APPENDIX II (*i*)

LPM. 13/66

LORD PRESIDENT'S CHAMBERS,
THE LAW COURTS,
KUALA LUMPUR

12th October, 1966

Setia-usaha,

SPECIAL SELECT COMMITTEE OF THE DEWAN RA'AYAT ON THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL, 1966

With reference to your letter No. Par. 47/66 dated 9th September, 1966, I regret to say I am unable to get the views of all the Judges in Malaya as the notice given was too short to enable me to contact all of them. However I manage to get the views of some of the Judges here.

We are all agreed that the holding of preliminary enquiries is a waste of time and should be abolished. Invariably witnesses who are generally kampong folks and illiterate are unable to remember at the High Court trial the statements made by them at the preliminary enquiries after a lapse of a long period and consequently are made liable to criminal prosecution for perjury. The doing away with preliminary enquiries will also enable Magistrates to devote more time to the hearing of ordinary cases.

We are also agreed that the jury system in Penang and Malacca should be abolished, except for offences punishable with death, to be in uniformity with the system in the other States in Malaya. We understand that the Bar Council is objecting on the ground that it would be a retrograde step that the present system in Penang and Malacca should be modified and brought in line with the other States in Malaya but rather there should be trial by jury for all offences in the High Courts in all the States in Malaya as now exists in Penang and Malacca. This argument would have some force if during the years since 1957 the Council had advocated amendment of the Criminal Procedure Code of the Federated Malay States to bring it in line with the States of Penang and Malacca. Singapore has already amended its Criminal Procedure Code to provide that there should be trial by jury only in capital cases. There was no hue and cry over the Singapore amendment and it has been found to work well. It is a little strange that when section 3 of the Act No. 41 of 1961 was enacted to provide that kidnappers shall be tried with the aid of assessors and not juries and applied that mode of trial to Penang and Malacca there was no significant protest. Neither is it objected that offences of criminal breach of trust under section 409 of the Penal Code which is punishable with life imprisonment, is triable in the Sessions Court without the preliminary enquiry and without either jury or assessors. Our view is that the reservation of trial by jury to capital offences is reasonable and will work well. According to the view of the Honourable the Judge in Penang the type of cases before the High Court at Penang, in the main, could well have been dealt with without the aid of jury without any prejudice to the accused or any impairment to the administration of justice in th'

country. There is always the right of appeal by the accused to the Federal Court if he is dissatisfied with the decision of the High Court Judge. And, according to another Judge, he believes that jury trials have been abolished in many parts of India.

The above, briefly, are our views on the proposed amendment and we are confident that the new system will progress satisfactorily throughout Malaya.

Yang benar,

(Sd.) TAN SRI SYED SHEH BARAKBAH

Setia-usaha,
Dewan Ra'ayat,
Bangunan Parlimen,
Kuala Lumpur

(ii)

A MEMORANDUM BY THE BAR COUNCIL OF MALAYA ON THE BILL TO AMEND THE CRIMINAL PROCEDURE CODE

The Bar Council of Malaya submits its following views on the above Bill:

Clause 6

The proviso to Section 112 should be amended by inserting the words "to make a statement which would have a tendency to expose him to a criminal charge or penalty or forfeiture" after the word "refuse".

There should be a further provision requiring a police officer to inform the person who is being examined of his rights under the proviso.

Clauses 9 and 28

The Bar Council is of the view that preliminary enquiries should not be abolished.

The criminal jurisdiction of Magistrates and Presidents of Sessions Court have been so enlarged in the last few years that only the very serious crimes are now being tried in the High Court. And it is only in these serious crimes which should be heard by the High Court that preliminary enquiries are now being held.

Preliminary enquiries are an integral part of our legal system which is designed to afford the individual every opportunity to defend his freedom.

Preliminary enquiries exist in England and many other countries including America, sometimes under different names.

A preliminary enquiry not only affords a person, accused of a serious crime, an opportunity to know what actually he is alleged to have done and the nature of the evidence against him and to acquaint himself with the facts and circumstances but also ties down the witnesses to their respective stories.

What the proposed amendment seeks to do is to take away "a detailed statement from each prosecution witness carefully recorded in open Court by a Magistrate in the presence of the accused and subject to his cross-examination" and to give instead "a short summary of the witness's evidence which would be prepared either by a police officer or somebody in the public prosecutor's department". Such a summary could not only be very brief but would also be in the third person in the words of the person preparing the summary and not in the words of the witness himself. A summary of the evidence would be of very little use to the accused. The accused would certainly not be in a position to use it for the purpose of impeaching the credit of the witness. The proposed substance or summary could by no means be an adequate substitute to a preliminary enquiry.

It may be that a preliminary enquiry does involve a certain amount of delay in the sense that time is taken to record the evidence and in typing it. But considering the vital safeguards that it affords the accused person such time is well spent and could by no means be regarded as a waste.

Besides that the delay in the Courts does not relate to only preliminary enquiries but to all cases both civil and criminal. And the answer to the delay is not the abolition of preliminary enquiries but more courts, more staff, more Magistrates, more Judges.

If preliminary enquiries are to be abolished then the most appropriate substitute for the adequate safeguarding of the interest of the accused is that he be supplied with a certified copy of the statement made by each witness for the prosecution to the police.

The Bar Council therefore suggests that the preliminary enquiries be retained.

If the preliminary enquiries are to be abolished then the Bar Council suggests:

(i) that the accused be supplied at least one week before committal with a certified copy of the full statement recorded by the police from each witness;

(ii) that if after the committal of the accused the prosecution decides to call any additional witnesses certified copies of their statements to the police should be supplied to the accused at least one month before the trial;

(iii) that provision should be made to enable the accused to have the benefit of council's advice before he is called upon to make any statement prior to committal;

(iv) that the accused should be given a copy of the charge free of charge before committal.

Clause 30

The Bar Council is not in favour of the amendment of S. 189 of the Settlement Code whereby trial by jury shall be restricted to only cases punishable with death. This would be a retrograde step. It is most desirable that all serious offences be tried by a jury. The jury system, through its use of ordinary citizens rather than professional officials, has been one of the great protective devices for individual liberties and democratic systems of Government. Repeatedly in the past juries have checked the misuse of administrative powers by returning verdicts in accord with public opinion. rather than with the letter of existng laws. The Bar Council suggests that the States Code be amended to extend trial by jury to all cases that are now being tried by jury in the Settlements.

Clause 33

No payment of any fees should be required for the notes of evidence.

Clause 36

The proposed Section 337 should be amended to refer to inquiries into deaths and not to trials.

(iii)

Our Ref: KLD/SR/G/66.

MR K. L. DEVASER,
K. L. DEVASER & CO.,
ADVOCATES & SOLICITORS,
ROOM 203, SECOND FLOOR,
ASIA INSURANCE BUILDING,
KLYNE STREET,
KUALA LUMPUR,
MALAYSIA.

27th July, 1966.

The Clerk of Council,
Parliament,
Parliament Building,
Lake Gardens,
Kuala Lumpur.

Dear Sir,

Re: CRIMINAL PROCEDURE CODE (AMENDMENT) BILL

I wish to submit the following few points in respect of the proposed amendments to the Criminal Procedure Code:

Amendment to section 112

The present section 112 is as follows:

(i) A police officer making a police investigation under this Chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined.

(ii) Such person shall be bound to answer truly all questions relating to such case put to him by such officer:

Provided that such person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

The amendment proposes to delete the word "truly" from sub-section (ii) and to add a new sub-section (iii) as follows:

"A person making a statement under this section shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to questions".

This new sub-section does not have the safeguard provided under sub-section (ii) and specifically provides "shall be legally bound to tell the truth".

The legal effect is that a person must tell the truth whether the answer will incriminate him or not. Secondly he may be prosecuted for false evidence. In this connection I may refer to the report of the Select Committee in India when they were considering amending section 161 of the Indian Criminal Procedure Code (section 161 is almost identical with our section 112). They stated as follows:

"It seems to us unfair that a man should be liable to be convicted of giving false evidence on the strength or by the aid of a statement supposed to have been given to a police officer, but which is not given on oath, which he has not signed and which he has had no opportunity of verifying. Such statements may be hurriedly taken down as rough notes; the police officer is not trained in taking evidence and the notes are often faired out by another officer. They bear no resemblance to a

deposition and ought to have no weight as such attached to them. We are aware that there are inconveniences in abolishing the direct liability for giving false evidence to the police, but the balance of expediency seems to us to be in favour of the old law."

In the modern advanced countries no attempt is being made to take away rights granted by law to the accused although every effort is made to train police officers to investigate so well as to obtain the necessary evidence from various sources against an accused person.

In England no statement made to a police officer is admitted unless it is proved that the accused person was duly cautioned. In the United States of America no statement made to the police is admitted unless the accused is advised that he is entitled to seek legal advice before making any statement.

A few days ago Mr Griswald, the Dean of the Harvard Law School gave a lecture in Kuala Lumpur and explained the rights of the accused in the United States of America to seek legal advice before making a statement to the police. The Honourable Mr Justice H. T. Ong stated in the question time at the same lecture that no accused person will admit his guilt if he is advised by his lawyer before making a statement to the police. The Dean replied that it is the duty of the State to train its officers in the art of investigation and not harass an accused when he is in custody.

Clause 9 of the Bill proposes to repeal Chapter XVII of the States Code and Clause 28 of the Bill proposes to repeal Chapter XVII of the Settlements Code and substitute therefore new provisions.

New Clause 143 provides *Not less than fourteen days* for the Public Prosecutor to supply statement to the accused person before the trial.

I suggest that this time should be extended to "not less than one month" as the accused may be in prison and it will be difficult for him to engage a lawyer and instruct him well for defence within *14* days.

Same should apply to Clause *153*. The new Clause 143 and 153 provide:

"That the Public Prosecutor should furnish to the accused person a copy of a statement of each witness when it is proposed to call at the trial setting out the *substance of the evidence such witness will give.*"

In my view the accused person should be supplied with a full statement of a witness and not merely the *substance* of the statement because the Public Prosecutor may well take away the essential features from the statement which may well be useful to the accused. At present in the preliminary enquiry, statement as made by a witness before a Magistrate is fully recorded and provided to the accused long before the hearing. The Representatives of the Bar Council urged this matter very forcefully in the Committee under the Chairmanship of the Attorney-General referred to in the Explanatory Statement of the Bill. I think this is a very essential safeguard to the accused. Under the guise of saving time the Government is taking away a very great protection given to the accused under the present law. After all there are numerous police officers and a full statement should be available to the accused person unless the Public Prosecutor can say that any part of the statement should be withheld in the public interest. He can do so by stating his reason for it.

If required I am prepared to give evidence before the Select Committee on this matter.

Yours faithfully,

(Sd.) K. L. DEVASER

K. L. DEVASER,
ROOM 203, SECOND FLOOR,
ASIA INSURANCE BUILDING,
KLYNE STREET,
KUALA LUMPUR.

8th September, 1966.

The Clerk of Council,
Parliament,
Parliament Building,
Lake Gardens,
Kuala Lumpur.

Dear Sir,

Re: CRIMINAL PROCEDURE CODE (AMENDMENT) BILL

Further to my letter dated the 27th July, 1966, I wish to add the following:

The amendment to the Criminal Law is as important as an amendment to the constitution of a country.

Mr P. T. Giles in his Criminal Law page 12 states "It has been said that freedom is not so much a matter for the formulation of soncrous abstractions as of protecting the rights of each single person in the state. The test of freedom lies in the rights of the individual and in the readiness of the law—particularly the criminal law—to uphold them".

Mr M. C. Setalvad the former Attorney-General of India in his "The Common Law in India" on page 167 states "The Indian Bill of Rights guarantees to the individual his freedom. The Indian Criminal Law helps him to enjoy it and uphold it."

As the amendment proposes to do away with preliminary enquiries, it will be relevant to note the purpose of preliminary enquiries.

The Explanatory Statement refers to the preliminary enquiries as a cumbersome and time wasting system. Ironic as it may seem the preliminary enquiries were introduced in India with a view to save the time of the Sessions Courts to which the Magistrates committed an accused person after holding a preliminary enquiry.

In 1954 All India Reporter (Madhya Bharat) Balwant Singh *vs.* Baldev Singh held "The object of preliminary enquiry is to save the accused from the prolonged anxiety of undergoing a trial for offences that cannot be brought home to him and to save the time of the court of sessions from being wasted over cases in which the evidence would obviously not justify a conviction.

In—"Lachman *vs.* Juala", 5 All 161 (A) Mohmood J. observed as follows:

> "The object of the law in providing that the inquiry shall be held by the Magistrate before the accused has to undergo a trial in the Court of Session, seems to be to prevent the commitment of cases in which there is no reasonable ground for conviction. This provision of the law is calculated, on the one hand, to save the subjects from prolonged anxiety of undergoing trials for offences not brought home to them; and, on the other hand, to save the time of the Court of Sessions from being wasted over cases in which the charge is obviously not supported by such evidence as would justify a conviction."

In "Jashanmal *vs.* Emperor", AIR 1939 Sing 222 (B), Davis J. held as follows:

> "The purposes of committal proceedings is not merely to place on record the case for the prosecution, but to commit to the court of sessions for trial an offence which, after having heard the evidence for the prosecution and for the defence, the magistrate thinks has been committed."

The principle behind a preliminary enquiry is more or less twofold. On the one hand, the object is that the accused may have ample notice of the matter for which he is going to be prosecuted and of the main evidence by which the prosecution would seek to prove his case so that he may be fully enabled to prepare his defence and to meet the case of the prosecution. The other object which is not far less important is that the High Court, where the cases has to be committed may not be unnecessarily burdened with the task of conducting trials into serious offences where there may be really no reasonable grounds for the conviction of the accused for such offences and in such cases it is the duty of the Magistrate to discharge the accused after recording his reasons or where he comes to the conclusion that such person should be tried before himself or some other Magistrate for a lesser offence, he is required to take the necessary action accordingly.

The proposed section 150 provides that the Magistrate shall forthwith commit the accused for trial.

The amendment gives no discretion to the Magistrate to commit or not to commit and regards the Magistrate merely as a machine to commit on the case provided by the Government.

Whereas the law regarding the powers of a committal Court is well settled, and may be summed up in the following five propositions:

(1) The Magistrate conducting the enquiry is not a machine or a mere post office to see whether there is any evidence against the accused or any of them. He is not bound to commit all those against whom any prosecution witnesses speaks regarding the offence, whether he is believed or not. He has to satisfy himself that there are sufficient grounds for committing the accused for trial by the High Court, and it is his right and duty to weigh the evidence from that point of view.

(2) He can, for that purpose, look not only into the depositions of prosecution witnesses but also into the depositions of the defence witnesses examined on behalf of the accused.

(3) Section 209 of the Criminal Procedure Code (India) does not bar a Magistrate from using his own knowledge and experience of men and affairs in judging and in weighing the evidence before him.

(4) But he judges and weighs the evidence for purpose of deciding whether the evidence is such as a Judge or jury could reasonably be asked to make it the basis of a conviction. If he comes to the conclusions that it is, it is his clear duty to commit. But if, he comes to the conclusion that the evidence before him is such that no Judge or jury can possibly believe it, he has got the power, and indeed, it is his duty, to discharge the accused. If he finds that the evidence against the accused is totally unworthy, and that there are facts on the records which show that no offence in fact was committed, or that one of the offences charged was not committed, or that any one of the accused is clearly shown to have not taken any part in the offence, he must discharge the accused covered by those conclusions. Of course, if his conclusions are manifestly wrong, and not merely one of two possible views, his order can be set aside in revision.

(5) But if, upon any reasonable view of the evidence, a conviction is possible, the case must be committed, and a Magistrate, is not empowered to give the benefit of the doubt to an accused person in committal proceedings.

In my submission the draftsman of the amending Bill did not consider the importance of the preliminary enquiries. The sections dealing with the preliminary enquiries in India were amended in 1955 but no body suggested that the preliminary enquiries were a cumbersome and time wasting system.

I do not suggest that we follow India in all matters but I am unable to understand why our country with a high standard of living cannot afford to engage sufficient number of Magistrates so that the system of preliminary enquiries found to be of value for nearly a century may be continued or at least the alternative suggested may be of such a nature that the protection guaranteed by preliminary enquiries may be preserved.

In England depositions before magistrates, to be given in evidence, must be taken in conformity with the Magistrates' Courts Act, 1952, and the Magistrates' Courts Rules, 1952, *and in the presence of the prisoner*, so that he may have an opportunity of cross-examining the witness. The depositions must also be taken in the presence of the magistrate. If a magistrates' court inquiring into an offence as examining justices is of opinion, on consideration of the evidence and of any statement of the accused, that there is sufficient evidence to put the accused upon trial by jury for any indictable offence, the Court shall commit him for trial; and, if it is not of that opinion, it shall, if he is in custody for no other cause than the offence under inquiry, discharge him.

Yours faithfully,

K. L. DEVASER

K. L. DEVASER,
ROOM 203, SECOND FLOOR,
ASIA INSURANCE BUILDING,
KLYNE STREET, KUALA LUMPUR,

17th September, 1966

The Clerk of Council,
Parliament,
Parliament Building,
Lake Gardens,
Kuala Lumpur

Dear Sir,

Re: CRIMINAL PROCEDURE CODE (AMENDMENT) BILL

With further reference to my letters dated 27-7-66 and 8-9-66, I shall be grateful if you will bring the following to the notice of the Honourable the Minister of the Interior, Chairman of the Select Committee on Criminal Amendment Bill:

> According to the *London Times* of the 13th September, 1966, there is a Criminal Justice Bill coming for deliberation in the British Parliament. It proposes major changes in committal proceedings.

The Home Secretary, Mr Jenkins, is quoted as follows:

> "I propose that the prosecution, if they do not desire committal proceedings will serve on the accused copies of the statements of the prosecution witnesses. If, having seen the statements, the accused does not wish any of the witnesses to be called to give evidence orally, he will be brought before the justices and committed for trial on the basis of the written statements and in such curtailed proceedings.
>
> If either the prosecution or the defence wish witnesses to be called at this stage they can be called, but only the witnesses who are specifically requested, so that the proceedings will still remain substantially simplified".

This may be a suitable alternative to the proposed abolition of the committal procedure envisaged by the above Bill.

If the Honourable the Minister is already aware of the English Criminal Justice Bill, then I regret for this inconvenience.

Yours faithfully,
(Sd.) K. L. DEVASER

c.c. The Hon'ble Mr S. Y. Chan,
C/o Messrs S. Y. Chan & Co.,
Advocates and Solicitors,
Kuala Lumpur

(iv)

Our. ref.: AG/L/58/66.
Your ref.: PAR. 47/66.

ATTORNEY-GENERAL'S CHAMBERS,
SINGAPORE, 1.
5th September, 1966

Setia-usaha Parlimen,
Pejabat Parlimen,
(Offices of Parliament),
Bangunan Parlimen,
Kuala Lumpur.

Sir,

Re: CRIMINAL PROCEDURE CODE (AMENDMENT) ACT, 1966

I refer to your letters dated the 26th July and 18th August, 1966, for which belated reply please accept my apology.

2. I have perused your Criminal Procedure Code (Amendment) Bill and, in particular, the provisions relating to committal procedure in cases triable by the Court of a Judge. Insofar as this is concerned, Singapore is interested in your move to do away with preliminary inquiries and, although there is no tangible movement yet in that direction, it is probable that we may follow suit in the near future.

3. It seems to me that the provisions requiring statements of witnesses to be supplied not less than fourteen days before the date fixed for trial is too arbitrary and may give rise to difficulties at a trial as the prosecution cannot envisage in every case the number and the kind of witnesses required to prove its case. For instance, a point may be suddenly taken before or indicated during the trial by the defence, which would necessitate a witness or witnesses to be called at the last moment, who were originally not thought to be necessary, to prove or disprove that point.

4. I would, therefore, suggest that provisions be included to provide for this contingency or, better still, be completely deleted so that a trial at the High Court, insofar as the prosecution is concerned, would follow more or less the summary trial procedure, especially where no statements of witnesses are required to be served on the accused. I cannot see how the deletion could be any less fair than the aforesaid summary trial procedure.

Trial at the High Court without a jury—Chapter XX A—

As you know, major amendments were made to the Criminal Procedure Code by the Criminal Procedure (Amendment) Code, 1960, which enable trials of serious offences to be heard by the High Court without a jury, except in capital cases. However, such trials require a preliminary inquiry by a Magistrate's Court before the accused person is committed; but it appears from Fung Yin Ching and others *v.* P.P. (1965) M.L.J. 49 and by the subsequent deletion of section 177B (3) thereof by the Criminal Procedure (Amendment) Act, 1966, a preliminary inquiry is not necessary. However, this point of view has not been seriously tested and I am unable to say what is the true effect of them as yet.

The procedure laid down for such trials in the afore-mentioned Chapter XX A is, to my mind, not comprehensive enough as they do not envisage all the contingencies which can possibly arise thereat. Cf. the procedures in a summary trial or a trial by the High Court with a jury.

Section 121, as amended—

Statements of accused persons have been made admissible under certain conditions by the Criminal Procedure (Amendment) Code, 1960. Since this amendment, the prosecution has been able, in very many instances, to use such statements against accused persons at their trial with encouraging results. The provisions have one major defect in that the Judges' Rules, as enacted in the form of Schedule E, have become creatures of statute and, therefore, have to be strictly construed. Cf. the English Judges' Rules, which are rules for administrative guidance of the police. Some of our Judges have put such a strict interpretation on the Rules, resulting in exclusion of such statements for the slightest infringement thereof so that many an obviously guilty person have been acquitted. Therefore, it became necessary to introduce a certain amount of flexibility to the application of Schedule E. Hence, the recent amendment by the Criminal Procedure Code (Amendment) Act, 1966.

Increased criminal jurisdiction of District/Magistrate's Courts—

The increased jurisdiction of both courts by the Criminal Procedure Code (Amendment) Ordinance, 1960, has worked out very well. In the result, it has taken away many of the routine criminal cases from the High Court, which has in turn reduced considerably the back-log of pending criminal cases.

Outstanding offences—section 170 A—

Although the courts may now take into consideration outstanding offences, which an accused person admits to have committed, in practice, accused persons have hardly resorted to them. It is difficult to give the reason for it, but, such provisions are, nevertheless, useful.

Irregularities not to vitiate proceedings—section 440—

Section 440 of the Criminal Procedure Code, Chapter 132, is, to my mind, somewhat restricted in its scope as it provides for only five different cases where irregularities would not vitiate proceedings. It is proposed at some later stage to have section 440 amended so as to widen its scope along similar lines as the proviso to section 60 of the Courts of Judicature Act, 1964.

5. I have touched only on such matters in the Code, which, I think, would be of interest to you.

FRANCIS T. SEOW,
for Solicitor-General, Singapore

(v)

MEMORANDUM FROM MR PETER MOONEY, M.A., L.L.B. (GLAS.) OF SKRINE & CO., ADVOCATES AND SOLICITORS AND NOTARIES PUBLIC, KUALA LUMPUR

In Scotland, there is no preliminary enquiry in criminal cases. The responsibility for prosecutions in the High Court is vested in the Lord Advocate, who corresponds to the Attorney-General. In practice this responsibility is exercised by the Advocates-Depute, who are experienced members of the Bar appointed by the Lord Advocate for this purpose.

An indictment is framed, setting out the allegation. This corresponds to the charge required under the Criminal Procedure Code. Appended to the indictment is a list of exhibits and a list of the names of witnesses. The indictment and these lists are served upon the accused person. The accused person is entitled to inspect the exhibits at the office of the Registrar of the Court.

The foregoing is a summary of the relevant parts of the Criminal Procedure (Scotland) Act, 1887 (Cap. 35, 50 and 51 Vict.).

(vi)

PRELIMINARY ENQUIRIES HELD IN 1965 IN KUALA LUMPUR

Case No.	Date of Arrest	Date of Committal	Time taken	Charge	Remarks
3597/64	8-12-64	24-12-65	1 yr. 16 days	Robbery	Absconded on 11-2-65 Arrested on 25-11-65
3298/65	15-7-65	10-12-65	4 mths 25 days	Murder	
3166/65	24-4-65	21-10-65	5 mths 27 days	G. Hurt	
3322/65	21-7-65	14-10-65	2 mths 23 days	Murder	
3176/63	14-6-63	5-10-65	2 yrs 3 m 21 d	Murder	Rearrest on 23-7-65
3260/65	23-6-65	5-10-65	3 mths 21 days	Murder	Joint trial
3274/65	28-6-65	5-10-65	3 mths 7 days	Murder	
3280/65	2-7-65	5-10-65	3 mths 3 days	Murder	
3281/65	1-7-65	5-10-65	3 mths 1 day	Murder	
3367/65	28-8-65	28-9-65	1 mth	Murder	
3279/65	1-7-65	28-9-65	2 mths 27 days	Murder	
3295/65	8-7-65	28-9-65	2 mths 20 days	Murder	
3248/65	16-6-65	16-8-65	2 mths	Assault for murder	
3292/65	14-7-65	12-8-65	28 days	Robbery	
3255/65	16-6-65	20-7-65	34 days	Murder	
3116/65	5-3-66	22-6-65	3 mths 17 days	Murder	
3085/65	17-2-65	27-5-65	3 mths 10 days	Robbery	Joint trial
3629/64	22-1-65	27-5-65	4 mths 5 days	Robbery	
3610/64	3-12-64	15-4-65	4 mths 12 days	Abduction	
3103/65	18-2-65	9-4-65	1 mth 21 days	V.C.G.H.	
3614/64	11-12-64	25-3-65	3 mths 14 days	Attempted murder	
356/64	27-11-64	23-2-65	2 mths 26 days	Robbery	
3594/64	27-11-64	23-2-65	2 mths 26 days	Robbery	
3528/64	29-10-64	28-1-65	3 mths	V.C.G.H.	
3548/64	7-10-64	18-1-65	3 mths 11 days	Murder	
3501/64	14-10-64	12-1-65	2 mths 28 days	Murder	
3496/64	4-10-64	12-1-65	3 mths 8 days	Murder	

As a rule deposition papers are to be forwarded to the High Court within 3 weeks. Generally, it takes between 1 to 3 weeks. To this must be added the time taken before a case comes up for hearing in the High Court.

(Sd.)

8-9-66

(vii)

THE BILL TO AMEND THE CRIMINAL PROCEDURE CODE

MEMORANDUM

ON AMENDMENTS SUGGESTED BY THE POLICE

Clauses 2 and 3

1. With a view to attaining uniformity in the administration of criminal justice throughout West Malaysia, it is suggested that this uniformity be effected by an extension of the provisions of the States Code subject to any particular modifications that may be considered necessary, to the States of Penang and Malacca. The effect of this suggestion is that there will be one Criminal Procedure Code applicable throughout West Malaysia, subject to such modifications as may be necessary in Penang and Malacca.

2. If this is done it would assist Legal, Judicial and Police Officers, in the administration of criminal justice.

Clause 4

3. It is suggested that Sections 363 to 369, offences related to Kidnapping, be included. These are serious offences and attract more public attention than other serious offences.

4. It is also suggested that consideration be given to including offences under other Acts and Ordinances, such as the Seditions Ordinance, Arms Act and Societies Ordinance. If this suggestion is accepted it may perhaps be tidier if the offences are listed as a schedule in the proposed Code.

Clause 7

5. It is suggested that amendment (*a*) reads
"Produce or cause the accused to be produced."

6. In complicated investigations the investigating Officer may not be available to produce himself the accused before the Magistrate within 24 hours of an arrest.

Clause 9—Chapter XVII

7. The Police entirely support the inclusion of this new Chapter. In addition to the reasons stated in the explanatory statement we wish to submit the following in support:

(*a*) The time lapse between a Preliminary Enquiry and the hearing often cause witnesses to forget their evidence.

(*b*) It is often difficult to trace witnesses who have given evidence at the Preliminary Enquiry, for the Trial.

(*c*) In many cases witnesses are tied down for not being able to leave the country for months.

(*d*) Intimidation of witnesses between a Preliminary Enquiry and a Trial often occurs, witnesses live in fear or suspense for a prolonged period.

(*e*) In cases of crime where violence has been used, including rape, the victims who had suffered at the hands of the accused(s) have to testify twice. They have to describe unpleasant and embarrassing incidents they wish to forget and what is worse, they have to submit to lengthy and painful cross-examination twice.

8. This system worked well during the first emergency and again during the present emergency.

Clause 9—Section 143

9. It is respectfully suggested that this amendment is likely to be misinterpreted because it is not clear whether statements or the substance of the evidence is required. It is suggested that the amendment be rephrased on lines as in L.N. 223 dated 3 June, 1965. For ease of reference the suggested amendment is shown below:

> "Not less than 14 clear days before the date fixed for the trial of the case, the Public Prosecutor shall furnish to the accused person a list of the names and addresses of all persons whom it is intended to call as witnesses for the prosecution at the trial, together with a note containing the substance of the evidence which such witnesses will give."

10. It is further suggested that a new sub-section on lines similar to Section 252.A of the present Criminal Procedure Code be included in this section. This will provide for calling of material witnesses whose statements were not in hand at the time when the accused person was supplied with statements of the prosecution witnesses. There will be cases where a material witness is traced less than fourteen days before the date fixed for the trial. If this sub-section is not included, a postponement may have to be asked for to enable the prosecution to comply with the preceding sub-section. This will cause undue inconvenience to everyone concerned.

Clause 36—Chapter XXX, Section 327

11. It is suggested that the proviso at the end of this section be deleted. We do not agree that a Police Officer should be vested with powers to order burial of a body in a sudden death without an examination by a Government Medical Officer.

12. If this suggestion is accepted, then the existing proviso in Section 330 of the States Code should also be deleted.

Clause 36—Chapter XXX, Section 333

13. It is requested that it be made compulsory for the Magistrate to view the body in all deaths occurring in custody. This will be to the interest of the Government, the deceased's family as well as the officer responsible for the custody of the deceased.

ANNEXURE "B"

AMENDMENTS RECOMMENDED TO THE STATES CODE WHICH ARE NOT INCLUDED IN THE BILL

Section 40 (i)

1. It is suggested that the designation "Commissioner of Police of the States of Malaya" be amended to read "Inspector-General of Police, Malaysia". It is further recommended that the words "Federated Malay States" in line 3 be amended to read "Federation of Malaysia".

Section 62

2. It is recommended that sub-paragraph (iii) be deleted because it is not always possible to obtain the owner of the property or his representative to accompany the officer conducting the search. There have been numerous cases of stolen property being retained but the informant is unable to supply details as to the ownership of the property. In this connection reference is made to Section 410 of the Penal Code where "Stolen property" is defined to include the transfer of stolen property subject of an offence committed within or without the Federation. In such cases it would be impossible for the Police to obtain attendance of the owner if the offence took place outside the Federation.

3. In case of persons habitually receiving stolen property, stolen property from a number of offences may be found in his possession. In such cases it would not be feasible for the Police to be accompanied by the owners of the property.

Section 63

4. It is recommended that the words "Chief Police Officer" be amended to read "Officer-in-Charge" Police District in this section. The reason for this recommendation is that it would not be practicable for OCPDs in outlying Districts to obtain the written authority from the Chief Police Officer where such authority is required at short notice.

Section 63 (ii)

5. It is recommended that the word "Summons" in line 6 be amended to read "Arrested and produced before a Magistrate." The reason for this recommendation is that the person in possession of stolen property will avoid service of summons. As it is the Police are experiencing difficulties in serving ordinary Traffic Summonses.

Section 70 (i)

6. It is recommended that the words "Issue a summons requiring him to appear and show cause" in line 6 be substituted with the words "issue a Warrant for his arrest to show cause." The reason for this is that the type of persons this section applies to are invariably bad characters. Most of whom have no fixed abode. It will be most difficult to serve on them.

Section 108 (iii)

7. It is recommended that the word "Sergeant" be amended to read "Corporal". The educational qualification of the present day Corporals are much higher than those of the Sergeants of the old days. In addition they are subjected to much better training at present available to them which was not available to the "Corporals" when the C.P.C. was introduced into the country.

Section 111

8. It is recommended that this section be amended by deleting the words "being within the limits of the Police District in which he is making the investigation." The reason for this recommendation is that the present day means of transport is far better than the old. Witnesses will not be put into too much inconvenience because travel Warrants will be supplied. Furthermore, the present day system of specialised investigation results in the

Investigating Officer not necessarily be of the District where crime was committed. Criminals use modern form of transport, they travel far and wide committing offences in a number of Districts. It would not be practicable for all the OCPDs to investigate his own cases. One centrally placed officer covers all investigations and it would be more practicable for the witnesses to be sent for rather than for the Investigating Officer to be tied down travelling around recording statements. It is further recommended that provisions as laid down in Sections 35 and 36 be written into this section. The reason for this is that witnesses very often avoid receiving Order to attend investigation, thereby delaying the investigation and justice.

Section 113 (i)

9. It is strongly recommended that this section be amended to fall in line with the law applicable in Sarawak and the Republic of Singapore on the admissibility in evidence of cautioned statements. A separate paper on this subject is attached marked Appendix "A" for consideration.

Section 113 (i)

10. When the undersigned appeared before the Special Select Committee the Hon'ble Mr S. P. Seenivasagam asked if the Police have any objection to witnesses signing their statements. We undertook to make a research and we find in the C.P.C. by Sohoni that it is to the advantage of the accused for witnesses not to sign their statements. Reproduced below is the text of the commentary on page 291

> "Statement made to the Police not be signed. Getting the person making a statement to the Police to sign the same, is not a mere irregularity, but a clear illegality, being a direct breach of a mandatory provision of the law. Even if it be a mere irregularity it is not one of which can be cured under Section 537. (FMS. Code S. 422). The policy underlying the rule that the statement shall not be signed, seems to be that witnesses at the trial should be free to make any statements in favour of the accused which they wish to make, unhampered by anything which they might have said or might have been made to say to the Police. If their signatures are obtained, the result would be to give them an impression that they were not free to make a different statement, 6 Luck. 668. But such an irregularity by itself would not be a sufficient ground to quash the conviction. To some extent it may impair the value of the evidence given by the witnesses affected by it, A.I.R. 1934 sind 78 (2)= Cr. L.J. 1170.

11. From a Police point of view there is no objection to witnesses signing their statements after they have been recorded and read over to the witnesses.

The First Schedule

12. It is recommended that the third column of the First Schedule to the C.P.C. of the following sections of the P.C. be amended to read as "May arrest without warrant,":

S. 121	...	S. 417	...	S. 466
S. 122	...	S. 418	...	S. 467
S. 123	...	S. 462	...	S. 468
S. 124	...	S. 465	...	S. 469
				S. 471

and the fourth column of the First Schedule in respect of the following sections of the P.C. be amended to read as "Warrant":

S. 172
S. 173
S. 174
S. 323

ADMISSIBILITY IN EVIDENCE OF CAUTIONED STATEMENTS

INTRODUCTION

Under Section 113 (1) of the Criminal Procedure Code, Federated Malay States, "No statement made by any person to a Police Officer in the course of a Police investigation made under this Chapter shall be signed by the person making it, nor shall such statement save as herein provided, be used as evidence".

2. This restriction in the use of statements as evidence dates back to since between 1867 and 1896, when the Criminal Procedure Code, borrowed from India, was first introduced into this country by the British. It is now considered that, in the interest of justice, this Section should be amended to permit the use of cautioned statements in evidence, as is the case in the United Kingdom, Sarawak and the Republic of Singapore.

OBJECT

3. The object of this paper is to examine and discuss the pros and cons for amending the Criminal Procedure Code to permit cautioned statements to be used in evidence.

THE PUBLIC/POLICE WHEN THE CRIMINAL PROCEDURE CODE WAS INTRODUCED

4. The Criminal Procedure Code was first introduced into this country at a time when public literacy was practicably non-existent and as such the law had to protect their interest. The standard of literacy in this country today is sufficiently high and therefore public interest no longer requires such protection. Independence has brought with it a Government elected by the people. The public as a whole, are conscious of their rights and liberties. They have access to the Government through their elected Members of Parliament and other Community Leaders. There is evidence that they are neither slow nor reluctant to use this avenue to complain or make representations.

5. The Federated Malay States Police was first established in about the year 1896, at a time when the standard of education in this country was very low, and limited educational facilities only within the reach of the upper and middle classes only. Correspondingly the calibre of officers recruited was necessarily low and as a result of which the integrity of the Police was suspect. This was therefore another possible reason, vis-a-vis malpractice, why at the very outset statements were not permitted to be used as evidence by the introduction of Indian rather than British law. Today, only well educated and hand-picked officers are recruited into the Force. They are specially trained both locally and overseas to equip them with the necessary knowledge and integrity to perform the duties entrusted to them.

THE LAWS IN THE FEDERATION

6. *Sarawak*. Cautioned statements made to Police Officers are admissible in evidence under Section 25 of the Sarawak Evidence Ordinance. This amendment came into force in 1962 and it reads as follows:

"There shall be substituted for sections 25 to 30 inclusive of the principal Ordinance the following section—

Admissibility of statements to police officers.

25. (1) Any statement (including a confession) made to any police officer or other person, whether or not made in the course of a Police investigation, shall be admissible in evidence in any proceedings, civil or criminal, in the like manner and circumstances and the like extent as if the law and practice in relation thereto were the law and practice for the time being in force in England.

(2) Any such statement shall be deemed to be made to a police officer or other person notwithstanding that it was recorded by such police officer or other person, with or without the assistance of an interpreter, in a language other than that in which it was made."

7. *The States of Malaya.* The following laws provide for the use of cautioned statements in evidence:

(i) Kidnapping Act, 1961—Section 15 (1);

(ii) Prevention of Corruption Act, 1961—Section 15 (1);

(iii) Road Transport Ordinance, 1958—Section 141 (2) and Section 141 (3);

(iv) Internal Security Act—Section 75 (1). This Section also provides for cautioned statements to be used in evidence in respect of selected Sections under a number of laws. These laws and Sections as stated in the Second Schedule to the Internal Security Act are as follows:

1.	The Malay Regiment Enactment (F.M.S. Cap. 42)	Any offence under any of the following Sections 74, 97, 98 and 100
2.	The Arms Act, 1960 (No. 21 of 1960)	Any offence under Section 9
3.	The Societies Ordinance, 1949 (F. of M. No. 28 of 1949)	Any offence under any of the following Sections 10, 11, 12 and 15
4.	The abduction and Criminal Intimidation of Witnesses Ordinance, 1947 (M.U. No. 26 of 1947)	Any offence under the Ordinance
5.	The Carrying of Arms Ordinance, 1947 (M.U. No. 42 of 1947)	Any offence under the Ordinance
6.	The Railway Ordinance, 1948 (M.U. No. 8 of 1948)	Any offence under any of the following Sections 108, 110 and 111
7.	The Sedition Ordinance, 1948 (F. of M. No. 14 of 1948)	Any offence under the Ordinance
8.	Any abetment of or attempt to commit any offence specified in this Schedule	
9.	The Corrosive and Explosive Substances and Offensive Weapons Ordinance, 1958 (F. of M. No. 43 of 1958)	Any offence under the Ordinance
10.	The National Registration Act, 1959 (No. 12 of 1959)	Any offence under any regulations made under the Act.

8. *The Republic of Singapore.* Section 121 of the Criminal Procedure Code was amended by the Criminal Procedure Code (Amendment Ordinance, 1960). This amendment added sub-section (5) to Section 121 which reads as follows:

"Where any person is charged with an offence any statement, whether such statement amounts to a confession or not or is oral or in writing, made at any time, whether before or after such person is charged and

whether in the course of a police investigation or not, by such person to or in the hearing of any police officer of or above the rank of Inspector shall be admissible at his trial in evidence and, if such person tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit:

Provided that no such statement shall be admissible or used as aforesaid:

(*a*) if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against such person, proceeding from a person in authority and sufficient in the opinion of the court to give such person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him; or

(*b*) in the case of a statement made by such person after his arrest unless the court is satisfied that the statement was made and recorded in compliance with the provisions of the rules set out in Schedule E of this code."

VIEWS OF THE COMMISSIONER OF POLICE AND CHIEF POLICE OFFICERS

9. The views of the Commissioners of Police, Sabah and Sarawak and all Chief Police Officers in Negeri[2] Tanah Melayu have been sought. They are all strongly in favour of amending the law to make statements admissible in evidence. As stated in paragraph 6, the Evidence Ordinance has already been amended to make statements admissible in evidence in Sarawak. The Commissioner of Police there wishes to retain this provision, it has been working satisfactorily since 1962.

ADVANTAGES

10. (*a*) Present day serious crime are directly or indirectly connected with secret societies and thug gangs. Victims and witnesses alike are more often than not afraid to identify the culprits. If cautioned statements are allowed in evidence the victims can be told that the accused has admitted and they have nothing to fear. By this one of the major difficulties in investigation will be overcome.

(*b*) During the last Emergency and even during the present Emergency, maximum use was made of cautioned statements, they have stood up to tests in the High Courts and even in the Federal Court of Appeal. If cautioned statements were not accepted in evidence, many of the Malaysian traitors would not have been convicted.

(*c*) There is already provision for use of cautioned statements in a number of laws, these enumerated in paragraph 7, Police Officers are therefore familiar with it. Applying it to other laws as well should produce no initial problems.

(*d*) At present if an accused wishes to make a clean breast of the crime committed by him, he will have to be taken before a Magistrate. Magistrates are not always available and in some places, there are no Magistrates. Delay in looking for a Magistrate will seriously prejudice the investigation and likewise the administration of justice.

ARGUMENTS AGAINST

11. (*a*) Language could cause a minor problem, this was overcome in the past and could easily be overcome if cautioned statements are recorded.

(*b*) Malpractice is the only real argument against. This is imaginary, the quality of the officer, both investigating and supervising will not permit this to happen, particularly when the good name of the Force will be involved.

(*c*) There is a danger that a person may be convicted by his own admission. What is wrong with this provided the Magistrate is satisfied that the admission was voluntary?

CONCLUSION

12. The country has advanced since 1896, the public are ready and the Police equipped for this major amendment to the Criminal Procedure Code. There could be no real arguments against it as it has stood the test of time in the United Kingdom, Sarawak and Singapore and in the Negeri[2] Tanah Melayu during the last Emergency and the present Emergency.

13. The only arguments against it are:

(i) tradition, which dates back to 1896; and

(ii) apparent injustice to accused persons through malpractice by Police Officers.

Both these arguments have been commented upon in this paper.

14. The State of Sarawak already has this amendment, but in the Evidence Ordinance, it is necessary that there must be a uniform Criminal Procedure Code for the whole of Malaysia. It would be a retrograde step now to bring Sarawak in line with the rest of Malaysia, on the other hand it would be a progressive step to bring the rest of Malaysia in line with Sarawak.

RECOMMENDATIONS

15. Since there are no real arguments against making cautioned statements admissible in evidence, it is recommended that Section 113 Criminal Procedure Code be amended by adding a new sub-section (v) after sub-section (iv) on the lines of the sub-section (5) of Section 121 of the Singapore Criminal Procedure Code, reproduced in paragraph 8 above.

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