do not carry a direct power of arrest. I list below the main offences punishable by imprisonment where no direct power of arrest exists under the statute creating the offence although even in respect of some of these offences varying statutory powers of arrest do exist (e.g. under Firearms Act 1968, Section 46; under Betting, Gaming & Lotteries Act 1963, section 51; under Road Traffic Act 1972, section 164(2)) and depending upon the circumstances of the commission of the offence a power may exist at common law.

1. Offences under Sexual Offences Act 1956 other than those contrary to Sections 22, 23, 30 and 32 and those against juveniles (the latter either because they fall under Section 2, Criminal Law Act 1967 or under Section 13 and Schedule I, Children & Young Persons Act 1933).
2. Section 38, Offences Against the Person Act 1861 (assault with intent to resist arrest).
3. Section 51, Police Act 1964 (assault on police and obstruction of police).
4. Section 4, Forgery Act 1913 (forgery with intent to defraud).
5. Section 6, Race Relations Act 1965 (incitement to racial hatred).
6. Section 1, Protection from Eviction Act 1977 (harassment of tenants).
7. Conspiracy to defraud contrary to Common Law.
8. Section 3, Public Order Act 1936 (organizing a procession in contravention of an order).

9. Section 25(2) Immigration Act 1971 (knowingly harbouring an illegal immigrant).
10. Sections 2 and 169 Road Traffic Act 1972 (reckless driving and forgery of licences etc.).
11. Offences under Sections 2, 3, 5(5), 6, 7, 9, 13, 22(1) and (2), 24(1) and (2), 25, 26, 29, 39(1), (2) and (3), 40, 42 and 49 Firearms Act 1968.
12. Offences under Sections 1(1), 2(1), 4, 5, 6, 16, 32(4) Betting, Gaming & Lotteries Act 1963.
13. Offences under Sections 1, 6, 14 and 18 Prevention of Fraud (Investments) Act 1958.
14. Offences under Sections 111, 113, 114, 187 and 330 and 331 Companies Act 1948.
15. Sections 11, 55, 56 and 65A, Post Office Act 1953.
16. Section 2, Obscene Publications Act 1959 (publishing obscene article for gain).
17. Sections 155, 156, 157, 158 and 159, Bankruptcy Act 1914.

This is not a comprehensive list but includes the more common imprisonable offences not covered by a statutory power of arrest.

2.9. I am aware that in other jurisdictions outside England and Wales suggestions have been made that <u>all</u> offences should carry a power of arrest with a proviso that no arrest should be made where proceedings by way of summons would suffice and it may be that this suggestion will be made to the Royal Commission. While I accept that for minor infringements of road traffic law the

existing use of the summons procedure should be adhered to I am opposed, other than in exceptional cases, to the use of the summons procedure where there exists a power of arrest because an arrest has the following advantages over a summons:

(i) An officer is sometimes entitled to arrest on reasonable suspicion (e.g. Section 2, Criminal Law Act 1967) but a charge can only be preferred on prima facie evidence. "Suspicion arises at or near the starting point of an investigation of which the obtaining of prima facie proof is the end. Prima facie proof consists of admissible evidence. Suspicion can take into account matters that could not be put in evidence at all" (Hussein v. Chong Fook Kam (1970) A.C. 942). The proper investigation of an offence by the conversion of reasonable suspicion into prima facie proof frequently is not satisfactorily carried out without the suspect's attendance at a police station which can only be effected, without his voluntary attendance, by arrest.

(ii) The identity of the suspect as the person he claims to be, can be more

satisfactorily confirmed at the police station.

(iii) The possibility of a defendant falsely alleging in court that he was not the person arrested and charged is much less easily made than is the case where no arrest is made and a summons ensues in which latter event sometimes only the officer concerned speaks to the defendant briefly in the street.

(iv) The suspect's attendance at the police station facilitates the searching of his person and premises when this is necessary for the proper investigation of the offence.

(v) During his attendance at the station police can obtain the suspect's accurate antecedents which, in the event of his conviction, is information which will be required at court. Part of this information may be derived from the fingerprints which will be taken at the police station following an arrest and charging.

(vi) The suspect is afforded the opportunity whether in writing or verbally of offering an explanation for his actions or behaviour which gave rise to the

officer's suspicions or the opportunity of making an admission of his guilt.

(vii) The legitimate questioning of a suspect (Rule I, Judges' Rules) particularly in a case of any but the most straightforward nature, which is part of the investigation of the offence, is more conveniently carried out at the police station than elsewhere.

(viii) The proper investigation of an offence, e.g. interviewing witnesses, searching for evidence, seeking for the arrested person's accomplices, is less easily frustrated by the suspect if he is in custody even if only for a short time.

2.10. There is one matter arising from Section 2, Criminal Law Act 1967 which does not directly concern police but which gives rise to an anomaly with regard to a private individual's powers of arrest. I feel it right that I should draw it to the Royal Commission's attention. Section 2(2) of that Act gives any person a power to arrest without warrant "anyone who is or whom he with reasonable cause suspects to be in the act of committing an arrestable offence". Thus if a store detective arrests a shopper whom he mistakenly but with reasonable cause suspects to be in the act of stealing, sub-section (2) will provide the store detective with a defence in an action against him

for damages. Because of the equivocality of the evidence at that stage (the shopper may allege that he intended to pay for the article before he left the store) it is sensible to delay the arrest until the shopper has left the store without paying. By that time the shopper is no longer in the act of stealing and the power of arrest which has to be relied on is that in the following sub-section (3), namely: "Where an arrestable offence has been committed any person may arrest without a warrant anyone who is or whom he with reasonable cause suspects to be guilty of the offence". Mistake, however reasonable, affords the private individual acting under sub-section (3) no defence unless an offence has been committed. The Criminal Law Revision Committee, in its Seventh Report, recognised that there was a substantial case for correcting this anomaly but in the event did not do so (paragraphs 13 - 15 of that Report). More recently Professor Glanville Williams, writing at page 314 of the 1978 Criminal Law Review refers to Section 2(3) as thoroughly unjust and suggests that the matter might be rectified as a result of the deliberations of the Royal Commission.

2.11. To summarize my recommendations they are:

(1) To provide the same power of arrest for all imprisonable offences by bringing all such offences within the definition of "arrestable offence" in Section 2, Criminal Law Act 1967.

(2) To codify in statute form the existing common law powers of arrest.

(3) To provide a power of arrest for all offences where the name and address of the suspect is unknown or that supplied is believed to be false.

(4) That the existing powers of arrest for non-imprisonable offences where such powers exist be retained.

(5) To remove the anomaly which arises from sub-sections (2) and (3) of Section 2, Criminal Law Act, 1967.

CHAPTER III

Detention of persons by police

What is detention?

3.1. A great deal of misunderstanding and resultant criticism of police methods has arisen over the use of the word 'detention'. The word is used in such a way as to imply that detention is a situation not necessarily involving arrest and often precedes arrest, for example 'detained' or 'held pending enquiries'. Indeed, at paragraph 151 of the 1929 Report of the Royal Commission on Police Powers and Procedure the following appears:

> "There remains however a different class of detention which is confined in practice to serious crimes and particularly murder. This is the case where the police have grounds, more or less strong, to suspect a certain person as a culprit and 'detain' him at the police station while they question him as to his movements and subsequently test the truth of his answers. This practice is followed not infrequently in the Metropolitan Police whose representatives have defended it before us and who regard it as essential in the interests of justice."

I do not wish, as presumably was done in 1929, to suggest that the law permits any detention short of arrest. It is quite clear that a person can only

lawfully be at a police station because he is there voluntarily, albeit at the request of police or because he has been arrested and is therefore there under compulsion. There is no half-way house. Sometimes the words 'detained' or 'held' are used implying as they do compulsion but they can only accurately be used if there has been an arrest.

"Assisting police with their enquiries"

3.2. It is important that it should be made perfectly clear that there are many occasions when persons, be they potential witnesses or be they suspects, attend a police station at the request of police quite voluntarily. In such cases the word 'detain' is wholly inappropriate although the man in the street might incorrectly in ignorance of the circumstances refer to such voluntary attendance as 'detention'. The common misunderstanding or even disbelief about the very possibility of a person's voluntary attendance at a police station is not helped by the phrase "assisting police with their enquiries". This largely journalistic phrase has been the cause of much misunderstanding and to a large extent unjustified criticism of a perfectly legitimate and sensible police practice. A police officer has a right, acknowledged in Rule I of the Judges' Rules, to question any person whether suspected or not, from whom he thinks that useful information can be obtained. When a person is at a police station being questioned by police and it is not known by the Press or other news media whether

or not that person has been arrested, it is common usage for the media to use the expression "assisting police in their enquiries". It is right in my view that a person being asked by police to attend or remain at a police station for the purpose of questioning or pending other enquiries by police, should be there on a voluntary basis or not at all unless police have arrested him. There is, however, a widespread belief that persons not under arrest will not attend police stations at police request on a voluntary basis to assist police.

3.3. There are many instances where persons are quite willing to assist police in their enquiries, without the necessity of arrest, by attending a police station. It is often the case during the preliminary stages of a police investigation where, for example, it is clear that a crime can only have been committed by one person, for there to be a number of persons police wish to question in order to eliminate them from the enquiry. It often transpires that even innocent persons, although perfectly willing to assist police by attending a police station, are none too pleased to be seen by their family or fellow workers being questioned by police at home or at work. Again, it may be that police enquiries entail showing those being questioned documents or other probable exhibits which it is not practical to remove from a police station. Again, the persons being interviewed by police may transpire to be potential prosecution witnesses from whom written statements have to be taken which can more conveniently be done at the police station. This is a

perfectly legitimate practice which should be allowed to continue. I accept and agree that the presence of a person at a police station other than on a voluntary basis should only be enforced as a result of arrest. The situation can arise when during a person's attendance at a police station his attendance ceases to be on a voluntary basis but this can only occur if the investigating officer causes the person to be arrested while at the police station.

Why is there delay between arrest and charging and how far does the present law permit it?

3.4. It is wrongly assumed by some people that the arrest of a person is only justified if police are at the time of the arrest in possession of prima facie evidence to justify a charge. There are of course cases where the facts are straightforward and witnessed by a police officer himself where it can be said that at the time of the arrest itself the officer is in possession of prima facie evidence justifying a charge. Indeed, there are some offences where a power of arrest is limited to arrest on view on the commission of the offence. Even in those straightforward cases where a person is arrested and on arrival at the police station there is little or no further investigation to be carried out there is some delay inevitable before charging and if bail is appropriate the release of the arrested person from the police station.

3.5. To give some indication of the reasons why such a delay occurs between the time a person arrested without a warrant arrives at a police station and, if

the case is an appropriate one for bail, his release from the police station, I set out below the steps that have to be taken even in the most straightforward of cases. For the purpose of this exercise I shall assume that the sole prosecution evidence is that of the arresting officer. In such a straightforward case there is no need for a period of time such as I refer to later to allow police to carry out an investigation to convert reasonable suspicion into prima facie evidence to justify a charge. Even in such a straightforward case, as will be seen from 2. below there is a filter element provided in that the Station Officer who accepts the charge first has to hear the facts leading to the arrest from the arresting officer to ensure that those facts (a) permit an arrest without a warrant and (b) will justify the proposed charge. It is specifically provided in the General Orders of the Metropolitan Police that a Station Officer who investigates a charge must hold the substantive rank of at least Sergeant and that in all cases of a serious, unusual or contentious nature an Inspector must be informed so that he may personally perform this duty. If charges are preferred by an officer of not lower rank than an Inspector responsibility for investigation rests with the officer concerned. If a Police Constable or acting Sergeant is performing station duty he will deal only with the immediate reception of the person arrested and must without delay inform a supervising officer (G.O. Sec. 23, paras. 6 and 10 and Sec. 2, para. 68).

1. The prisoner arrives at the police station and is placed in the charge room in the custody of the arresting officer to wait for the Station Officer who may be engaged with other prisoners or on other urgent matters.

2. On arrival of the Station Officer he will ask the arresting officer in the presence of the prisoner to give the facts leading to the arrest so that he can confirm that those facts (a) permitted an arrest without a warrant and (b) will justify the proposed charge. If as sometimes occurs the prisoner interrupts this verbal report by the arresting officer, the prisoner will be asked to delay any reply he wishes to make until the arresting officer has completed his verbal report. In any event, when the arresting officer has given his verbal report the prisoner will then be given an opportunity to say anything that he wishes to say.

3. The Station Officer informs the prisoner of the rights and facilities available to him in accordance with the Judges' Rules and a written notice to this effect is drawn to his attention (Administrative Direction 7(b) Judges' Rules).

4. The Station Officer informs the prisoner of his right to have intimation of his arrest and the station at which he is held sent to a person named by him (Section 62, Criminal Law Act 1977).

5. The prisoner is searched in the presence of the Station Officer, as is any motor vehicle in his charge at the time of his arrest.

6. Charge forms are prepared and the personal details of the prisoner, the time and place of arrest and the arresting officer are entered.

7. The specific charge is entered on the charge form.

8. Any property taken into possession of the Police is listed.

9. The charge is read to the prisoner, he is cautioned and any reply noted.

10. The list of property is checked with the prisoner and he is invited to sign an acknowledgement that it is correctly listed.

11. The prisoner is given a form which includes a copy of the charge and describes the facilities available to him.

12. The prisoner's property is bagged and sealed.

13. The prisoner is photographed finger-printed and questioned in order to obtain his antecedent history, which history the Court will require in the event of a conviction.

14. The prisoner is then placed in a cell since he is still in custody while the enquiries referred to at 15 and 16 below are made.

15. Searches are made of local and central police records for any information about the prisoner particularly to indicate whether or not he is known to or wanted by police.

16. Enquiries are made as to the suitability of the prisoner for bail through police of the area where the prisoner resides. These may be satisfied either from local police knowledge or records or may entail personal enquiry at the prisoner's home.

17. On completion of satisfactory searches and enquiries referred to above and the offence alleged being suitable for bail the appropriate record is made and a copy supplied to the prisoner in accordance with Section 5, Bail Act, 1976.

18. The property is checked against the recorded list and restored to the prisoner against his receipt.

19. The prisoner is released.

3.6. Delays can occur in the procedure outlined above. These may arise, for example, from the fact that:

(a) the person arrested is a juvenile and the parents or guardians might not be immediately available particularly during working hours,

(b) there is no female police officer immediately available to carry out a search of a female prisoner,

(c) the prisoner's solicitor or friend if the prisoner asks for his attendance may not be immediately available to attend the police station,

(d) if there are language problems an interpreter might not be immediately available to attend the police station,

(e) the prisoner may wish to make a written statement under caution,

(f) the physical state of the prisoner may be affected by drink or drugs so that the prisoner is not immediately in a fit state to be taken through the procedure outlined above,

(g) the prisoner may be ill or injured so that the first consideration will be to call a medical practitioner to him who may not be immediately available,

(h) sometimes possible positive identification from police records may take some time to verify,

(i) further offences may come to light as a result of admissions by the prisoner or searches which will entail investigation,

(j) bail enquiries may be delayed through lack of police manpower particularly in rural areas outside the Metropolitan Police District where, because of a small population, police manpower is thinly spread,

(k) the station officer may be engaged with other prisoners or on other urgent matters so as not to be immediately available.

Even in a quiet provincial country police station this can take some time but in a busy understaffed Metropolitan Police station with perhaps a considerable number of persons being arrested for various matters and having to be processed through this procedure even the most simple of cases can take some considerable time.

3.7. The majority of serious offences, that is "arrestable offences" as defined by Section 2, Criminal Law Act 1967, carry a power of arrest on reasonable suspicion. For ease of reference I set out below the terms of that section.

"2.-(1) The powers of summary arrest conferred by the following subsections shall apply to offences for which the sentence is fixed by law or for which a person (not previously convicted) may under or by virtue of any enactment be sentenced to imprisonment for a term of five years, and to attempts to commit any such offence; and in this Act, including any amendment made by this Act in any other enactment, "arrestable offence" means any such offence or attempt.

(2) Any person may arrest without warrant anyone who is, or whom he, with reasonable cause, suspects to be, in the act of committing an arrestable offence.

(3) Where an arrestable offence has been committed, any person may arrest without warrant anyone who is, or whom he, with reasonable cause, suspects to be, guilty of the offence.

(4) Where a constable, with reasonable cause, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence.

(5) A constable may arrest without warrant any person who is, or whom he, with reasonable cause, suspects to be, about to commit an arrestable offence.

(6) For the purpose of arresting a person under any power conferred by this section a constable may enter (if need be by force) and search any place where that person is or where the constable, with reasonable cause, suspects him to be.

(7) This section shall not affect the operation of any enactment restricting the institution of proceedings for an offence, nor prejudice any power of arrest conferred by law apart from this section."

3.8. Although there exists such a power of arrest upon reasonable suspicion, such suspicion is not sufficient to justify a charge for which there must exist prima facie evidence. The distinction was explained in Hussein v. Chong Fook Kam (1970) A.C. 942, "Suspicion arises at or near the starting point of an investigation of which the obtaining of prima facie proof is the end. Prima facie proof consists of admissible evidence. Suspicion can take into account matters that could not be put in evidence at all". It follows, therefore, that it is often necessary for a period of time to elapse between arrest and charging to enable a police investigation to convert reasonable suspicion into prima facie evidence. This may involve interviewing and obtaining statements from potential prosecution witnesses who obviously are not always immediately

available and cross checking those statements, carrying out searches both of private premises and sometimes considerable areas of public property, scientific analysis and of course questioning the suspect himself, the latter often on more than one occasion as further information comes into police hands as a result of their other lines of investigation. Such questioning of a suspect even when he is in custody is acknowledged by Rule I of the Judges' Rules. This of course takes time. It is important to appreciate that the time taken depends not only on the complexity of the particular investigation in question (which is usually the sole criterion used by those criticising the delay between arrest and charging in a particular case) but the other equally urgent police work that has to be carried on unrelated to that particular investigation. Some idea of this latter difficulty can be gauged by the fact that in 1946 in the Metropolitan Police District the ratio of indictable offences known to police officers on strength was 9 to 1; in 1976 the ratio was 21 to 1.

3.9. The present law contains no provision for bringing a person arrested on reasonable suspicion before a court until he has been charged or summoned for an offence. The statutory provisions which govern the position of a person arrested without a warrant and his subsequent appearance at court are found in Section 38, Magistrates Courts Act 1952 and can be summarised as follows:

(1) A person whom it is not practicable to bring before a magistrates' court within 24 hours of arrest but who is charged and the offence is not serious, shall be bailed from the police station to appear before court.

(2) Where police cannot complete enquiries forthwith the suspect may be bailed from police station to attend at later date at police station.

(3) Where not bailed he shall be brought before magistrates' court as soon as practicable.

The situation at (1) above, by reason of its reference to bail to appear before a magistrates' court can only apply as indicated above to a situation where police investigation has proceeded to the stage where a charge has been preferred so that a person arrested in that situation will find himself either appearing before a magistrates' court within 24 hours of his arrest or if the offence is not a serious one bailed to appear there at some later date. The situations referred to at (2) and (3) at paragraph 3.9 above apply where an arrest has been made but police investigations are not sufficiently advanced to be able to prefer a charge. In the case where bail is considered appropriate then the arrested person may be bailed to appear at the police station under (2) above. Where bail is not appropriate the requirement

under (3) is effectively to charge and bring before a magistrates' court as soon as practicable.

3.10. Difficulties occur and police are criticised on occasions where a person is arrested but is kept for some time in custody (usually because it is feared he will abscond or commit serious offences of the kind for which he was arrested or will interfere with witnesses) while police are carrying out their investigations to justify a charge, in other words to translate their reasonable suspicion into prima facie evidence. As soon as police have sufficient prima facie evidence a charge is preferred. The present law presumably recognising the difficulty of imposing any fixed time limit requires the suspect to be brought before the magistrates' court (and this presupposes a charge being preferred) "as soon as practicable". A suspect in custody aggrieved about the length of time taken before a charge is preferred is not without remedy because he can apply to the Divisional Court for a writ of habeas corpus. This is by no means a legal remedy that has fallen into disuse but a real and available remedy. In 1977 there were 55 applications to the Divisional Court for writs of habeas corpus.

3.11. Some examples of recent cases where it was necessary for an appreciable delay to occur between arrest and charging are given in an appendix. If the Royal Commission require further details they will be provided.

3.12. This need to allow time for police to convert reasonable suspicion into prima facie evidence sufficient to justify a charge applies to the situation covered by Section 38, Magistrates Courts Act 1952 namely arrest without a warrant. Where an arrest is made for an offence by virtue of a warrant issued under Section 1 of the same Act police enquiries will have already proceeded to a stage where there is prima facie evidence justifying a charge because in that instance the order of the court will be to arrest the alleged offender and take him before the court or if the warrant is endorsed for bail under Section 93 of the Act, to release him on bail conditioned for his appearance before the court, so that in either case he will make his appearance before the court already charged with an offence.

What can police do with regard to their investigation between arrest and charging?

3.13. Lord Denning in Dallison v. Caffery (1965) 1 Q.B. 348 differentiates between the duty of a private individual and that of a police officer having effected an arrest. "The private person must, as soon as he reasonably can, hand the man over to a constable or take him to a police station or take him before a magistrate .... When a constable has taken into custody a person reasonably suspected of felony [now for this purpose the word 'felony' should be replaced by 'arrestable offence'] he can do what is

reasonable to investigate the matter and to see whether the suspicions are supported or not by further evidence. He can, for instance, take the person suspected to his own house to see whether any of the stolen property is there; else it may be removed and valuable evidence lost. He can take the person suspected to the place where he says he was working, for there he may find persons to confirm or refute his alibi. The constable can put him up on an identification parade to see if he is picked out by the witnesses. So long as such measures are taken reasonably, they are an important adjunct to the administration of justice. By which I mean, of course, justice not only to the man himself but also to the community at large. The measures must however be reasonable."

Does the law require amendment?

3.14. It is in my view essential that police should retain their existing power of arrest for serious crimes upon reasonable suspicion. If police were unable to make an arrest until they were in possession of prima facie evidence sufficient to justify a charge this would very seriously impede their duty on behalf of the public to bring criminals to justice. In particular it would

(i) give criminals the opportunity of "going to earth" either in this country or abroad in order to avoid arrest giving rise to a heavy additional expenditure in police time and manpower to effect a subsequent arrest;

(ii) give criminals the opportunity of covering the traces of their crimes by the destruction of or removal of evidence or proceeds of their crimes and interference with witnesses;

(iii) operate as an incentive to criminals to commit similar offences to those of which they are suspected in cases of robbery and the like in order to provide them and their families with financial resources in the event of their eventual conviction;

(iv) leave the public open to the risk of further like offences particularly in cases such as murder and sexual offences which might be likely to be repeated while police are carrying out their investigations to the point where it can be said that there is sufficient prima facie evidence to justify a charge;

(v) remove the opportunity police have of questioning suspects, an opportunity which, I shall be advocating, when I deal with the subject of such questioning and the Judges' Rules, should be enforced by the removal of the right of silence.

3.15. If, as I RECOMMEND, police retain their power of arrest on reasonable suspicion for serious offences it follows that they will still require

sufficient time between arrest and charging to convert that reasonable suspicion into prima facie evidence to justify a charge and the subsequent appearance of the person charged before a magistrates' court.

3.16. If my recommendation is accepted, the question will doubtless and properly be raised as to whether or not the existing restrictions on the time permitted for investigation are sufficient or sufficiently defined particularly bearing in mind in custody cases the words "as soon as practicable" in Section 38(4) and the right of a person to apply to the Divisional Court for a writ of habeas corpus. It would in my view be quite impractical to fix any rigid time limit for such investigation between arrest and charging because not only would a time sufficient for such investigation be dependent upon the particular circumstances of a case but it would also be dependent upon the available police manpower necessary for other contemporaneous but unrelated police work. Indeed, to fix a rigid time limit might have the result of tempting police to prefer an ill-considered charge without a sufficiently thorough investigation or to force police to release a dangerous criminal on the public.

3.17. Some may argue that the existing law is open to the objection that short of an application for a writ of habeas corpus there is no judicial control over the period of time during which a person can be

held in custody during a police investigation between the time of arrest and charging. To meet this objection I RECOMMEND that if a person arrested by police and held in custody for a continuous period of 72 hours had not been charged he would have to be released from that custody unless prior to the expiration of that period police had made an ex parte application to a justice of the peace to retain the suspect in custody in order to continue their investigations. On the application police would have to inform the justice of the peace of the name and address of the suspect (if known to police), the time, date and place of his arrest, the grounds of suspicion leading to the arrest, the progress made in the investigation and the reason why no charge had been preferred. The justice of the peace would then have a discretion to order

(i) the immediate release of the suspect without conditions,

(ii) the immediate release of the suspect on bail to return to the police station at a time and date stated when police investigations had progressed further,

(iii) the retention of the suspect in police custody for a further period not exceeding 72 hours.

3.18. In making a decision the justice of the peace would, of course, be doing so in exercise of a discretionary power. It would seem appropriate in any statutory provision providing for these powers to indicate guidelines on which a justice of the peace should exercise that discretion. These guidelines might include -

(i) the seriousness or otherwise of the offence suspected,

(ii) the strength of the grounds to connect the suspect with the commission of the offence,

(iii) the reasons why the police investigation had not reached the stage when a charge could be preferred,

(iv) whether it is likely that any further information discovered by police would necessitate interrogation or further interrogation of the suspect,

(v) the likelihood of the suspect surrendering to custody or committing offences or interfering with witnesses or otherwise obstructing the course of justice if granted bail or consideration of whether or not the suspect for his own protection should be refused bail.

My suggestion that the justice of the peace should have power to order the retention of the suspect in police

custody is intended to facilitate the interrogation or further interrogation of the suspect as a result of any further information discovered by police from their investigation. It would be open to police to make further applications to a justice of the peace if the circumstances warranted it before the end of any extended period of custody granted by a justice of the peace under the above provisions.

3.19. To summarize my recommendations they are:

(a) that police retain their power of arrest on reasonable suspicion for serious offences,

(b) following such arrest police are given sufficient time to enable them to convert reasonable suspicion into prima facie evidence to justify a charge,

(c) the period of custody following an arrest until charging should not exceed 72 hours unless authorised by a justice of the peace.

APPENDIX TO CHAPTER III

Examples of cases where appreciable delay occurred between arrest and charging

(1) CR 201/76/265

On 20th January, 1977 at 1 p.m. a man was arrested in connection with a number of offences of burglary, theft and criminal deception and taken to a police station. He readily admitted a number of these offences but because he was suspected of being responsible for the murder of a bank clerk during a robbery the previous year he was transferred to the police station where that murder investigation was being conducted. He was questioned on 21st January about the murder but denied being involved. Shortly after that interview he attempted to commit suicide and was conveyed to hospital. He was returned to the police station on 22nd January but was not fit to be interviewed. On 23rd, 24th and 25th January he was interviewed on six separate occasions during which interviews he put forward various explanations of his movements on the day of the murder. These explanations required numerous enquiries to be made which involved tracing a number of persons in the country areas of Hampshire. Following a visit from his wife on 26th January he admitted his responsibility for the death of the bank clerk. Following his admission a considerable amount of time was spent during the next twenty-four hours to test the veracity of his

admission and in particular to recover the murder weapon from the river where he had thrown it. He was charged with murder at 4 p.m. on 27th January, i.e. 7 days 3 hours after his arrest. Twenty-four hours of that delay was caused by his suicide attempt, the remainder of the delay was occasioned partly by the need to check the untrue information he supplied about his movements on the day of the murder and partly to check the accuracy of his subsequent admission to the murder. At his subsequent trial he was convicted of murder.

(2) CR 202/77/514

In January, 1977 police arrested five men suspected of being involved in four armed bank robberies. At the same time or very shortly afterwards a further ten persons were arrested on suspicion of complicity in the robberies so that police had a total of fifteen persons in custody. It was necessary for all persons arrested to be questioned at length by police by several interviewing teams of officers. Those interviewing teams held conferences at regular intervals to assess and pool the results of their questioning and then to re-question the arrested persons as a result. Because of the number of persons arrested and the complexity of the offences five and a half days were spent holding a total of sixty-two separate interviews with the arrested persons and identification parades in respect of four of them.

In the event five of those arrested were released without being charged, the remaining ten were charged. The maximum period which elapsed between arrest and charging was 5 days 8½ hours (except for one man who was released after 1 day and 13 hours and charged later). Of the ten persons charged six were prosecuted to conviction.

(3) CR 232/75/612

On 14th July, 1975 at 4 p.m., following a four day observation by police three men were arrested on suspicion of handling a large quantity of stolen coffee. The men were not charged until 17th July at 6.25 p.m., a delay of 3 days and 2½ hours. This delay was caused partly because the three men said that they would speak to police only in the presence of their solicitor. This was arranged but entailed a delay of over half a day before the solicitor could attend the station. The interview with the first man was concluded in the presence of his solicitor on 15th July at 8.05 p.m. but the solicitor not unreasonably was not prepared to remain later at the station because of the lateness of the hour. The interviews with the second and third men took place in the presence of their solicitor and were concluded at 7.24 p.m. on 16th July. The men alleged that the coffee was not stolen but was bankrupt stock. It was therefore necessary before the men were charged for police to be satisfied there was evidence to prove that the coffee was stolen. It was

this necessity that in part contributed to the delay because there was no record held by police to indicate from where the coffee had been stolen. Eventually, by patient detective work, the coffee was traced back through wholesalers to a transport firm from which a lorry containing the coffee had been stolen. Armed with this evidence and the other evidence available police were able to charge the three men at 6.25 p.m. on 17th July and the men were convicted at their subsequent trial.

(4) CR 230/75/7097

As a result of police observation for a long period of time a total of fifteen persons were arrested between 1.10 p.m. on 12th November, 1975 and 10.55 a.m. on 14th November on suspicion of being involved in numerous offences of theft and dishonest handling of stolen property. The maximum delay which occurred between arrest and charging was 2 days 4½ hours except for one man who was released after 5 hours and charged later. The delays in this case were occasioned by the number of persons arrested who had to be interviewed so that the results of the officers' observations could be put to them, many of those arrested being interviewed on more than one occasion, and the need to carry out searches at various addresses and recover property; some additional delay was occasioned by false details supplied by one of those arrested. Subsequently

all fifteen were charged and with only one exception all prosecuted to conviction.

(5) CR 201/77/165

On Sunday, 10th July, 1977 at about 10.30 p.m., a fight took place between some youths and two employees of a public house during which one of the employees cut two of the youths with a knife. Police were called and the youths decamped. At about 11 p.m. a barman leaving the public house was attacked by a number of youths and was fatally stabbed. Police were quickly able to trace the staff of the public house in order to discover the background to the earlier fight and were able to trace a number of witnesses to the second fight. In the event, six youths were arrested in connection with the second fight, the first at 7.30 p.m. on 11th July and the last at 10.30 a.m. on 14th July. The maximum period which occurred between the arrest and charging of any of those six youths was 2 days 21 hours. The reason for this delay was partly due to the large number of witnesses who had to be seen and interviewed by police, many of whom had to be re-interviewed several times before the full truth was ascertained; thus, on 11th July, 26 witnesses were interviewed by police, seven of those on two or more occasions, 11 witnesses on 12th July; 12 witnesses on 13th July; and 8 witnesses on 14th July. The six youths arrested in connection with the second fight themselves had to be interrogated, these interrogations lasting in all about ten hours.

In addition the first fight introduced a secondary investigation, albeit on a much smaller scale, which resulted in one of the public house employees being charged with wounding two youths, one of whom was a youth himself charged in connection with the second fight. In the event, five of the six youths arrested in connection with the second fight were prosecuted to conviction, as was the employee of the public house charged with the wounding of the two youths referred to above.

(6) CR 202/76/1068

During the later part of 1975 and the early part of 1976 it was known that a number of young Chinese men were regularly committing robberies against other members of their community in the West End of London. It was estimated that about thirty such offences were committed over a period of three or four months but only about four were reported to police.

On 14th March, 1976 at 11.25 p.m. two Chinese men were arrested in the act of robbery in the West End but their associates escaped. Due to the lateness of the hour little could be achieved until the next day when officers with knowledge of similar previous offences arrived. The whole of the 15th and much of the 16th March was taken up with short interviews of the two arrested men and attempts to trace victims of other offences. On 16th March, between 8.30 p.m. and 11.25 p.m., one of the arrested men made a statement under caution and on 17th March, between 9.30 a.m. and

11.20 a.m., the other arrested man made a statement under caution. Both were charged at 11.55 a.m. on 17th March, i.e. just over 2½ days after their arrest.

On 18th March members of the gang still at large beat up a young Chinese man who resisted an attempt to rob him; the attack was so savage that he lost the sight of one eye.

On 23rd March, 1976 at 12.40 p.m., as a result of information received, police arrested four Chinese men in connection with that attack. Those men were charged at 7.5 p.m. on 26th March with offences of blackmail and causing grievous bodily harm arising from three separate incidents. The delay between arrest and charging in respect of those men being 3 days 6½ hours.

The delay between arrest and charging in both cases was due to the need for each of the arrested men to be interviewed by officers with a background knowledge of the build up to the offences, the language problem in that they spoke English with varying degrees of difficulty necessitating the use of interpreters, and in those cases where a group attack on a single victim was alleged, the need to identify the specific part played by each suspect. In the event all six were prosecuted to conviction.

CHAPTER IV

The Questioning of Suspects
(including cautioning, taking of statements, the right of silence during investigation and the involvement of the suspect's lawyer during police questioning).

4.1. The sole purpose of police questioning of a suspect is to arrive at the truth whether the truth establishes the guilt or the innocence of a suspect. Because the English criminal trial operates on an accusatorial and not an inquisitorial basis it is wrongly thought by some people that the purpose of questioning by police, whether the person being questioned is a suspect or a potential witness, is to build up a case against a suspect. It cannot be too strongly emphasised that this is not so, the sole purpose being to arrive at the truth. The only person not to benefit from the establishment of the truth is a suspect who wishes to hide his involvement in a criminal offence.

4.2. The law governing police questioning of suspects gives virtually no assistance to police and every assistance to a suspect wishing to hide his guilt. Frustrating as this is to every police officer charged with the investigation of crime, the ultimate sufferer is the law-abiding general public, whose interest it is that the guilt of a criminal be revealed so that those responsible for criminal offences should not only be brought to trial but to a trial where the accused cannot shelter behind a system which protects him from

revealing the truth. I do not for one moment suggest that every proper protection should not be given to an accused person but I do strongly advance the view that protection should not include the right to shelter behind a shield of silence. In this respect I am supported by the views expressed by the Criminal Law Revision Committee in its Eleventh Report published in June 1972 (Cmnd. 4991) paragraphs 28-42.

4.3. What assistance does the law at present give to police officers in their obligation to investigate criminal offences while questioning suspects? At first sight the law provides every assistance, for Rule I, Judges' Rules, declares:

> "When a police officer is trying to discover whether, or by whom, an offence has been committed he is entitled to question any person, whether suspected or not, from whom he thinks that useful information may be obtained. This is so whether or not the person in question has been taken into custody so long as he has not been charged with the offence or informed that he may be prosecuted for it".

The effectiveness or otherwise of the assistance provided by Rule I to police in the questioning of a suspect is in the hands of the very person who has most to lose by its effectiveness namely a guilty suspect. Rule II, however, <u>completely absolves</u> the suspect from any obligation whatsoever to reply to any questions put

by police, "You are not obliged to say anything unless you wish to do so ..." and places an obligation on police to inform the suspect of this complete lack of obligation. Likewise Rule III provides for the incorporation in the heading of a written statement made by a suspect of the words, " ... I have been told that I need not say anything unless I wish to do so ..."

4.4. The virtual annulment by Rules II and III of the assistance given to police by Rule I of the Judges' Rules does not stand alone but is enforced by the fact that it is not permissible for a jury or a magistrates' court to draw inferences from the failure of an accused when questioned by police either before or after the stage when the caution has to be administered to give an explanation for his conduct which he afterwards puts forward at his trial (R. v. Hoare (1966) 50 Cr.App.R. 166, R. v. Sullivan (1967) 51 Cr.App.R. 102). The extent of this latter rule is indicated by R. v. Sullivan where the following direction given by the trial Judge to the jury was held by the Court of Appeal to be a misdirection: "Of course bear in mind that he was fully entitled to refuse to answer questions, he has an absolute right to do just that, and it is not to be held against him that he did that. But you may well think that if a man is innocent he would be anxious to answer questions. Now, members of the jury, that is what it really amounts to".

4.5. It is in my view unarguable but that the right of a suspect to refuse to answer any questions put to him by an investigating officer coupled with the inability of a court to draw any inferences from such refusal, which for convenience I shall refer to as the right of silence, is a serious hindrance to a police investigation and a serious hindrance to the effective ascertainment of the truth at a criminal trial. It might therefore be expected that the arguments to justify the existence of these serious hindrances would be overwhelming but an examination of those arguments shows this not to be so. Those arguments appear to fall under three heads:

i) Antiquity.

ii) Unfairness to the suspect.

iii) The innocent suspect.

Antiquity

4.6. It is said that the rule is of such antiquity that its removal by very reason of its entrenchment in English law would be wrong. I would not dispute its antiquity. Lord Diplock in Hall v. R. (1970) 55 Cr.App.R. 108, referring to the right of an accused, enshrined in the Judges' Rules, to refuse to answer police questions said that it "merely serves to remind the accused of a right he already possesses at common law". I could understand the need to give a suspect the right to refuse to answer police questions if subsequently at his trial, while the prosecution was entitled

to call evidence of any questions and the accused's replies, the accused himself was not allowed to give evidence on oath to refute or explain the answers it was alleged he had made. Since it is now eighty years since the Criminal Evidence Act 1898 removed the prohibition on an accused giving evidence on oath at his trial I see no justification for the retention of this right of silence on the basis of antiquity any more than an argument for the retention of the death penalty on the basis of antiquity.

Unfairness to the suspect

4.7. This argument is based on a combination of the two propositions that it is for the prosecution to prove its case and that it is morally offensive or unfair for a man to be compelled to incriminate himself. I obviously accept the proposition that it is for the prosecution to prove its case in the sense that unless it can be shown beyond reasonable doubt on the evidence that the accused is guilty he should be acquitted. I can find no justification for an extension of that principle which allows an accused person of his own volition to restrict the evidence which might have been placed before the court by having earlier refused as a suspect to answer police questions. If the accused chooses to restrict the evidence in that way what justification can there be to forbid a court in its search for the truth to draw any inference it thinks proper from such earlier silence or evasive or equivocal replies the accused may have made as a suspect? Lest

it be thought that my views on this point would be unacceptable to the public, it is relevant to recall that they have already been accepted by Parliament in the field of race relations by virtue of Section 65, Race Relations Act 1965. That section provides that in order to help a person who considers he may have been discriminated against in contravention of the Act to decide whether to institute proceedings and, if he does so, to formulate and present his case in the most effective manner, he may question the respondent on any matter which is or may be relevant; if it subsequently appears to the court or tribunal that the respondent deliberately and without reasonable excuse omitted to reply or made an evasive or equivocal reply, the court or tribunal may draw any inference from that fact that it considers just and equitable to draw including an inference that he committed an unlawful act. Doubtless this right to shelter behind a shield of silence is "fair" to a suspect or accused in the sense of Bentham's often quoted comment, "If all criminals of every class had assembled and framed a system after their own wishes, is this not the rule, the very first, which they would have established for their security? Innocence never takes advantage of it; innocence claims the right of speaking, as guilt involves the privilege of silence". Fairness in this context should mean that the innocent should be acquitted and the guilty convicted, not that the guilty should by their silence be shielded from

conviction. "Fair" that may be to the criminal but is it fair to the effective administration of justice?

The innocent suspect

4.8. The term "innocent suspect" may appear to be a contradiction in terms. I use it here to mean a person who, from information in police hands, is justifiably in the category of a suspect but who, unknown to police, is, in fact, innocent. Usually one would expect, along with Bentham, that "innocence claims the right of speaking" so that by speaking or answering police questions the innocent suspect can immediately show police that their suspicions are ill-founded. Indeed, it may seem illogical that in such a situation when it is as much in the interests of the innocent suspect as of police that the truth be revealed as quickly as possible, the innocent suspect finds himself cautioned to the effect that he is not obliged to say anything.

4.9. The argument that the right of silence is essential for the protection of the innocent suspect can best be dealt with by considering the possible reasons why such a person might wish to shield behind a shelter of silence:

(i) He may fear that any answers he may make to police questions will reveal the guilt of another person whom he wishes to protect. If, as I suggest above, it is not in the public interest for a person

by his silence of impede an investigation aimed at identifying the perpetrator of a crime when that person himself is the perpetrator, there is even less justification if by his silence he is attempting to shield another who is the perpetrator. I do not suggest that silence to police questioning should itself be an offence except in so far as it is already in certain circumstances, e.g. Section 11, Prevention of Terrorism (Temporary Provisions) Act 1976, section 168 Road Traffic Act, 1972. It is an offence for a person to take an active step to impede the prosecution of a person who has committed an arrestable offence (Section 4, Criminal Law Act 1967); trying to shield another by silence is not far removed and certainly of equal hindrance to a police investigation aimed at identifying the perpetrator of a crime.

(ii) He may wish to remain silent out of a sense of principle or cussedness. He is entitled to adopt this attitude now and would be entitled to do so under my suggestion for the removal of the right of silence since no one in a civilised society can be compelled to answer police

questions and the removal of the so-called right of silence would be no more than the effect that that silence during police questioning would have at a subsequent trial. But I would expect the public to have little sympathy for the innocent suspect who, by his refusal to answer police questions and thus allay suspicion, delayed or perhaps effectively prevented the criminal himself being brought to justice.

(iii) He may wish to remain silent because he fears that any answers he may make would reveal not a criminal offence committed by him but some act or association less than a crime, the knowledge of which by others he considers might prove embarrassing to him. There are many such matters which come to police knowledge during their work and the confidentiality of such information is always respected. Indeed, the improper disclosure of any information which an officer has in his possession as a member of a police force is a specific offence under The Police (Discipline) Regulations, 1977.

In each of the instances at (i), (ii) and (iii) above of the suspect who, unknown to police, is, in fact, truly innocent, his refusal to answer police questions whereby he would be able to satisfy police of his innocence means that the matters which led police to reasonably suspect him of the offence still stand and accordingly the public interest in bringing the actual criminal to justice is delayed or in some instances entirely frustrated, perhaps, in some cases, to the public's peril.

4.10. For those reasons I advocate a complete change in the rights of a suspect during police questioning and the effect of a suspect's silence during that questioning at his subsequent trial. A change which would damage no one other than the guilty. To those who say that I am advocating abolishing the principle that it is not just that a person should be compelled to incriminate himself, I agree I am advocating that, but what justice is there in that rule or what protection does it afford other than to the criminal?

4.11. In order to effect the change I advocate it would not be sufficient to vary the Judges' Rules since they are not rules of law but rules of practice drawn up for the guidance of police officers (R. v. May (1952) 36 Cr.App.R. 91) and the right of silence contained in the Judges' Rules "merely serves to remind the accused of a right he possesses at common law" (Hall v. R. (1970)

55 Cr. App. R. 108). Accordingly I RECOMMEND that it be provided by statute as follows (in this part of my written evidence I shall underline my recommendations but leave my comments thereon in plain type so that they can be easily distinguished).

4.12. 1. When a police officer is trying to discover whether or by whom an offence has been committed he is entitled to question any person, whether suspected or not, from whom he thinks that useful information may be obtained. This is so whether or not the person in question has been arrested or charged or informed he may be prosecuted for the offence.

This follows the wording of the existing Rule I of the Judges' Rules except with regard to the last sentence which under my recommendation would enable a police officer to question a person after he had been charged with an offence or informed that he may be prosecuted for it without the restrictions on such questioning as provided by the existing Rule III(b). It is only rarely that a police officer would wish to question further after a person had been charged or informed that he would be prosecuted for the offence but if such questioning, whether tending to confirm or refute guilt, is necessary I can see no justification for restricting it in any way other than on the misconceived principle that it is wrong or "not cricket" that a person should incriminate himself. (See paragraphs on Unfairness to the Suspect and The Innocent Suspect above). The further questioning

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may be necessary as a result of statements made by other suspects or witnesses or legal advice received by police after the person has been charged or informed that he would be prosecuted for the offence. I emphasise that such further questioning as any police questioning is aimed not at building a case against a person but at the ascertainment of the truth. In a different context but with relevance to this point Sir Henry Fisher, at paragraph 23.1 of the Confait Report, says, ".... the police have a duty to seek further evidence which may support or contradict the confession. Supporting evidence will make it more likely that the prosecution will succeed and if the police believe that the confessor is guilty they have a duty to try to strengthen the case against him. On the other hand there is a public interest that persons should not be prosecuted who are innocent or whose acquittal is certain or likely if they are brought to trial, and that if prosecutions have been brought against such persons they should not be continued longer than necessary. It is therefore equally important that evidence contradictory of the confessions should be brought to light as early as possible. The notorious fact that false confessions are sometimes made makes it all the more important that further evidence which will disprove the genuineness of the confession should be sought". It seems to me that any further questioning necessary to ascertain the truth, whether this strengthens or weakens a case against a person charged

can only be in the public interest whether or not a confession exists and can harm no one other than the guilty. It is for this reason that I favour the abolition of Rule III(b).

4.13. Rule II of the Judges' Rules requires that as soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence that person shall be cautioned that he is not obliged to say anything. Since I am advocating the removal of the right of silence from a suspect during police questioning the need for that present form of caution would cease. In its place I RECOMMEND that the effect of that removal should be incorporated in what I shall refer to as the First Caution, namely:

2.(a) Where a police officer has reasonable grounds for suspecting that a person has committed an offence AND wishes to ask that person questions about the offence he shall caution that person orally or cause him to be cautioned before putting to him any questions or further questions relating to that offence in the following terms (which I shall refer to as the First Caution):

"I suspect that you /the nature of the offence(s) to be outlined by the officer in simple language/ You will be asked questions about it (them). If you are prosecuted later and have not answered the questions now, the Court

will be told of your failure to answer and your evidence may be less likely to be believed".

I have adapted that First Caution from that at paragraph 44 of the Eleventh Report of the Criminal Law Revision Committee.

4.14. 2.(b) When a person is at the police station (whether voluntarily or under arrest) because a police officer has reasonable grounds to suspect that that person has committed an offence he shall as soon as practicable be brought before the duty officer responsible for the wellbeing of persons suspected of offences. The police officer responsible for the investigation of the offence shall in the presence and hearing of the suspect tell the duty officer why the suspect is at the police station. The duty officer will notify the suspect of the First Caution. If the suspect is under arrest when he arrives at the police station or is arrested while at the police station the police officer responsible for the investigation of the offence shall inform the duty officer responsible for the wellbeing of arrested persons at the police station and the duty officer shall hand to the arrested person a form on which shall be set out the rights and facilities available to arrested persons and the obligations to which the arrested person is subject.

This is a slight variation on the existing system within the Metropolitan Police District as provided for by Section 23, paragraphs 6 and 129, Metropolitan Police General Orders, whereby arrested persons are brought before the station officer and the rights and facilities available to them are displayed on a printed form drawn

to their attention. The rights, facilities and obligations which I envisage should be incorporated on the form handed to the arrested person are:

Rights and facilities

1. Section 62, Criminal Law Act 1977.
2. The right to communicate and to consult privately with a solicitor (as at present set out in Rule (c) and Administrative Direction 7(a) to the Judges' Rules subject to the same qualifications as now concerning delay or hindrance in Rule (c) and hindrance in Direction 7(a)).
3. Provisions as to bail.
4. Provisions as to identification parades.

Obligations

5. As set out in the First Caution.
6. To supply body samples as set out in my recommendations on that topic.

4.15. 3. Before a person is charged or informed that he may be prosecuted for an offence a police officer responsible for the investigation of the offence shall inform the duty officer responsible for the wellbeing of persons suspected of offences who shall read to the suspect the following caution (which I shall refer to as the Second Caution):

"You are going to be charged with /or you may be prosecuted for/ the nature of the offence to be explained by the officer in simple language/. If there is anything which you have not already said which you think shows that you are innocent you should tell me about it now. If you hold it back until you go to Court your evidence may be less likely to be believed".

Again I have adapted the Second Caution from that at paragraph 44 of the Eleventh Report of the Criminal Law Revision Committee. The purpose of this Second Caution is to give the person to be charged a last opportunity before the charge is preferred to say anything he wishes. I envisage that if in answer to the Second Caution anything should be said by the suspect which causes the investigating officer to believe that the matter requires further investigation before he is satisfied that there still is sufficient evidence to prefer a charge for the offence, the charging of the suspect should be delayed until that further investigation has been carried out.

4.16. 4.(a) When a police officer is trying to discover whether or by whom an offence has been committed he is entitled to invite any person, whether suspected or not from whom he thinks that useful information may be obtained to make a written statement. This is so whether or not the person in question has been arrested and whether or not the person has been charged with the offence or informed that he may be prosecuted for it. If the person in question is one

whom the officer has reasonable grounds for suspecting of having committed an offence and accepts the officer's invitation to make a written statement the officer shall ask the person making the statement to sign or make his mark at the commencement to the statement to the following:

"I wish to make a written statement in my own handwriting /or I wish to make a written statement and want someone to write down what I say/".

When the written statement is finished the suspect shall be asked to sign or make his mark to this certificate at the end of the statement: "I have read the above statement /or I have had the above statement read to me/. I have been told that I can correct, alter or add anything I wish. This statement is true."

(b) The written statement shall be in the suspect's own words. The officer shall not prompt the suspect but can indicate to the suspect what matters the suspect may wish to include in his statement. The officer shall not ask any questions while the statement is being taken other than appear necessary to make the statement coherent, intelligible and relevant to the material matters and to clarify any ambiguity in the statement.

4.17. I RECOMMEND that the statutory enactment should provide in relation to those cautions as follows:-

Where a police officer has reasonable grounds for suspecting that a person has committed an offence and has questioned that person following the administration of that First Caution or has administered the Second Caution to the suspect, the failure of the suspect to answer such questions put under the First Caution or to mention any relevant matter which the suspect thinks may indicate his innocence under the Second Caution should empower a court to draw any inference it considers just and equitable to draw, including an inference that the accused committed the offence, unless there existed at the time the respective caution was administered a reasonable excuse for failure to reply to such questions or mention such relevant matter as the case may be.

4.18. The whole purpose of those First and Second Cautions would be lost if the suspect's lawyer or friend through ignorance or otherwise advised the suspect not to answer police questions put under the First Caution or to mention any relevant matter under the Second Caution because it would then be open to the suspect to use that advice given to him as his excuse at his trial for failure to answer or mention any relevant matter. In the same way the whole purpose of those First and Second Cautions would be lost if the suspect alleged at his trial that his reason for failing to answer police questions put to him under the First Caution or to mention any relevant matter under the Second Caution

was because he was unable at the time to recollect the appropriate answer or relevant matter.

4.19. In order to overcome these difficulties I RECOMMEND that the statutory enactment should provide that it should not be deemed a reasonable excuse on which an accused could rely at his trial to prevent the Court drawing an inference from his failure to answer questions under the First Caution or to his failure to provide relevant information under the Second Caution on the grounds either

(a) that the suspect had received advice from a lawyer or any other person not to answer police questions under the First Caution or to fail to provide relevant information under the Second Caution

or

(b) that the suspect was unable at the time of the administration of the First or Second Caution to call to mind any particular matter unless he caused any relevant subsequent recollection to be reported to the police officer concerned as soon as possible whether before or after being charged or summoned.

4.20. I anticipate that my recommendation as to a reasonable excuse for silence would work in this way. If a suspect when being questioned refuses to

answer any questions or is evasive in his replies and is subsequently charged on the basis of other evidence, the fact of his silence or evasive replies when a suspect will be revealed during the prosecution evidence at his trial. It will then be for the Court to determine whether or not there was a reasonable excuse for his silence or evasion. Since a Court is deemed competent to decide the issue of guilt which often involves complicated issues of law and fact, it is well within its capability to decide whether or not, taking into account all the circumstances, including the accused's character and ability, his refusal when a suspect to answer questions or his evasive replies were justified by a reasonable excuse. A Court will have had the opportunity of seeing the accused and, if my recommendation which I make elsewhere with regard to an obligation on an accused to proffer himself at his trial for cross-examination is accepted, an opportunity of hearing him give evidence. It is well within the capability of a Court to draw a proper conclusion about an accused's ability or lack of it to express himself or to recollect events. Thus an accused of low intellect might well explain in evidence that he did not reply to police questions because he did not understand them or was upset and confused at the police station; on the other hand a similar explanation may be put forward by an accused possessed of considerable confidence and intelligence. The Court will then draw its conclusions

as to whether such an excuse would be reasonable in both cases.

Road Traffic Offences

4.21. The Judges' Rules apply equally to road traffic offences as they do to any other offence against the criminal law. The view has often been expressed that it is perhaps unfortunate that road traffic offences are criminal offences. There are certainly some road traffic offences which are worthy of the term 'crime' (driving or being in charge of a motor vehicle under the influence of drink or drugs or with excess alcohol, driving recklessly or causing death by reckless driving or driving while disqualified, forgery of road traffic documents) but there are a great many road traffic offences which some feel are not or should not be criminal offences at all. The Royal Commission may well feel that the arguments for and against road traffic offences being treated as criminal offences do not fall within its terms of reference. However, in considering the topic of the Judges' Rules the Royal Commission may wish to consider the application of those Rules to road traffic offences. The ordinarily law abiding citizens found to be committing relatively minor road traffic offences often strongly resent the feeling that they are being treated as criminals by having recited to them the various cautions provided for by the Judges' Rules and, indeed, complaints by such persons have often been made as a

result. Accordingly I RECOMMEND that all road traffic offences other than those which I have listed above should be excluded from any provision as to cautioning contained in the Judges' Rules or any enactment replacing those Rules.

The place of the suspect's lawyer in police questioning

Present position

4.22. In considering what advice to give to his client with regard to police questioning the lawyer owes a duty to no one other than his client. The lawyer is by duty bound to advise his client, subject to his client's instructions, to refuse to answer any police questions which might reveal the truth if that truth indicates that his client was responsible for a criminal offence. In advising his client the lawyer does so in the knowledge that the silence of a guilty suspect during police questioning can only be to the suspect's advantage, albeit to the public's disadvantage, and cannot be held against the suspect at his subsequent trial. The police officer is duty bound to attempt to discover the truth whether that truth discloses the innocence or the guilt of the suspect. It follows that the duty of the lawyer to his client on the one hand and the duty of an investigating officer and the interests of the public that those responsible for crime be brought to justice on the other hand are diametrically opposed.

4.23. The suspect is able to obtain advice from his lawyer before, during and after questioning. He is able

to obtain it before and after questioning because Note (c) to the Judges' Rules provides "That every person at any stage of an investigation should be able to communicate and to consult privately with a solicitor. This is so even if he is in custody, provided that in such a case no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice by his doing so." Additionally, Administrative Direction 7(a) of the Judges' Rules provides: "A person in custody should be allowed to speak on the telephone to his solicitor or to his friends, provided that no hindrance is reasonably likely to be caused to the processes of investigation, or the administration of justice by his doing so". Although a suspect's lawyer has no specific right to be present so as to advise his client during police questioning he can effectively insist on his presence during questioning, subject to the proviso to Note (c) of the Judges' Rules, by refusing to allow his client to answer police questions or advising his client not to answer police questions unless he, the lawyer, is present; moreover the lawyer can select which questions he will allow the suspect to answer or insist that he will only answer questions previously submitted by police in writing as a condition of his client answering any questions.

4.24. Unreasonable delay within Note (c) of the Judges' Rules would be caused, for example, if police

believed that an arrested suspect had vital information about the whereabouts of a timed explosive device or a kidnapped child or a large quantity of valuable stolen property and had to defer questioning the suspect about such vital information until the arrival of a suspect's lawyer or until the suspect had been able to communicate with the lawyer or a friend. To allow such delay to occur might well result in the loss of life or serious damage to property.

4.25. Hindrance within Note (c) and Administrative Direction 7(a) of the Judges' Rules would occur, for example, if it was thought that the lawyer or friend might wittingly or unwittingly (a) assist the suspect to escape, (b) prevent the recovery of property subject to the investigation, (c) remove or destroy items of evidential value, or (d) prevent the arrest of other persons suspected of being responsible for the same or related offences as the suspect under arrest. If the investigating officer thought that the lawyer or friend was criminally involved with the suspect it would clearly be a hindrance to the process of investigation to allow the arrested suspect to communicate with such a lawyer or friend. More commonly it may be that it is thought that the suspect may use the lawyer or friend to pass to others messages (<u>which might appear to the lawyer or friend quite innocent</u>) but which may be intended by the suspect and perhaps planned by him in advance to be "tip offs" to other persons to achieve any of the aims set out at

(a), (b), (c) or (d) above. However much it may be a most effective and practical hindrance to police investigation that the lawyer might advise his client to refuse to answer any police questions, it is clearly not a hindrance within the intention of Note (c) or Administrative Direction 7(a) of the Judges' Rules. Similar considerations which apply to Note (c) and Administrative Direction 7(a) of the Judges' Rules apply to Section 62, Criminal Law Act 1977.

<u>Position of suspect's lawyer under my recommendations set out above of new cautioning procedure for a suspect and the effect of the suspect's silence during police questioning on his subsequent trial</u>.

4.26. There would, in fact, be little change. The existing rights of a suspect to communicate and to consult privately with a solicitor as provided for by Rule (c) and Administrative Direction 7(a) would remain. For the reasons set out above it would remain essential that those rights should be subject to the same qualifications as now concerning delay or hindrance in Rule (c) and hindrance in Administrative Direction 7(a). The only effective difference would be in the advice likely to be given by the lawyer to the suspect, since that advice <u>of itself</u> would not be capable of providing the suspect with a reasonable excuse to fail to reply to police questions and the lawyer would be mindful of the effect of a failure to reply at a subsequent trial. As I indicated above, the lawyer at present has no <u>right</u> to be present during

police questioning but can effectively insist that he should be present as a pre-requisite to a suspect answering police questions subject only to the proviso as to delay and hindrance.

4.27. To summarize my recommendations they are:

(1) The removal of the protection at present afforded to a suspect who chooses to remain silent when questioned by police by permitting a court to draw any inference it considers just and equitable to draw from such silence the effect to be explained to a suspect by a new First Caution.

(2) An arrested person on his arrival at a police station (or upon his arrest if it takes place at a police station) to be handed a form setting out the rights and facilities available to him and the obligations to which he is subject.

(3) A new Second Caution administered prior to charging inviting the suspect to inform the officer of anything which he has not said already which may show his innocence with the same sanction on silence referred to at (1) above.

(4) A new form of heading to a written statement by a suspect and certificate at the end.

(5) The removal of the restriction on questioning imposed by the existing Rule III(b) of the Judges' Rules.

(6) The removal of the need to caution for the majority of road traffic offences.

(7) A court of trial should not be prevented from drawing the inference referred to at (1) and (3) above by reason of advice given to the suspect by a lawyer to remain silent or by reason of the suspect's failure of recollection of a relevant matter unless the suspect caused any subsequent recollection to be reported to police as soon as it was recalled to mind.

(8) The rights of a suspect to communicate and consult privately with a solicitor to remain unchanged.

CHAPTER V

Tape Recording

5.1. On first consideration the use of tape recorders during police questioning of suspects, if such use can produce an exact and indisputable record of the conversation between police and the suspect, would be of considerable value. I would welcome any device which would safeguard police officers against malicious allegations. It is an unpleasant and demoralizing experience for honest and truthful police officers time and time again when being cross-examined to find themselves accused of perjury and having their characters besmirched when the evidence they have given is accurate and true and the allegations made against them are completely groundless. However, from experience I am convinced that the statements of defendants most likely to be truthful are those made immediately after the event or after the arrest and it is agreed by all who have considered the matter - including the Committee which considered the feasibility of an experiment in tape recording of police interrogations - that it is impractical for these statements to be tape recorded.

5.2. In R. v. Turner & Others (1974) 61 C.A.R. at page 76, in the Court of Appeal, Lord Justice Lawton commented on the problem as follows:-

> "Apart altogether from the problem of length and expense, there was the particular problem of the evidence of a number of police officers as to oral statements (colloquially

known as "verbals") which the accused were said to have made after arrest. Defending counsel had to challenge this evidence if their instructions from their clients made challenges necessary. As almost always happens in this class of case at the Central Criminal Court (but not so commonly on circuit), nearly all the defending counsel challenged the credibility of the police witnesses giving evidence about oral statements. They were severally accused of lying, bribery, fabricating and planting evidence, perjury in other cases, the theft of £25,000, threatening witnesses, assault and drunkenness. The existing practice followed by the police for putting this kind of evidence before courts almost inevitably leads to attacks on the credibility of police officers. If the evidence is true, as it usually is, the jury is greatly helped. It is a matter of human experience, which has long been recognised, that wrongdoers who are about to be revealed for what they are, often find relief from their inner tensions by talking about what they have done. In our judgment and experience this is a common explanation for oral admissions made at or about the time of arrest and later retracted. But if the evidence of such oral admissions is untrue, as regrettably it sometimes is, defendants are unjustly and unfairly put at risk. In our judgment something should be done, and as quickly as possible, to make evidence about oral statements difficult either to challenge or to concoct."

In that part of his judgment Lord Justice Lawton was

referring in the main to that very small proportion of all criminal cases from England and Wales which are tried in the Central Criminal Court (0.17% on 1976 figures) and the even smaller proportion of all criminal cases which are heard in the Court of Appeal as appeals against conviction (0.018%). There are, of course, many other cases in which police evidence as to oral statements made by defendants is challenged which never come before the Court of Appeal either because the cases were tried in the magistrates' courts or were tried in the Crown Courts and no appeal against conviction was heard in the Court of Appeal. Nevertheless, the problem can be overstated because in a great many cases there is no head-on dispute as to the accuracy of verbal statements either because there is a plea of guilty or because the defence accepts the accuracy of the police officer's evidence as to verbal statements but relies for the defence on other matters.

5.3. It is quite clear that both in magistrates' courts and in Crown Courts justices and juries are much more cautious in accepting police evidence as to verbal statements by defendants than in the past and scrutinize such evidence with great care. I welcome this scrutiny and also the fact that police officers are now placing greater emphasis on obtaining, wherever possible, corroborative evidence, be it scientific or otherwise, to support verbal admissions made by the defendants. I consider that it is important for police to have the

extra powers to obtain such corroborative evidence of the type referred to in Chapter I.

5.4. I am convinced, however, that the main thrust against the concoction of verbal admissions must lie in action taken by senior police officers. They must be constantly vigilant to detect and punish malpractice by their officers and must set proper standards and ensure that those standards run through the whole training of police officers. Again, I emphasise that the increased powers I am asking for in earlier chapters would have an effect on this early training in that there would be less temptation for officers to cut corners to obtain evidence. I would welcome any practical solution which would make the concocting of false verbal admissions or the successful challenging of true verbal admissions difficult or impossible. But it is my view, for the reasons I express below, that the tape recording of police interrogation does not provide that practical solution.

5.5. It is of interest to note that the Committee appointed by the Home Secretary to consider the feasibility of an experiment in the tape-recording of police interrogations did not express or form any collective view either as to the desirability of such recording in general nor even the desirability of an experiment (paragraph 4, The Feasibility of an Experiment in the Tape Recording of Police Interrogations (Cmnd. 6630) published October 1976). At paragraph 6 of that Report the Committee said that they were not aware of

any country in Western Europe where it is the practice to tape-record police interrogations on a systematic basis and that although in the U.S.A. a few police authorities do tape-record all or some parts of police interrogations of suspects, it is not the practice of the F.B.I. or of United States police authorities generally and that one or two authorities which have used tape recorders in the past do so no longer. I would comment in parenthesis that bearing in mind that tape recording equipment has been available for a considerable number of years it is significant that those countries have not attempted to make use of it on any large scale and indeed some authorities which did make use of it have now abandoned it. Even if there were data available from abroad its value would be small and unreliable because of the differences in the criminal process in England and Wales on the one hand and those other countries on the other hand.

5.6. So far as this country is concerned the use of tape recorders to record conversations of suspected criminals has been almost entirely confined to situations distinguishable in two important aspects from the proposal at present under consideration in that the recording of the conversation was (a) the recording of a conversation between an accused person and the victim or between two accused, not between accused and police, and (b) the recording was made without any knowledge on the accused's part that it was being made (R. v. Mills & Rose (1962)

46 Cr.App.R. 336; R. v. Ali & Hussain (1966) 1 Q.B. 688; R. v. Senat & Sin (1968) 52 Cr.App.R. 282; R. v. Stevenson & Others (1971) 55 Cr.App.R. 171; R. v. Robson & Harris (1972) 1 W.L.R. 651). An exception was the case of R. v. Halverson, Maidstone Crown Court (May 1978). It is perhaps worthy of note that the facts of all those cases indicate that there would have been no conversation to record had the accused been aware that the conversation was being recorded and that in two of them the authenticity of the recording was challenged. The majority of the Criminal Law Revision Committee in its Eleventh Report (Cmnd. 4991) published in June 1972, expressed the view at paragraph 50 of its Report that there should be no general introduction in the use of tape recorders in interrogations "until experience of their use on an experimental basis ... has shown that the difficulties mentioned in this paragraph ... can be overcome and that the use of recorders makes a sufficiently valuable contribution to the ascertainment of the truth concerning happenings at police interrogations without seriously imparing their efficiency". I set out below the formidable practical difficulties as I see them which the introduction of compulsory tape recording would produce. I anticipate that the data produced by any experimental scheme would reinforce the existence and extent of these difficulties and accordingly that the introduction of such an experimental scheme would itself be accompanied by these disadvantages.

5.7. (1) <u>The effect on a suspect</u>. The purpose of any criminal investigation is to arrive at the truth. This objective is much more readily and effectively achieved if the suspect is prepared to answer police questions. If the suspect is, in fact, innocent his replies to police enable police to check the information he gives so as to eliminate him from their enquiries and devote their energies elsewhere. If the suspect is guilty the fact that he provides replies to police questions is of greater assistance to the ascertainment of the truth than his silence and this is so even if his replies are untrue because so often a false or untrue explanation can be indicative of guilt and shown by other evidence to be so. Is the use of a tape recorder which an accused knows is being used likely to inhibit the accused from speaking or answering police questions? I am sure that this is so. Even in a social or family context, quite apart from a criminal context, it is a well known fact that the use of a tape recorder which use is known to the speaker inhibits him. Even if it does not have the effect of totally silencing a speaker it certainly

inhibits spontaneity so that instead of bubbling like a spring the speaker is under restraint. How much more this is likely in a criminal context of a police interrogation, as opposed to a family or social context, is self evident. This reluctance to speak will not only relate to a suspect's own guilt but also his knowledge of the guilt of others. A suspect is often prepared to give police useful information about the involvement of his co-criminals in the crime of which he is accused but very seldom to put that information in a written statement under caution on the basis that he can always subsequently deny that he was the source of the information. This kind of information is frequently of great use in a police investigation but is almost as frequently accompanied by a refusal to have it recorded in writing. If a suspect knew that this information was to be permanently recorded on tape, this valuable source of information would be no longer forthcoming.

(2) <u>The value of evidence not tape recorded</u>. There may exist quite apart from any evidence resulting from a taped interview in a police station other untaped evidence. This may result from conversations which occur at or before the time of arrest in the street or

at the suspect's home or place of work where it is not possible to provide adequate or any recording equipment or it may occur at the police station before or after the taped interview or at a time when all the available taping facilities are being used by other officers in respect of other suspects or it may occur at a Court prior to and after an accused's appearance before the Court itself. In any of these instances an accused person or suspect may make some admission. It would be unrealistic to exclude such untaped conversations in subsequent criminal proceedings but they are likely to be treated as inferior or of less weight merely because taping facilities were not available. In this context it is not infrequently the case that a person on his initial arrest will make a spontaneous admission but by the time he has reached the police station has had an opportunity to review his position and either will deny his earlier admission when being questioned or remain silent. (See Appendix D of the Home Office Report). The denial or silence during taped interrogation is likely to be treated by a jury with more emphasis and weight than the earlier spontaneous untaped admission.

(3) Disputes as to what transpired during interrogation.

The suggestion that the use of tapes will avoid such disputes is in my view not valid. Quite apart from any mechanical misfeasance of the equipment itself or failure by strike action or otherwise in electric current, or allegations by defence or prosecution of tampering with tapes there is the problem of the suspect who talks insufficiently clearly or too quietly or too quickly so that although his words might be intelligible to an officer sitting with him, the taped reproduction of those words may be insufficiently clear for a full transcript to be made by the audio typist. Again, the suspect may give only visual replies, e.g. by a nod of the head. Even a person used to dictating with a dictating machine, who is purposely dictating with a view to his words being accurately transcribed, will find often from queries by the audio typist or, indeed, from the typed document that the words he intended to convey have not been transcribed. There is also the problem of the suspect who wishes to deliberately falsify the taped record as it is being made by making untrue allegations of bribery, assault or other improper conduct against his interviewer knowing full well that if he repeats those

allegations at his trial they will be in part corroborated by the taped interview. It is sometimes useful to a police investigation to interview more than one suspect at the same interview. Although it would be clear to a person present at such an interview who was speaking it would be by no means clear to anyone (including an audio typist preparing a transcript) listening to the tape subsequently.

(4) Cost

This is a matter which may be thought to be of no direct concern to police because the funds will presumably be additional to those already provided for police purposes. If, however, there are funds available to support such an additional cost burden then there are many aspects of police work which would benefit from their use other than the setting up of the necessary machinery, specialised accommodation and typing power which the venture would necessitate.

5.8. The Home Office Report on the Feasibility of an Experiment states that it was not possible to make any satisfactory estimate of the total cost of an experiment although the Report provides some figures in Appendix 7, which figures are solely restricted to the likely capital costs and running costs (in terms of tapes and transcripts) for nine police stations. The existing typing staff could

not cope with a workload greater than they already carry so that additional staff would have to be recruited.

5.9. The figures at Appendix F of the Home Office Report assume that one recording machine at each station would be sufficient. This does not allow for the breakdown of a machine and it also assumes that only one interview is taking place at any one police station at one time. This is wholly unrealistic because not only are there frequently several interviews taking place at the same time in respect of different unrelated offences but simultaneous yet separate interviews with suspects thought to be concerned with the same offence. An inquiry revealed, for example, that on one day in March 1978 a total of 41 separate interviews took place at West End Central Police Station occupying a total time of 22 hours 25 minutes and on the same day 26 separate interviews at Brixton Police Station occupying a total time of 14 hours 55 minutes. It follows that not only will a number of recording machines be required at each police station but so also will a number of rooms be required acoustically fitted out at each police station. These rooms would have to be fitted not only to make them acoustically suitable but also to make them sufficiently secure to deal with the most dangerous of criminals who are at present interviewed in secure cell accommodation.

5.10. Replay machines would be required not only for the courts, as suggested at Appendix F to the Report, but also for the prosecution and defence. The time engaged in typing a transcript would be considerable because, unlike someone dictating into a machine and stopping the machine to avoid silent passages, the machine used to tape an interrogation would have to remain on throughout the interrogation and it is not unusual for a suspect to take a considerable time to reply to a question. There is a considerable difference in transcribing a taped dictation from the voice of a person accustomed to dictate with clarity and transcribing a taped interview where the typist has to distinguish which voice is speaking particularly when the suspect's conversation may be somewhat inarticulate or peppered with colloquialisms. Enquiries have been made in my Force to ascertain the probable length of time an audio typist would require to transcribe a taped interview of an hour's duration. It is not possible to arrive at a firm answer because so much depends upon the quality of the recording and the absence of background noise, the ability of the speakers to speak without using colloquialisms and the tenor of the conversation, i.e. the avoidance of heated discussion with persons speaking simultaneously. But I am informed that a typist experienced in transcribing taped conversations will require a <u>minimum</u> of a whole working day to transcribe one hour's conversation. The tapes taken at a busy police station on any one day might therefore well involve

in excess of twenty typing days to transcribe one day's tapes, which would necessitate (quite apart from typing power) more than twenty replay machines.

5.11. It is suggested at Appendix F of the Report that transcripts would be required in slightly more than half the cases. I do not know on what basis this estimate is made but it seems to me to be unrealistic to suppose that already hard pressed prosecution and defence lawyers could find the time to sit and listen to taped interviews rather than more quickly and conveniently to read a typed transcript. Certainly in contested cases a transcript of the whole interview would be required and even in non-contested cases I assume that since there existed a record of the interview on tape any defence lawyer would see it as his duty to check the accuracy of any interview so recorded on tape to ensure the extent or nature of any admissions made by his client.

5.12. It cannot be assumed that where a transcript was required only one document need be typed. It may be that much of what appears on the transcript prepared by the audio typist would be inadmissible on the basis of irrelevance or prejudice so that the final transcript prepared for a court would have to exclude such inadmissible evidence if the prosecution and defence were able to agree on the parts to be excluded.

5.13. For these reasons I consider the costing, even on an experimental basis, for nine police stations as suggested at Appendix F to be very much on the conservative side. The total cost of a nationwide scheme cannot be gauged but would obviously be enormous.

5.14. This cost has to be set against the number of times statements to police are challenged. It will be seen from Appendix B of the Report that Table 1 disclosed that 1.6% of written statements made were challenged and Table 2 that 1.2% of defendants challenged police evidence about written and verbal statements made at police stations and elsewhere. A figure of 56% of challenges to written and verbal statements is revealed by Appendix C but it should be noted that this figure, which is based "on personal recollections" (paragraph 11) is apparently restricted to contested cases of a serious nature. Moreover, it is not clear from Appendix C what percentage of the challenges was in respect of statements made at or away from police stations and accordingly what percentage might have been capable of being tape recorded.

5.15. It seems to be unlikely that the use of recording equipment would substantially reduce the number of "trials within trials". These "trials within trials" are by no means confined to questions of fact as to what was or was not said at an interview between police and an accused person because there so often remains argument on the evidential admissibility of what was said, e.g. was

an admission made by an accused person a voluntary admission or did anything which was, in fact, said amount in law to an inducement in the mind of that particular accused person. Tape recording will not resolve this question of admissibility. As to the actual content of the tape the Home Office Report at paragraph 35 says:

> "..... we do not believe that any equipment, however sophisticated, could ever exclude the possibility of ... dispute ... there is no equipment in this or any other field which is beyond the ingenuity of accused persons or their advisers to challenge ..."

5.16. I consider that these disadvantages far outweigh any possible advantages which the compulsory use of the tape recording of police interrogation would bring. Moreover, I consider that the practical difficulties are too great to be realistically overcome. Because I see those disadvantages and difficulties to be so overwhelming I am opposed to the compulsory use of tape recorders generally or even on a restricted and experimental basis.

5.17. If it was decided to conduct an experiment into the tape recording of police interrogations I should, of course, instruct my officers to co-operate

fully in such an experiment but I should be failing in my duty if I did not make it clear now that I consider that such an experiment would be a costly method of illustrating in a practical way the overwhelming disadvantages and difficulties to which I have referred.

5.18. If it was decided to conduct an experiment it is my view that any data produced by such an experiment would be valueless unless it was made in 'real life' situations for a period of time which, to avoid an unacceptable cost burden, would have to be restricted to a limited geographical area or areas. The cost of a country-wide introduction for experimental purposes would clearly be too great.

5.19. If an experiment is to be carried out I fully endorse what is said at paragraph 54 of the Home Office Feasibility Report referred to above namely:

(i) the need for prior consultation between police, lawyers and the courts,

(ii) the preparation of clear and precise instructions,

(iii) that the experiment be a modest one.

However, I do not accept, as paragraph 89 of that Report suggests, that such an experiment be restricted to the taking of written statements. Such a restricted experiment would provide no data in those areas where I foresee the greatest difficulties, namely verbal

interrogations and the extensive production and use of transcripts and the overall cost.

5.20. To summarize my conclusions they are that the disadvantages far outweigh any possible advantages which the compulsory use of tape recording of police interrogations would bring.

CHAPTER VI

The Particular Rights of Juveniles

6.1. At the time that this evidence is being compiled I am aware that it is intended that the Judges' Rules are to be re-issued in the same form as hitherto but incorporating the effect of those Home Office circulars affecting the Administrative Directions to the Rules. I have commented elsewhere in my evidence on the Judges' Rules so far as they relate to the questioning of suspects generally and my comments there apply equally to adults as to juveniles. I would not seek to suggest that those rights which appear in the re-issued form of the Administrative Directions which relate specifically to juveniles should be changed.

6.2. I support the thinking behind the legislation relating to juveniles that the paramount consideration must always be the consideration of the young person concerned. But it must be remembered and sadly reported that the number of juvenile offenders is large and of those some can be likened in their attitude to crime to professional criminals. It is somewhat disturbing to record that in 1976 and 1977 in the Metropolitan Police District out of a total number of arrests for indictable offences the following percentages of those offences were committed by juveniles:

	1976	1977
Assaults (etc.) including homicide	15%	14%
Robbery and other violent theft	38%	33%
Burglary	46%	44%
Autocrime	38%	39%
Other theft	24%	27%
Fraud and forgery	5%	6%
Miscellaneous	23%	25%

6.3. In order to ensure that careful consideration should be given to the question of the decision to prosecute or refrain from prosecution, with certain exceptions to which I shall refer, the case of every suspected juvenile offender who comes to police notice within the Metropolitan Police District is referred to a Juvenile Bureau. It may assist the Royal Commission if I explain the operation of the Juvenile Bureaux scheme with reference to its work in connection with the decision to prosecute or refrain from prosecution. Before doing so I wish to emphasise that this is not the sole function of the Juvenile Bureaux.

6.4. Thus Juvenile Bureaux are the focal point for police involvement in care proceedings and cases of non-accidental injury to children. Following the initial action taken by divisional police officers in urgent cases, the juvenile bureaux staff take over the responsibility for the full investigation of care cases. Similarly, the juvenile bureaux are the information

centres for police involvement in case conferences about children at risk or the suspected victims of non-accidental injury. Juvenile Bureaux officers attend all case conferences notified to or initiated by police. They are also responsible for informing the local Detective Superintendent who will arrange for the attendance of a senior C.I.D. officer at non-accidental injury case conferences.

6.5. A further aspect of the work of Juvenile Bureaux not directly concerned with the prosecution process is to identify and combat areas of juvenile delinquency. To this end I recently emphasised the importance of each bureau maintaining a comprehensive schools programme and a considerable amount of time and effort is expended to this end. Bureaux officers are constantly involved in giving talks, discussions and seminars and showing films on a whole range of subjects which are of concern to youth in an attempt to prevent young people from contravening the law and to reduce juvenile delinquency.

6.6. The first juvenile bureaux were set up by the late Sir Joseph Simpson, then Commissioner of Police of the Metropolis, in the London Boroughs of Bexley and Greenwich as a pilot scheme in August 1968 and were extended to cover the whole of the Metropolitan Police District by April 1969.

6.7. Each Juvenile Bureau is staffed by a Superintendent or a Chief Inspector (with an Inspector as deputy) who has the major responsibility for Community Liaison in his Division which embraces all aspects of police involvement in the community. In addition to the supervising officers there is a sergeant and about six male and female officers, usually four male to two female. The staff of a juvenile bureau are police officer volunteers accepted for an average period of four years away from normal duty. A careful selection is made from those volunteering for this duty. Those selected are required to have a good background of practical police experience together with a particular understanding of the type of problems that are likely to confront them. Married officers with children of their own are preferred but all who are selected must have a mature outlook backed by an enthusiastic, sincere and open-minded approach.

6.8. When a juvenile is arrested for a crime he is brought to the police station and his parents or guardians are informed and the alleged offence investigated by the station officer who must satisfy himself that it is supported by credible evidence. With only four exceptions the juvenile is then released to the custody of his parent or guardian so that the matter can be referred to the Juvenile Bureau. The exceptions where the case is not referred to the

Bureau but (if the evidence warrants it) the juvenile is charged without reference to the Bureau are as follows:-

(a) where the juvenile has been arrested on a warrant;

(b) the officer has reason to believe that the juvenile has committed homicide, robbery, rape, arson or grave assault where life is endangered; or if his release would defeat the ends of justice, or that if he were released he would fail to answer any charge that might be made;

(c) that the juvenile is listed as a recidivist on a list compiled by the Divisional Police Community Liaison Officer in consultation with the local social services departments;

(d) the officer has reason to believe that the juvenile has committed a nuisance offence specified as such by the Divisional Commander for that area (e.g. an offence involving football hooliganism).

6.9. Subject only to those exceptions mentioned above, once there is evidence to support a prima facie case against a juvenile, the officer in the case is required to submit a report of the relevant facts concerning the alleged offence to the Juvenile Bureau through a Chief Inspector who has to certify that the offence is capable of proof. Included with that report must be a certificate from the complainant that he is

content to leave the matter in the hands of the police; in the absence of such a certificate one of the options open to the juvenile bureau namely to caution the offender (to which I refer below) is removed.

6.10. The bureau staff having received the report are then responsible for gathering information about the juvenile from the social services department of the local authority, the probation service and the education service. In the majority of cases an officer from the bureau will visit the juvenile's home where an appointment will have been made to interview the juvenile together with his parents. The object of such a visit is to discover the juvenile's background in order to judge whether or not a prosecution is necessary or to assess how effective or otherwise a formal caution would be. Much useful information is obtained from these visits which would not otherwise be available to the officer whose duty it will subsequently be to make a decision whether or not to prosecute. Perhaps the most valuable information lies in the attitudes of both the parents and the juvenile. The bureau officer will submit a report of his findings together with any observations and recommendations to the officer in charge of the bureau.

6.11. There are four courses open to the officer in charge of the bureau:

(1) To caution.
(2) To prosecute.
(3) To take no further action.
(4) To institute care proceedings.

In making his decision the officer in charge of the bureau has as his paramount concern the most appropriate course of action for the juvenile under consideration. Bureaux have built up over the nine years they have been operating a considerable expertise in assessing the most appropriate course of action. In particular there will be taken into account the possible deterrent effect of a particular course of action and the likelihood of the juvenile re-offending, the nature of the offence, the previous history of the juvenile, information gathered both from the home visit and from the social services and other agencies and the attitudes both of the parents and the juvenile.

6.12. There are no established levels of recidivism beyond which a juvenile may not be cautioned. Similarly, the fact that a juvenile is referred to a bureau for the first time does not preclude a decision to prosecute him. The efficacy of police cautioning cannot be evaluated by the limited research carried out so far but on the available information there are clear indications that juveniles cautioned by police tend to reappear in the system more slowly than those sent to Court.

6.13. (1) <u>To caution</u>. Before a caution is administered the following conditions have to be met:

(a) the juvenile must admit the offence,

(b) the parents or guardians must agree to the juvenile being cautioned,

(c) the complainant or loser must be willing to leave the decision to police.

If a decision to caution is made then an appointment is made for the juvenile and his parents to attend a police station where they are seen by a Chief Inspector or Superintendent in uniform who will administer the caution under formal circumstances. A form is signed by the parent and the juvenile acknowledging that a caution has been given. The juvenile is told that if he subsequently appears before a juvenile court details of the caution may be given to the magistrates. Details of the caution are given to the other statutory agencies involved. This provides an opportunity for social services if appropriate to offer the juvenile the opportunity to avail himself of some voluntary assistance or to provide some form of family support in appropriate cases. In some minor traffic offences not carrying endorsement the officer in charge of the bureau may authorise the sending of a caution by post.

(2) <u>To prosecute</u>. If the decision was made to prosecute it was customary to proceed by way of summons. However, it has recently been decided that in an attempt to avoid any further delay after a decision to prosecute has been taken the juvenile will return to the police station at a prearranged date to be charged rather than served with a summons. Whenever possible the extended bail system is used and the juvenile will appear before the juvenile court at a convenient date.

(3) <u>To take no further action</u>. The more common reasons for this decision are the triviality of the offence, or the victim declining to prosecute or the fact that care proceedings have already been initiated in respect of the juvenile, or cases where there has been a long delay and it is thought inappropriate to take action.

6.14. If a juvenile is involved in any offence with another person, whether another juvenile or an adult, his case is considered in exactly the same way by the juvenile bureau as if he had been involved alone although if a decision is made to prosecute arrangements will be made as far as possible and appropriate and legislation allows for both cases to be heard together. If two juveniles are involved and it is thought appropriate it is open to deal with both in different ways.

6.15. I set out below the statistics of the cases referred to the juvenile bureaux in the years 1975, 1976 and 1977. In reading these figures it must be remembered that the system of charging rather than summoning a juvenile once a decision to prosecute has been made is about to be introduced at the time this evidence is being prepared.

	<u>1975</u>	<u>1976</u>	<u>1977</u>
Summons	15,499	11,528	11,990
Charge	7,747	9,087	10,964
No further action	3,120	2,820	3,309
Caution	13,195	11,023	13,786
	39,561	34,458	40,049

6.16. The reasons for the frighteningly large numbers of juvenile offenders and the effectiveness of the Court's powers to deal with them in a way which might deter them and others to follow their example are not within the Royal Commission's terms of reference and accordingly I shall not comment on these problems. But given the present system of dealing with juvenile offenders I recommend the method of the Juvenile Bureaux scheme as operated within the Metropolitan Police District and accordingly I have no specific recommendations to make in this part of my evidence.

CHAPTER VII

Obtaining of Body Samples (including Fingerprints etc.) from suspects

Fingerprints etc.

7.1. Despite the very great value in many criminal investigations which the provision of body samples (including fingerprints etc.) can give to confirm or refute a suspect's involvement in a criminal offence there is no provision which entitles police to obtain such samples from a suspect without his consent.

7.2. So far as finger and palm prints are concerned the combined effect of Section 40, Magistrates Courts Act 1952 and Section 33, Criminal Justice Act 1967 is to enable a police officer not below the rank of inspector to make an application to a magistrates' court for an order to enable a constable using such reasonable force as may be necessary to take the finger and palm prints of a person not less than fourteen years old (a) who has been taken into custody charged with any offence or (b) who appears before a magistrates' court in answer to a summons for an offence punishable with imprisonment.

7.3. There are three difficulties which arise with regard to the existing provisions of those two combined sections:

(i) In the absence of a suspect's agreement there is no power to obtain his finger or palm prints even on application to a

Court until he has been charged or summoned. So that although for some offences an officer has a power to arrest on suspicion e.g. Section 2, Criminal Law Act 1967, he is prevented without the suspect's agreement from using this valuable scientific aid to confirm or refute his suspicion until a charge or summons has been preferred.

(ii) Section 40 Magistrates Courts Act 1952, by the use of the words "if it thinks fit" gives the Court a discretion whether or not to grant an order. Obviously any discretion given to a Court must be exercised judicially and not capriciously, yet the Act gives no guidance to the Court to indicate what matters it should take into account in order to exercise its discretion.

There are three reasons why an application is made by police under Section 40, namely:

(a) to confirm or refute evidence that a defendant is involved in the offence charged,

(b) to confirm or refute whether his fingerprints are identical with those relating to other crimes,

(c) to confirm whether or not he has a criminal record so that in the event of a conviction this information can be placed before the Court and not withheld by a defendant supplying false particulars. Bearing in mind the public interest that criminals should be brought to justice and the protection afforded to an acquitted defendant by the provisions of sub-section (4) of Section 40, I find it difficult to understand on what grounds it is proper for a Court to exercise its discretion to refuse to grant an order. The difficulties which can arise when a Court refuses an order are not restricted to the hindrance placed on an investigation. A defendant can be charged, for example, with a serious indictable offence, refuse to supply his fingerprints, and the Court can refuse to make an order under Section 40. If that defendant is granted bail and is subsequently convicted and given a suspended sentence, no record of that defendant's fingerprints will be available to the fingerprint department of that conviction so that it will never be possible to prove that conviction on a subsequent occasion even if there is a

breach of the suspended sentence, other than by visual identification. In such a case no reliance can be placed on the provisions of the Regulations for the Measuring and Photographing of Criminal Prisoners (S. R. & O 1896 No. 762, by virtue of Section 54(3) Prison Act 1952 effective as if made under Section 16 of that Act) because although those Regulations cover fingerprinting such a defendant has never been a prisoner.

(iii) Section 40 as amended relates only to finger and palm prints. Although the circumstances where the provision of toe or foot prints would be of use are not frequent the impressions made by toe and foot prints are equally as unique as finger and palm prints and there seems no reason for their exclusion.

7.4. Accordingly, in order to overcome these problems, I RECOMMEND the abolition of Section 40, Magistrates Courts Act 1952 and the substitution therefor of a provision authorising a police constable following the arrest of a person to take at a police station the finger, palm, toe and foot prints of the person arrested, if need be using

such reasonable force as is necessary, if the officer believes it to be necessary for any of the following purposes, namely:

(a) to confirm or refute evidence that the person arrested is involved in the offence for which he was arrested,

(b) to confirm or refute that the person arrested is responsible for other offences where finger, palm, toe or foot prints may reveal the identification of the perpetrator of such other offences,

(c) to enable the identification of the person arrested to be confirmed from any existing records held by police.

7.5. Finally, I RECOMMEND that if a person convicted of an offence for which a sentence of imprisonment, whether suspended or not, or disqualification is imposed has not had his fingerprints taken by police, a police constable shall be empowered to detain that person in order to take the fingerprints of that person at Court or at a police station if need be using such force as is necessary, as soon as practicable after the occasion that the sentence was imposed.

Photographs

7.6. It is the practice in this Force to photograph arrested persons immediately after they have been charged. This enables any photograph of a previously convicted person held in their criminal records office file to be

up-dated and provides a record which can be preserved with the criminal records office file of a previously unconvicted person if he is subsequently convicted as a result of his arrest. Moreover, it is not infrequent that a condition of bail imposed on an arrested person by a Court is the requirement to report to a police station, usually that nearest to his residence. In reporting to that station it is likely that he will be reporting to an officer who does not know him. If, however, a photograph has been taken of the arrested person after charging and forwarded to the station to which he is required by the Court to report it enables the officer there to confirm that it is the accused himself who is reporting and not someone else sent in his place.

7.7. If an arrested person consents to be photographed immediately after being charged no problem arises. If, however, he objects to being photographed and is granted bail, even if he is subsequently convicted and given a suspended sentence of imprisonment, no photograph or up to date photograph will be available on his criminal record office file. In such case no reliance can be placed on the provisions of the Regulations for the Measuring and Photographing of Criminal Prisoners (S. R. & O 1896 No. 762 referred to above) because he has not been a convicted criminal prisoner nor would he come within the limited exceptions covering untried criminal prisoners by those Regulations.

7.8. To overcome this difficulty I RECOMMEND that it should be enacted that a police constable should be empowered following the charging of a person to take or arrange to have taken at a police station photographs of that person if need be using such reasonable force as is necessary. Additionally, I RECOMMEND that if a person convicted of an offence for which a sentence of imprisonment, whether suspended or not, or disqualification is imposed has not for any reason had his photograph taken in accordance with that recommendation (e.g. because proceedings were instituted by way of summons rather than charge or because of the malfunctioning of the equipment) then a police constable shall be empowered to detain that person in order to take photographs of that person at Court or at a police station, if need be using such reasonable force as is necessary, as soon as practicable after the occasion that the sentence was imposed.

Body Samples

7.9. The continuing advances made in the scientific field with regard to comparison tests between body samples taken from suspects and those found on victims or at scenes of crime prove to be of immense assistance in the investigation of crime. This is particularly, but not exclusively, indicated by the advances made in the grouping of blood. The possession by a person of a particular blood group is permanent to that person for life.

7.10. In cases of violent crime such as murder, assault or rape, blood is commonly spilt. The blood from a victim may be transferred to the clothing of a suspect and if the suspect is also injured, his blood may be found on the victim or at the scene of the crime. Blood grouping provides a means of distinguishing between victims' and suspects' blood and whilst not giving an absolute identification, as in the case of fingerprints, it is of high value. This value can be expressed as a frequency of occurrence of the particular blood groups within a given population. Many blood groups are known at present. The most widely recognized of these is the ABO system. Historically it is interesting as it was the first one to be discovered, and together with the Rhesus system, it is of prime importance in blood transfusion work.

7.11. In the ABO system, every person, irrespective of race, is a member of one of the four sections within it i.e., they are A, B, AB or O. From many thousands of blood samples it has been found that the alternative groups occur with different frequencies. For example, in the British population -

Group O occurs in 47%
Group A occurs in 42%
Group B occurs in 8%
Group AB occurs in 3%

This is only one system. There are many other systems, independent and distinct from each other and from the ABO system, but, like the latter, made up of sub-

groups with corresponding frequencies of occurrence. At present, because of the difficulties arising with bloodstains as distinct from whole blood, it is possible to use only 20, at most, of these. Nonetheless, the discrimination which can be obtained between two blood samples is very great. This is because the distributions are multiplied together and multiplication of fractions rapidly produces very small fractions indeed.

7.12. Thus, for example, applying four systems to blood of Groups O, R_1r, PGM 2-1, Hp 2-2

System	Group	Occurrence % of population	Cumulative occurrence
ABO	O	47%	
Rhesus	R_1r	34%	34% of 47% = 16%
PGM	PGM 2-1	36%	36% of 16% = 5.8%
Hp	Hp 2-2	35%	35% of 5.8% = 2%

could have come only from 2% of the population.

If we extend this to the 11 most commonly used grouping systems and take from each of these the most frequently occurring group the result is:

System	% occurrence of most common group
ABO	47
Rh	34
PGM	39
EsD	81
EAP	43
Hp	48
GLO	50
AK	91
Gm (1, 2:5)	42
Km	82

Combining to give 0.147% of the population i.e. only 81,600 persons in the United Kingdom would have this particular combination of blood groups.

7.13. It can be seen from the table that it is possible to exclude more than 99% of the population from an enquiry. It also means that a better identification is possible in 99% of people. It is not uncommon to identify a bloodstain with a combination of groups occurring at less than 1 in a million of the population. However, most people would have group combinations which fall between the two extremes of 1 in 680 and 1 in many millions. The number of blood group systems used in any examination will depend on several factors. There may be insufficient material in a bloodstain for grouping in more than a few systems, some group systems have low frequency of variation

(e.g. 91% belonging to one group) and others are race linked and therefore only really applicable to non-Europeans. As can be seen from the frequency figures above this can provide, when identified in the laboratory, high quality evidence for the court. This evidence is factual and not subjective or open to misinterpretation in the same way as eye-witness evidence may be.

7.14. The advantage of this work in excluding at least 99% of the population as possible suspects if blood has been left at the scene of a crime has two effects:-

(1) It can reduce police investigation time by removing the need to check movements and alibis of possible suspects; and

(2) It can relieve innocent suspects from prolonged questioning and checking by police.

In addition to the serious assault offences these latter aspects can be of particular value in burglary cases where the suspect has cut himself at the scene. This is the position at the present. The identification of people by their blood groups will, in the future, inevitably improve as the science progresses.

7.15. The degree of identification of other body samples e.g. semen, saliva, hair etc. is not at present as good as that of blood. Work is being done in this field and it is hoped that the inevitable improvements

will come shortly particularly in the field of fluids associated with sex crimes (semen, saliva, vaginal secretion). In these cases mixtures of fluids are being typed and this provides many problems. Even so, recently an identification of a seminal stain with a frequency of 1 in 300 of the male population was possible. The additional information implicating a person of negro origin improved the figure to 1 in 600. In spite of not providing such good identification as blood grouping, the factual evidence produced by the laboratory on other body samples is often of immense value to a police investigation and can provide useful and at times vital evidence.

7.16. Unfortunately, the law has failed to keep up with these advances, so that there is no provision at all in the criminal law whereby such body samples can be taken from suspects unless the suspect himself gives his consent. The body samples I have in mind include blood, saliva, teeth impressions, hair, nail scrapings, anal and penile swabs. To a limited degree the civil law has given statutory recognition to the importance that blood samples can provide in paternity cases by sections 20-25, Family Law Reform Act 1969 which provide power to the Court to order blood tests in paternity cases but, again, no sample can be taken without consent of the person from whom it is sought to take it, although on a refusal to comply with the Court's order the "Court may draw such inferences if

any from that fact as appear proper in the circumstances". Similarly, the criminal law has given statutory recognition to the important evidence that blood and urine samples can provide in road traffic cases by Sections 7-12, Road Traffic Act 1972, giving power to police officers in certain circumstances to require drivers of motor vehicles to supply blood or urine samples but, again, no sample can be taken without consent of the person from whom it is sought although failure to provide a sample is itself an offence in the absence of "reasonable excuse". /The 'reasonable excuse cases' indicate that reasonable excuse for a failure to supply blood may not be a reasonable excuse to provide urine and vice versa and that a mental condition or physical injuries must be of an extreme character to constitute reasonable excuse/. Additionally, in cases of unfitness to drive under Section 5, Road Traffic Act 1972 refusal to supply a blood or urine specimen "may, unless reasonable cause therefor is shown, be treated as supporting any evidence given on behalf of the prosecution, or as rebutting any evidence given on behalf of the defence with respect to /the defendant's/condition at that time" (Section 7(1) Road Traffic Act 1972).

7.17. Accordingly, at present the police are, in their investigation of any criminal offence, however serious or however great the danger its possible repetition may be to the public, entirely in the hands

of the suspect insofar as the provision of body samples is concerned. The taking of such samples other than by a medical practitioner would in my view be fraught with difficulties not least because the taking of such samples by an unqualified person might cause injury. It is of interest to note that Scots law is more helpful in this respect, e.g. Hay v. H.M. Advocate (1969) Crim. L.R. 39 (warrant granted to obtain teeth impressions of suspect prior to arrest in a case of murder); H.M. Advocate v. Milford (1975) Crim. L.R.110 (warrant granted to obtain sample of blood from suspect in a rape case).

7.18. Accordingly, I RECOMMEND that statutory provision be made

(i) that a police officer may arrange for the examination of a person in custody by a medical practitioner if the officer has reasonable grounds for believing that such an examination might provide evidence of an offence,

(ii) that a police officer may arrange for a medical practitioner to take a body sample or samples from a person in custody for the purpose of analysis or other examination if the officer has reasonable grounds for believing that such an analysis or other examination might provide evidence of an offence,

(iii) that no such examination or obtaining of a body sample should take place unless either the person to be examined or from whom it is intended to take a body sample has consented or an order has been obtained from a magistrates' court or, in cases where a delay in obtaining a body sample occasioned by the need to make an application to a magistrates' court would result in the value of such sample being totally or partially reduced (e.g. penile and anal swabs), the written authority of a police officer not below the rank of Superintendent has been obtained,

(iv) the person whom it is desired to have examined or from whom a body sample is desired, shall be given an opportunity of appearing before the court at the time any application referred to at (iii) above is made in order to enable him to make such representations to the Court as he sees fit,

(v) where any application is made to the Court under (iii) above the Court may make such order for such compulsory examination or the taking of body specimens as the circumstances warrant but in particular shall consider

(a) the seriousness or otherwise of the alleged offence or offences,

(b) the likely usefulness of the examination or the taking of the body specimens,

(c) any representations made by the person to be examined or from whom body samples are sought to be obtained except in so far as those representations express or imply a fear that the examination of body samples taken might incriminate him in a criminal offence.

(vi) where a medical practitioner makes an examination of a person or obtains a body sample from a person following a Court order or the written authority of a police officer not below the rank of Superintendent neither civil nor criminal proceedings shall lie against such medical practitioner in respect of anything reasonably done by him for the purpose of such examination or to obtain such body sample and a police constable assisting such medical practitioner may use such force as may be necessary for that purpose.

7.19. To summarize my recommendations they are:

(1) The abolition of Section 40, Magistrates Courts Act 1952 and the substitution of a provision authorising a police constable to take at a police station the finger, palm, toe and foot prints of an arrested person in certain circumstances.

(2) Power for a police officer to detain a person for the purpose of taking his fingerprints who has not had his fingerprints taken previously and who has been convicted of an offence for which an immediate or suspended sentence of imprisonment or disqualification was imposed as soon as practicable after the occasion that the sentence was imposed.

(3) Power for a police officer to arrange for the examination of a person in custody by a medical practitioner if the officer has reasonable grounds for believing that such an examination might provide evidence of an offence if that person consents or an order has been obtained from a magistrates' court.

(4) A similar power as at (3) above for obtaining body samples by a medical practitioner from a person in custody but with an additional provision that in cases of urgency where delay might result in the total or partial reduction of the value of such sample, authority of a police officer not below the

rank of Superintendent can be given in lieu of an order from a magistrates' court.

(5) Power for a police officer following the charging of a person to have photographs of that person taken.

(6) Similar power as at (2) above but in relation to photographs.

CHAPTER VIII

Identification

8.1. The Royal Commission will know that following the full and detailed Report of Lord Devlin's Committee on Evidence of Identification in Criminal Cases published in April 1976 the Attorney General and the Director of Public Prosecutions reviewed the whole area of identification evidence and procedure and agreed upon five guidelines in cases in which it appeared likely that identification would be an issue. The statement to the House reads as follows: (Cols. 287-289 Hansard 27 May 1976).

"My right hon. Friend the Home Secretary has already announced to the House that he is studying the Report of Lord Devlin's Committee on Evidence of Identification in Criminal Cases, and he is now engaged in urgent consultations with those having an interest in identification evidence and procedures with a view to making proposals for changes.

"The Director of Public Prosecutions and his staff whose concern is the pre-trial and trial stages of cases conducted by them have always tried to ensure, so far as lies within their power, that best practice is followed and so to set a standard which should reduce to a minimum the danger of miscarriages of justice resulting from misidentification. The present and past Law Officers have given that policy their full support.

"When deciding whether to initiate or continue proceedings and, if so, upon what charges, the Director has no opportunity of hearing and seeing the potential witnesses, and can only consider the evidence as disclosed in their statements. In doing so, however, he applies two tests: first,

is that evidence sufficient, if accepted by the jury to justify a conviction; and secondly, does the public interest require a prosecution? It follows that if the evidence, as so disclosed, would justify strong suspicion but not conviction, the decision is against prosecution. The House will, of course, appreciate that on these criteria it may be right to have prosecuted even though, at the subsequent trial, the judge, having seen the witnesses and heard their evidence, decided, and very properly decided, that it would be unsafe to leave the case to the jury.

"In every case of which he has the conduct it is the Director's duty to follow the existing law and judicial guidance and not to anticipate future changes. Nonetheless, the Director and I have reviewed the whole area of identification evidence and procedure in order to establish whether, without prejudice to decisions as to changes in the law or practice, we can introduce in the handling of such cases, before and at the trial, still further safeguards against the danger of wrong conviction due to misidentification. We have now agreed upon the following guidelines in cases in which it appears likely that identification will be an issue.

"1. All cases of which the Director has the conduct will be given the personal consideration of the Director himself or his Deputy and will, if the Director considers it desirable, be reported to the Law Officers. Such cases will be kept under review in the light of any new developments.

"2. The procedure under Section 1 of the Criminal Justice Act 1967 (Committal, with the

consent of the defence, by magistrates without consideration of the evidence) will not be used. Instead, the witnesses as to identity will be called to give oral evidence, and it will, of course, be open to the accused himself, at the committal stage, to challenge that evidence and to give evidence of any alibi, and call witnesses to support it. Should, however, there have been no prior opportunity for the police to inquire into such an alibi, it might then be necessary for the Director to seek an adjournment of the committal proceedings for an investigation to be made. If the alibi were substantiated the proceedings could be brought to an end.

"3. The Director's representative at the committal proceedings, or Crown counsel at any subsequent trial, will not invite a witness as to identity, who has not previously identified the accused at an identification parade, to make a dock identification unless the witness's attendance at a parade was unnecessary or impracticable, or there are exceptional circumstances.

"4. Any failure to comply with the current Home Office guidance, or any which may replace it, as to the manner of holding identification parades, or of showing to potential witnesses photographs of a suspect, will continue to be regarded as an important factor in considering whether or not to institute or, as the case may be, continue proceedings.

"5. Where proceedings are instituted, the Director will, subject to the requirements of the public interest, continue his practice of making available to the defence any material

likely to assist the defence. In particular he will supply to the accused's solicitors on request the name and address of any witness, whether or not such witness has attended an identification parade, who is known to him as having stated that he saw, or as being likely to have seen, the criminal in the circumstances of the crime, together with a copy of any description of the criminal given by such a person.

"In cases not referred to the Director neither he nor I can ensure that these safeguards will be adopted. I very much hope, however, that, pending legislation or judicial guidance, they will be generally accepted and that the Director's advice will be sought in difficult or borderline cases. The Director and I are confident that magistrates and their clerks will fully co-operate in implementing the practice of calling oral evidence of identification at the committal stage.

"Finally, I hope that the House will accept that, pending legislation or judicial guidance, the guidelines which I have announced, if generally adopted, will make a substantial contribution to reducing the risk of wrong convictions."

8.2. So far as the Metropolitan Police are concerned those guidelines are complied with by Metropolitan Police General Orders, Section 25, paragraph 172(1), which require police officers to submit for legal advice and representation (which is then provided by the Director of Public Prosecutions or the Solicitor, Metropolitan Police) all cases where

the prosecution depends on the correctness of visual identification of the defendant which is likely to be disputed. A copy of the Attorney General's statement was at once sent by the Solicitor, Metropolitan Police, to all members of his Department with a direction that it was to be complied with. Subsequently a more detailed memorandum was sent by the Solicitor to members of his Department which read as follows:

> "We have now had the benefit of guidance offered by the Attorney General and, very recently, by the Court of Appeal (Criminal Division) about the steps which should be taken in all cases involving disputed evidence of visual identification in an effort to reduce, as far as possible, those few instances in the past where a miscarriage of justice has occurred in such cases.
>
> "Whenever a prosecution depends wholly or substantially on the correctness of visual identification of the defendant as the offender, and the defendant contends that that identification is mistaken because he was elsewhere, the following action should be taken in relation to witnesses in the case.
>
> "First, it should be ascertained whether each witness who so identifies the defendant provided to the police when first seen a description of the offender which was duly recorded but which has not been included in full in the written statement taken from the witness, and, if so, whether there is any material discrepancy between the first description and the appearance of the defendant.

"Second, the officer in the case should be requested to provide a copy of any first description so given to the police by an identifying witness (even though this may have been repeated in the statement of the witness) and if there is such a material discrepancy in the first description, and that description is not included in full in the statement of the witness, particulars of the first description must be provided to the defence, irrespective of whether they ask for such information.

"Furthermore, the officer should be asked to supply to the Department copies of recorded descriptions provided by any eye-witnesses in the case who have <u>not</u> identified the defendant as the offender, and also copies of any recorded descriptions provided by persons from whom, for some reason, statements were not taken by the police. The latter instances should be rare!

"<u>All</u> such descriptions, together with details of the persons who have provided them, must be supplied to the defence if a request is made by them for that information.

"If it should become apparent that an eye-witness who is called by the prosecution but who does not identify the defendant as the offender has provided a first description which conflicts with the appearance of the defendant or the testimony of identifying witnesses, but which has not been included in his witness statement, a copy of such first description should be supplied to the defence without waiting for them to make a request for such information. Similar action should be taken in relation to any such conflicting description given by any person who has not, in fact, made a witness statement.

"Whenever particulars of persons who have made statements to the police but are not being called as witnesses for the prosecution are given to the defence, and those persons could be regarded as eye-witnesses, there should also be supplied to the defence copies of the statements made by those persons. Any doubt about whether this action is appropriate in relation to a particular witness should be resolved by providing the statement. At the same time, copies of any first descriptions provided by those persons should also be supplied, unless this has been done in compliance with an earlier request from the defence.

"In all cases where it is known that the defendant is contending that he was elsewhere at the time of the offence it is essential that steps be taken to ensure that all those eye-witnesses who consider that they are still able to identify the offender are given an opportunity to do so on an identification parade held prior to the hearing in the magistrates' court, if this is at all possible.

"As a result of the guidance offered by the Attorney General, in all such disputed cases which are to go for trial the Section 1 committal procedure will not be used, and eye-witnesses who have identified the defendant will be called to give evidence in the magistrates' court. Nevertheless, the statements of all the witnesses upon whom the prosecution relies in proof of its case - identifying witnesses and all others - will be served on the defence prior to the hearing.

"In cases where the defendant has confessed to the crime the police may well

have decided against asking eye-witnesses to see if they can pick out the defendant on a parade, and it may be that there will be no indication from the defence that the case is to be contested. Such cases which are to go for trial can be committed under the Section 1 procedure. If an alibi notice is served thereafter, consideration will then be given to the necessity for approaching the defence about an identification parade.

"In that type of case, it would be preferable that witnesses who can identify the offender should have the opportunity to do so at the earliest moment, despite the fact that the prosecution relies on evidence that the defendant has confessed to the crime. However, the holding of identification parades in all such cases would be a burden on the police which is difficult to justify. Nevertheless, there are some cases where that course could be justified.

"Cases will arise in which the evidence of identifying witnesses is supported by, say, evidence of the possession of property stolen, things used in the crime, or admissions made. In these cases, too, copies of first descriptions should be obtained and the defence should be furnished with information about any discrepancies therein which are not otherwise apparent. They should also be provided, at their request, with all descriptions which have been given. Similarly, copies of the statements of eye-witnesses not called should be provided to the defence.

"The foregoing observations apply in the main to cases committed for trial. However, many are applicable to summary matters. In

those cases, too, descriptions should be furnished to the defence when they request such information, but known material discrepancies should be supplied to the defence without waiting for any such request.

"Summarizing the matters requiring disclosure:-

(1) The police should be asked to provide copies of <u>all</u> recorded first descriptions. If any of the descriptions was given by an identifying witness and it contains a material discrepancy on comparison with the appearance of the defendant, that description must be provided to the defence as a matter of course, unless the discrepancy is revealed in the statement of the identifying witness.

(2) When first descriptions have been given by persons who are called for the prosecution but who do <u>not</u> identify the defendant as the offender, and those descriptions conflict with the appearance of the defendant or the testimony of identifying witnesses, the descriptions must be supplied to the defence if the discrepancy is not revealed in the statement of the witness who gave the description.
Such disclosure should be made in the rare case of a conflicting description which has been given by a person who has not made a witness statement.

(3) <u>All</u> such first descriptions, together with details of those who provided them, must be supplied to the defence on request.

(4) Whenever details of persons who are not being called as witnesses for the prosecution are given to the defence, there should also be provided a copy of the statement made by any such person who could be described as an eye-witness. Copies of any first descriptions provided by those persons should also be supplied.

"Most of the matters discussed above are, of course, covered already by the practice which is followed in the Department in cases involving disputed visual identification. It is hoped that in future witnesses will include in their statements their first description of the offender and so describe it.

R.E.T.B.
14.7.76."

8.3. Since the Devlin Report, the judicial guidance referred to by the Attorney General followed in the case of R. v. Turnbull and Others (1976) 3 All E.R. 549 and later decisions, some of which were usefully collated in an article appearing in the 1977 Criminal Law Review at page 509, "Identifying Turnbull". I am aware that at the time this evidence is being prepared it is intended with the approval of the Lord Chief Justice to issue revised guidance on identification parades and the use of photographs.

8.4. Whenever there is public anxiety on a particular problem there is a tendency to seek its cure by legislation. Sometimes that legislation is effective in rectifying some particular aspect of the problem but it proves in practice too rigid when the other less apparent facets are considered. It is for this reason that I oppose any rigid statutory enactment on identification evidence which would, I fear, place an unnecessary fetter on the administration of justice.

What matters so much in identification cases is, as was indicated in R. v. Turnbull, the quality of evidence.

8.5. There are two matters which would facilitate the holding of identification parades. These concern the attendance of volunteers to stand on a parade and the attendance at parades of witnesses.

8.6. It is becoming increasingly difficult for police to persuade volunteers to attend identification parades and this difficulty is reinforced when a suspect is of unusual appearance. Moreover, it will be appreciated that if there are a number of suspects and a number of witnesses, the number of volunteers required can be considerable. Police officers might find their task of persuading volunteers to attend easier if payment could be made to volunteers to cover their time spent in attending a parade and an additional payment made to cover any travelling expenses. This recommendation was made to the Devlin Committee and received its support (paragraph 5.52 of the Devlin Report). I SO RECOMMEND.

8.7. It is because of this difficulty in persuading volunteers to attend parades that I would oppose the photographing of parades because I have no doubt that many otherwise willing volunteers would decline to stand if they were told that it was necessary for them to be photographed.

8.8. So far as witnesses are concerned I RECOMMEND that provision should be made to cover the payment to

them of travelling expenses but I would not recommend any other payment to cover their actual attendance at a parade.

8.9. It would be helpful if provision could be made, and I SO RECOMMEND, that it would be possible to obtain from a justice of the peace an order to compel a witness unwilling to do so to attend a parade in the same way that a court can issue a witness summons or warrant to a witness to attend court. As in the case of obtaining the attendance of a reluctant witness at court it would probably be only rarely that a summons or warrant would have to be applied for once a witness knew that the power existed.

Conclusion

8.10. I am of the opinion that the guidelines set out by the Attorney General followed by the guidance given by the Court of Appeal in R. v. Turnbull and subsequent cases now provide a sensible and realistic approach to avoiding as far as humanly possible the dangers of miscarriages of justice occurring in cases involving visual identification which could not be bettered and would probably be unhelpfully restricted if dealt with by statutory enactment. I do, however, recommend the payment to volunteers and witnesses attending parades as set out above and that there should be a power to obtain, if necessary, attendance of witnesses at a parade.

CHAPTER IX

The means by which the rights of suspects are guaranteed and made effective

9.1. However clearly the rights of suspects are defined it would in my view be impossible to devise any scheme which would be a guarantee that such rights would never be breached by police officers whether intentionally or unintentionally. But those rights can be and are made effective by various means which as I see it are five in number, namely:

(1) The Judges Rules.

(2) Civil proceedings against police officers.

(3) Criminal proceedings against police officers.

(4) Disciplinary proceedings against police officers.

(5) Applications for writs of habeas corpus.

Judges Rules and Administrative Directions

9.2. The present purpose of the Judges Rules is to lay down guidance for police officers and other professional investigators to ensure as far as possible that any statement made by a suspect is a voluntary statement and that proper facilities are afforded to suspects while in police or similar custody.

9.3. In that part of my evidence concerning the questioning of suspects I recommend that a suspect shall not as at present be entitled to shelter behind

a shield of silence in the sense that although a suspect should still be entitled to remain silent a court of trial should be entitled to draw what inferences it sees fit from such silence. As I indicated, if my recommendation in that respect were to be adopted it would not be sufficient to vary the Judges Rules since the right of silence in the Judges Rules "merely serves to remind the accused of a right he possesses at common law" (Hall v. R. (1970) 55 Cr. App. R. 108). It follows that it would be necessary to replace the Judges Rules by statutory provisions. Those provisions could conveniently serve the present purpose of the Judges Rules, with any necessary amendments, namely to set out the general guidelines for the admissibility in evidence of a verbal or written statement made by a suspect and the rights and facilities available to suspects while in police or similar custody.

9.4. I have suggested in that part of my evidence dealing with the questioning of suspects that the rights and facilities available to an arrested person as well as his obligations, should be set out in a printed notice to be handed to the arrested person rather than at present having that information given to him orally and having his attention drawn to a notice on display. It is, of course, important that every arrested person is fully accorded the rights and facilities available to him. But occasions will

undoubtedly arise when through inadvertence or misunderstanding of circumstances this will not occur. For example, the proviso to the existing Rule 7(a) of the Administrative Directions on Interrogation and the Taking of Statements referring to hindrance to the processes of investigation or the administration of justice, requires in practice a judgment or assessment of the situation to be made by an officer. An officer may in all good faith make a judgment subsequently found by a court to be ill-founded. However, a deliberate breach of the Judges Rules by an officer may result in disciplinary proceedings.

Civil proceedings

9.5. The rights of a suspect are further made effective by the fact that every police officer is liable to have civil proceedings taken against him in the High Court or the County Court by any person who alleges that the officer unlawfully trespassed on his property, searched him, seized his goods, arrested him, assaulted him or maliciously prosecuted him. The officer's chief constable is, by virtue of Section 48, Police Act 1964, jointly liable for such torts committed by constables under his control and direction in the performance or purported performance of their duty. It is important to appreciate that save in the case of malicious prosecution (which by its very definition ill-will by the officer must be proved) the remaining civil remedies are available even if the officer was acting in

good faith and however reasonably under the mistaken impression that he had authority to do the act alleged. Furthermore, all that the plaintiff has to prove, for example, in an action for wrongful arrest is that the arrest was made, the onus is then on the defendant officer to prove a reasonable and proper cause for that arrest. Albeit that many such civil proceedings are brought without justification, the fact that such a remedy is available is in my view a valuable protection of the liberty of the subject. The total number of such civil actions commenced against Metropolitan Police officers in 1977 was 73.

9.6. It is of interest to note that in Scotland the remedy of civil proceedings against police is little used (see paragraph 3.32 Criminal Procedure in Scotland (Second Report) Cmnd. 6218 published in 1975). Various reasons have been suggested for this but the main one is undoubtedly that under Scots law it is not sufficient (as in England) to show that an arrest was unlawful but additionally it must be shown that the officer was actuated by a malicious motive. Moreover, in Scotland an individual would normally not be liable for malicious prosecution because the Lord Advocate or Procurator Fiscal exercises an independent discretion whether or not to prosecute. In England a prosecution can give rise to proceedings for malicious prosecution even if initiated by the Director of Public Prosecutions.

Criminal Proceedings

9.7. It is open to any suspect or arrested person to apply to a magistrate for a summons against a police officer and if granted to prosecute the officer in criminal proceedings. There is certainly no reluctance on the part of magistrates in the Metropolitan Police area to grant such summonses, the basis of which usually is an allegation of the use of excessive force in making an arrest, or if it is alleged that the arrest itself was unlawful, then the basis would be a technical assault arising from the alleged unlawful arrest. There are on average about fifty such cases arising every year. Ten or fifteen years ago such applications for summonses were very rare. It would, I feel, be unjustified to draw any adverse conclusion against police with regard to such increase. Such summonses are granted on the word of the complainant and when subsequently the facts are examined even on the complainant's version the allegations often are found to be without justification. Many accused persons endeavour to use the fact of the issue of the summons as a tactic in their own defence to bolster an allegation against an officer. This is evident from the fact that many such summonses taken out against police officers are not eventually proceeded with.

Disciplinary proceedings against police officers

9.8. The duties of police officers with regard to suspects, whether arrested or not, and the provisions of the Judges Rules are set out in detail in the

Metropolitan Police General Orders. It is an offence under the Discipline Code contained in The Police (Discipline) Regulations 1977 for an officer (inter alia) without good and sufficient cause to disobey or omit or neglect to carry out any lawful order, written or otherwise, to neglect or omit to attend to or carry out with due promptitude and diligence anything which it is his duty as a member of a police force to attend to or carry out, to knowingly or through neglect make any false, misleading or inaccurate oral or written statement or entry in any record or document made, kept or required for police purposes or without good and sufficient cause to make an arrest or to use any unnecessary violence towards any prisoner or other person with whom he may be brought into contact in the execution of his duty. Although there are separate Regulations covering senior and junior officers that Discipline Code applies to all officers. If charges under the Code are found to be proved the penalty imposed can extend to dismissal from the Force.

Application for writ of habeas corpus

9.9. In relation to the rights of suspects the application for a writ of habeas corpus is a valuable remedy to a suspect who alleges that he is being unlawfully detained by police. As I remarked when dealing with the topic of detention, it is by no

means a remedy that has fallen into disuse but a real and available remedy. In 1977 there were 55 applications to the Divisional Court for writs of habeas corpus, although these figures relate to applications throughout England and Wales and include applications unconnected with alleged unlawful detention by police.

Conclusion

9.10. It follows therefore that with the possibility of civil, criminal and disciplinary proceedings being invoked against him every police officer has every encouragement in his own best interests to ensure that he affords to suspects every right and facility to which they are entitled. Additionally, the new and detailed statutory provisions for dealing with complaints against police which became effective from 1st June 1977 not only ensure a thorough investigation of such complaints by police themselves but superimpose the completely independent review of such complaints by the Police Complaints Board.

CHAPTER X

Bail

10.1. As with so many of the matters with which the Royal Commission is concerned the question of bail is one in which there is no easy solution which can satisfactorily balance the right of the arrested suspect with the interests of the law-abiding community.

10.2. I am not concerned with the petty criminal who fails to answer to his bail. Such a person imposes additional and unnecessary work on police in tracing him and bringing him before the Court, but the offence which he now commits under the provisions of Section 6, Bail Act 1976, provides a reasonable sanction. The Act has only been operative from 17th April 1978 and it remains to be seen how effective that sanction is in practice. If Courts imposing a sentence of imprisonment for an offence deal at the same time with an offence under Section 6 of the Bail Act 1976 by way of a concurrent sentence such a penalty may prove an inadequate deterrent and consideration would then have to be given to a recommendation that any such sentences should be made consecutive.

10.3. But what I am particularly concerned about are those professional criminals who are accused of serious offences frequently involving violence whose release on bail enables them to continue their criminal

activities and, indeed, encourages them to engage in further crime to make financial provision for the future of themselves and their families. For example, of the 230 people arrested for major crimes by the Robbery Squad between January 1976 and September 1977, 52 (22.6%) of those were persons already on bail. Had bail been refused many of those serious crimes, including some where firearms were used, would not have occurred. The Royal Commission may wish to refer to the figures on bail absconders which I set out in Appendix 29 to my Annual Report to the Home Secretary for the year 1977. But I emphasise that both those figures and those quoted above are in respect of periods prior to the coming into operation of the Bail Act 1976 on 17th April, 1978.

10.4. Insufficient time has elapsed since the commencement of the Bail Act 1976 satisfactorily to assess the effect of the Act with regard to the professional criminal but since the provisions of the Act make an application to oppose bail so much more difficult to sustain I fear that the problem will be exacerbated.

10.5. Police and the public will no doubt continue to criticise decisions made by Courts in certain cases to release accused persons on bail. To some extent I sympathise with Courts who have to apply the test laid down in paragraph 2 of Part I

of Schedule 1 of the Act namely whether or not there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would (a) fail to surrender to custody, or (b) commit an offence while on bail, or (c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person. That paragraph refers to those accused of imprisonable offences. Strangely enough, paragraph 2 of Part II of that same Schedule which relates to those accused of non-imprisonable offences avoids the use of the word "substantial".

10.6. It may be that by the time the Royal Commission comes to consider in detail the question of bail the Bail Act 1976 will have been in operation for sufficient time for its effect to be ascertained. I do not intend to deal here with the serious delays to the work in magistrates' courts which the requirements of Section 5 of the Bail Act 1976 are causing with regard to the completion of the prescribed records as to decisions to grant or withhold bail. This problem will no doubt be brought to the attention of the Royal Commission from other sources and hopefully will be alleviated as a matter of urgency in the near future.

10.7. To summarise, I consider that it is too early to evaluate the effects of the Bail Act 1976 although I think it likely that the unsatisfactory

position which existed prior to the coming into operation of the Act with regard to the professional criminal will be exacerbated. I have no specific recommendations at this stage beyond the need to review the situation in the fairly near future.

END