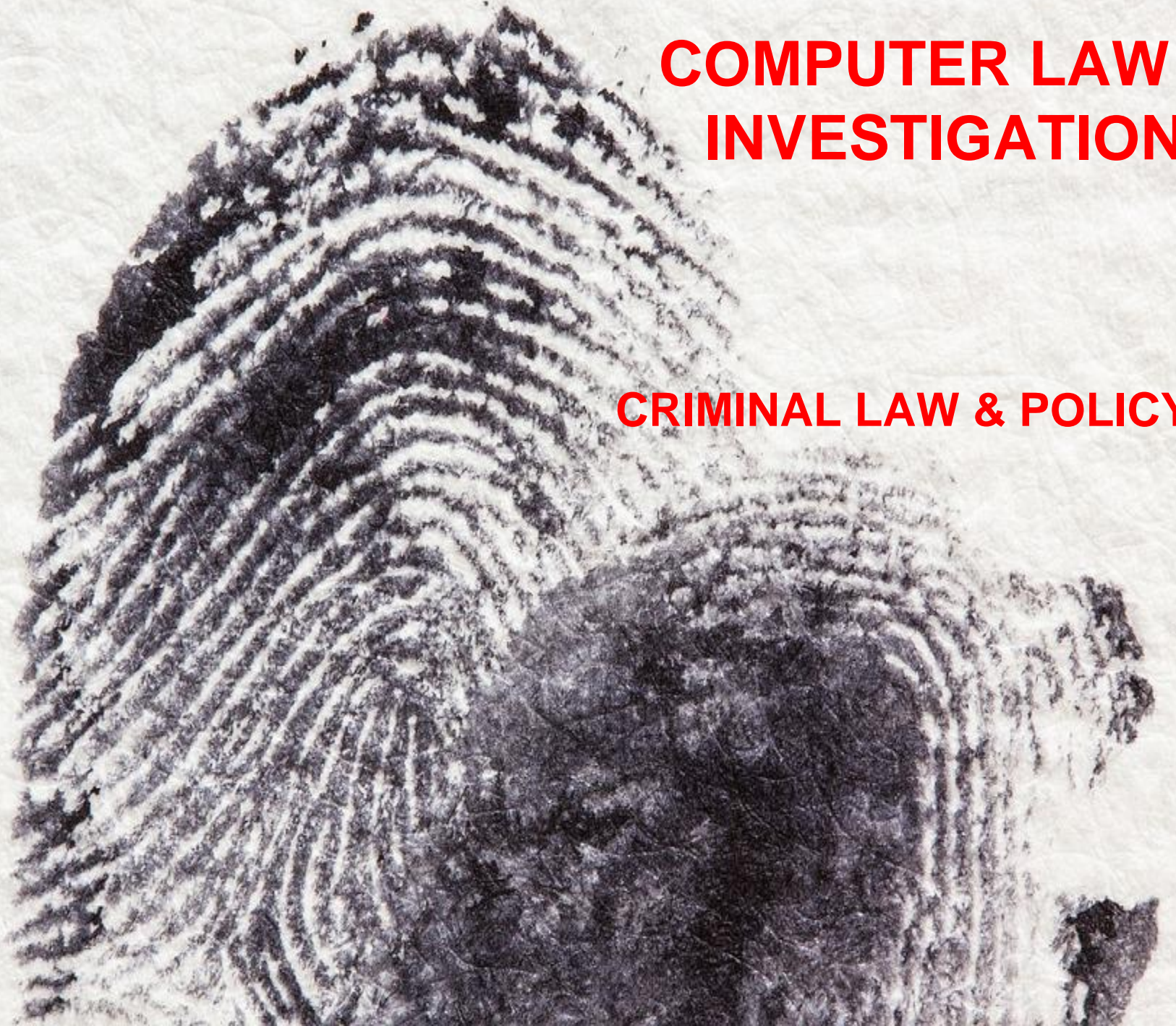


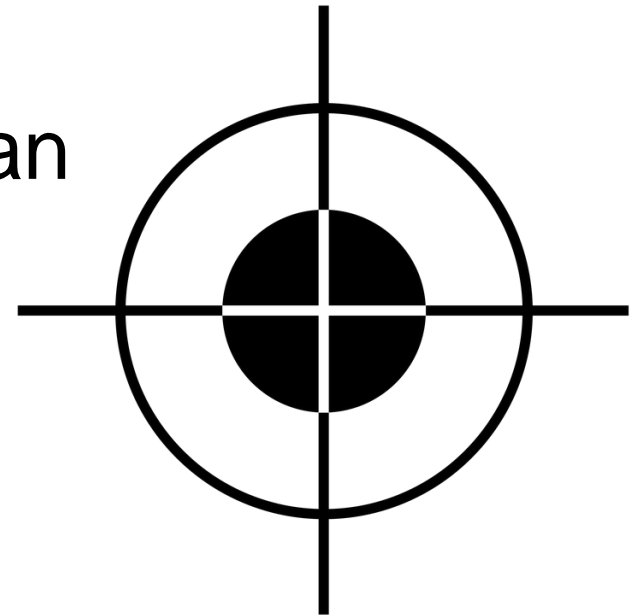
# COMPUTER LAW & INVESTIGATION

## CRIMINAL LAW & POLICY 2



# Learning Objectives:

1. Search, Seizure & Assistance
2. Constitutional Rights of the Accuse
  - Eg right to counsel etc
3. Police Statements
4. Charging the Accused with an offence(s)
5. Trial Procedure





# 1. Search, Seizure and Assistance



Photos: Singapore Police Force - Recruitment's Facebook page

- Under the Criminal Procedure Code, police have automatic **powers of search** if investigating an arrestable offence (s.34). They may, without a search warrant, enter any place (e.g. house or place of abode of the person who is under arrest) and search those premises for documents/things necessary for his investigation e.g. evidence of the offence.
- Furthermore, (s.32) if a high ranking police officer (not lower than the rank of Sergeant) has reasonable cause for suspecting that stolen property has been concealed in any place, that officer may search for that stolen property without a warrant.

# Police Powers of Search

## Searching for Persons

- Section 77 of Criminal Procedure Code
- If a person acting on a warrant or any police officer has reason to believe that the person to be arrested is in a particular place, the person residing there or having charge of the place is required, on demand,
  - to allow the person making the arrest free entry to that place
  - provide him all reasonable facilities to enable a search to be conducted there.

# Police Powers of Search

S.77(4) If entry cannot be gained, the person making the arrest may “break open any outer or inner door or window of any place” once he has notified the person residing in or having charged to the residence

- of his authority
- The purpose of the search warrant

# Power to Access Computer (Criminal Procedure Code)



- S39(1) – Police officer investigating an arrestable offence may access and inspect a computer, or search for data in that computer, suspected to be used in that offence.
- S39(2) – Police officer can require assistance from any person using that computer in connection with the offence, or any person in charge of that computer.
- S39(3) – Penalty for failure to comply: fine not exceeding \$5000 or jail term not exceeding 6 months or both.

# Power to Access Decryption Information (Criminal Procedure Code)



- S40(2)(a) – in addition to powers under s.39, police officer, investigating an arrestable offence shall be entitled to [access information, code or technology for unscrambling encrypted data](#) into readable text for investigation.
- S40(2)(b) – Police officer can require any person to provide him with [technical assistance for purposes of s40\(2\)\(a\) above - to unscramble encrypted data](#).
- S40(2)(c) – Police officer can require any person to be in possession of decrypted information to grant the police access to that information.
- S40(3) – Penalty for failure to comply: fine not exceeding \$10,000 or jail term not exceeding 3 years or both.



# Search & Seizure of computer articles

- Application for a “Search Warrant”
- Under Section 26 of Criminal Procedure Code
  - Warrant issued by Court to the Commissioner of Police and police officers designated by name
  - Warrant will
    - Specify the place(s) to be searched s.26(4)
    - Prescribe the manner in which the search is to be conducted s.25
    - Authorize the seizure of the materials or articles sought s.25



# List of information in Search Warrant

Seize all electronic, magnetic, optical, electrochemical, or other data processing device which includes but does not limit itself to the following items:

- CPU (Central Processing Unit)
- Disks (floppy, hard, compact or any other disks)
- Operating logs
- Digital cameras
- Keyboard and printer
- Software operating Manuals/Instructions



Photo by: <https://tinyurl.com/yx9srpfw>

# Exception in obtaining Warrant



## s.32 Stolen Property

- It is recognized that in certain exceptional circumstances, it would be impractical to require the police to obtain a warrant to search premises.
- Good grounds for believing that by reason of delay such property likely to be removed
- The information must be received by a police officer not lower than the rank of Sergeant.

# Search & Seizure of computer articles



<https://www.theonlinecitizen.com/2016/06/01/teo-soh-lung-visibly-shaken-from-police-house-raid-of-7-8-officers-without-search-warrant/> (see videos inside)

# 2. The Constitutional Rights of the Accused

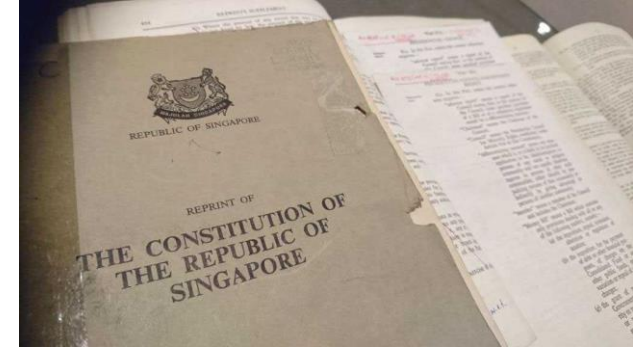


Photo by: <https://tinyurl.com/yxwx43v2>

## Highlights under Article 9 of our Constitution:

- An arrested person has a right to be informed of the grounds of his arrest
- He must be allowed to consult and be defended by a legal practitioner of his choice
- If he is arrested and not released, he must be produced before a Magistrate without unreasonable delay and in any case within 48 hours
- If he is unlawfully detained, a complaint may be made to the High Court which can order him to be produced before the Court and release him. This procedure is called an application for Habeas Corpus (a writ requiring the person to be brought before a judge or court).



# Article 9 of the Constitution

## Liberty of the person

**9. —(1)** No person shall be deprived of his life or personal liberty save in accordance with law. (Relates to physical life and quality of life, as well as liberty of the individual)

(2) Where a complaint is made to the High Court or any Judge thereof that a person is being unlawfully detained, the Court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the Court and release him. (High Court must investigate any complaint about persons unlawfully detained)



# Article 9 of the Constitution

- (3) Where a person is arrested, he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice. (Issue of Right to Counsel and Discovery)
- (4) Where a person is arrested and not released, he shall, without unreasonable delay, and in any case within 48 hours (excluding the time of any necessary journey), be produced before a Magistrate and shall not be further detained in custody without the Magistrate's authority.


# Article 9 of the Constitution

Court of Appeal held that Section 337A did not violate Article 9 as the phrase “life and liberty” referred only to the personal liberty of a person from unlawful incarceration and not to the right of privacy and personal autonomy.

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## Please Keep Penal Code 377A in Singapore



96,161 have signed. Let's get to 150,000!

First name

Last name

Email

☒ Display my name and comment on this petition

[Sign this petition](#)

By signing, you accept Change.org's [Terms of Service](#) and [Privacy Policy](#), and agree to receive occasional emails about campaigns on Change.org. You can unsubscribe at any time.

Paul P. started this petition to Singapore Government

*(This is a real petition which will be submitted to the PMO and REACH mailboxes when we have attained at least 100K signatures. However, the online petition will remain opened for signing until 24 Sep 18.)*


There has been a renewed call by prominent figures recently to challenge and repeal the penal code section 377A in the light of the recent India's Supreme Court's decision on the same issue.

## Ready for Repeal (#Ready4Repeal)

Sep 9 2018

Authors: Glen Goei and Johannes Hadi. Lead Signatories: Ho Kwon Ping and Claire Chiang, Hsieh Tan Siok Sun, Constance Singam, Dr Finian and Fiona Tan, Kok Heng Leun, Loh Lik Peng and more

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#Law Reform

Target:  
The Government of Singapore

Region:  
Singapore

We have prepared a petition regarding the 2018 review of the Singapore Penal Code. As part of the ongoing public consultation on the review of the Penal Code, this petition and its supporting signatures will be delivered to the Ministry of Home Affairs by 28 September 2018.

Section 377A is a colonial law that criminalizes consensual sex between men. In the past,

<https://www.straitstimes.com/singapore/lgbt-activist-who-is-a-retired-gp-files-new-case-against-section-377a>

# An overview of Article 9 of the Constitution

The criminal pre-trial process, as you have observed, is set out in the following procedural law:

- Constitution of the Republic of Singapore
- Criminal Procedure Code

This process has often been the most controversial in the administration of the judicial system of Singapore. We will deal with the controversy or problems as follows:

- a. Right to Counsel
- b. Obtaining Illegal Evidence
- c. Lack of Discovery – Exchange of Information

# a. Right to Counsel



Art 9(3): “Where a person is arrested, he shall be informed as soon as may be, of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice.”

3 related rights:

- Right to be informed ‘as soon as may be of the grounds’ of arrest
- Right to ‘consult’ counsel
- Right to ‘be defended by a legal practitioner of his choice’
  - See Law Society 2014 – Access to Counsel
  - See SMU Law 2014 – Constitutional Rights to Counsel

# Art 9(3) – Right to Counsel

- Court's explanation of Art 9(3): “If a person who is arrested wishes to consult a legal practitioner of his choice, he is, entitled to have this constitutional right granted to him by the authority who has custody of him after his arrest and this right must be granted to him within a reasonable time after his arrest” (*Lee Mau Seng v. Minister of Home Affairs*, 1971).
- Court's interpretation:
  - No need to provide counsel immediately upon arrest.
  - Is a two-week detention reasonable? (*Jasbir Singh v PP* [1994] 2 SLR 18) 19 days reasonable? (*PP v Leong Siew Chor* [2006] 3 SLR 290)
  - So when? When investigation is completed.



# Court rules on access to lawyer

*“reasonable time” must be given to the police to carry out investigations. The burden is on the police to show that giving effect to the right to counsel would impede investigations or the administration of justice.*



Photo illustration of a man in handcuffs. (Photo: Jeremy Long)

<https://www.todayonline.com/singapore/law-reasonable-time-accused-gets-access-counsel-clear-court-appeal>

<https://www.asiaone.com/singapore/court-rules-access-lawyer>

# Rajeevan s/o Edakalavan v PP [1998]

- Article 9(3) clearly stated that a person under arrest “shall be allowed to consult and be defended by a legal practitioner of his choice”. The operative words were “**shall be allowed**”. Nowhere in Article 9(3) does it provide that there was a further right to be informed of one’s right to counsel. There was **no obligation imposed on the relevant authority to inform and advise the person under custody of his right to counsel**.
- Furthermore, providing counsel during the investigation stage may hamper the due process of the police. There is **no requirement for the lawyer to be seated beside the Accused during interrogation**.
- Court’s interpretation:
  - No need to inform Accused right to seek counsel
- Compare with US position

# Sixth Amendment US Constitution

- The Sixth Amendment to the Constitution of the United States of America, the relevant provisions of which provide that —
    - In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial... and to have the Assistance of Counsel for his defence.
  - The U.S. Supreme Court laid down this ruling:  
*“Accordingly, we hold that an individual held for interrogation must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation under the system for protecting the privilege we delineate [ie describe].”*
  - It refers to: **Criminal Prosecutions - Jury Trial, Right to Confront and to Counsel (1791).**
- >> Is Singapore’s approach to the “right of counsel” correct?**

# Comparing Art 9(3) and Sixth Amendment

## Court's interpretation of Art 9(3):

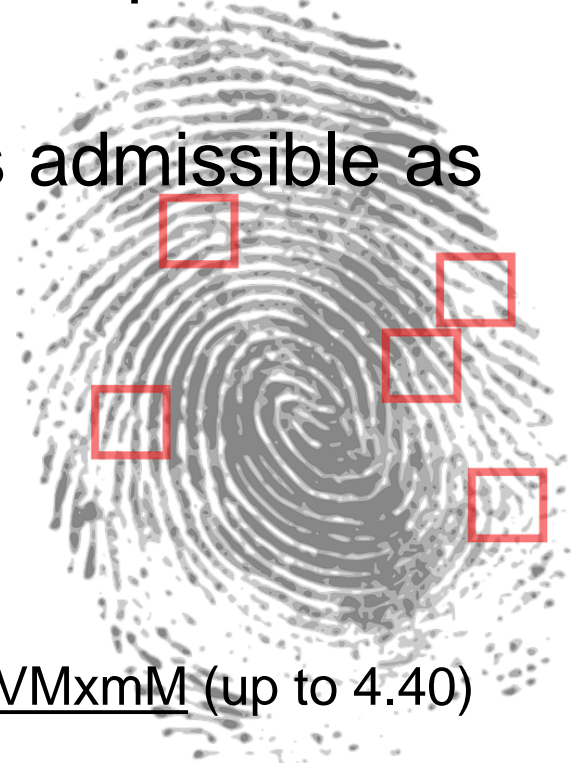
- No need to inform Accused his right to seek counsel. (Rajeevan Edakalavan v. PP, 1998)
- No need to provide counsel immediately upon arrest but within a “reasonable time”. (Jasbir Singh v. PP, 1994)
- A reasonable time must be given to police to carry out its investigations. Burden is on the prosecution to satisfy the Court that it is “reasonable” to withhold access to counsel so that it will not hinder police investigations. (Jasbir Singh v. PP, 1994)

This is different to that of the Sixth Amendment to the US Constitution, which states that:

- An individual held for interrogation must be clearly informed that he has the right to consult with a lawyer.
- If the suspect exercises this right to a lawyer, the questioning must cease until a lawyer is present.

## b. Illegally Obtained Evidence

- This relates to the role of “agent provocateur”
- The question is whether a person who act undercover for the purpose of exposing criminals (agents provocateur) are partners in crime?
- Evidence unlawfully obtained is admissible as long as it is relevant.



<https://www.youtube.com/watch?v=J7d7UJVMxmM> (up to 4.40)



# Illegally Obtained Evidence



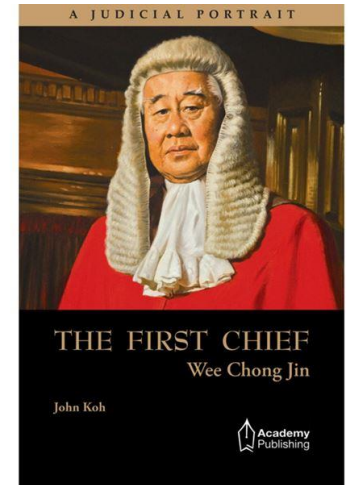
For instance, if drilling a hole into a hotel room to record the adulterous activities of a cheating spouse would land you in trouble with the law (trespass, damage to property, outraging a woman's modesty, etc.), is it still possible for the recording to be admitted as evidence to support a divorce application on basis of adultery?

# Cheng Swee Tiang v PP

- Two police officers had entered the appellant's shop for the express purpose of entrapping the appellant into accepting their stakes in a 10,000 characters lottery.
- Court of Appeal considered whether an illegally obtained evidence can be considered as admissible in Court.

Court Held:

- **Wee Chong Jin CJ:** ... It is not in dispute that the senior police officer sent a subordinate into the shop to commit an offence for the purpose of getting evidence against someone in that shop and in order that an offence by another person may be detected.
- Evidence obtained in this manner, if relevant, was in law admissible



# SM Summit Holdings Ltd v PP

- The raid was carried out by Business Software Alliance ('BSA') and HS Intellectual Property Services, a firm of private investigators at the premises of Summit Holdings and Summit CD Manufacture ('Summit') pursuant to two search warrants obtained by BSA before a magistrate & one from a High Court judge.
- This relates to copyright (software piracy) and trade marks offences on computer soft wares allegedly committed by Summit.
- In support of the application for the search warrants, three statutory declarations were used. One was that of a private investigator, Jimmy Chew, who deposed that he entered into a contract with one Tan Siang Yong for Summit to replicate counterfeit masters of CD-ROMs which Summit did.

# SM Summit Holdings Ltd v PP

## The Raid

- Raid was carried out on 12 Aug 1997 (2pm) to 13 Aug (5.10am) – lasted 15 hours.
- Raid Team consisted of 35 police officers, BSA, BSA lawyers and TCS crew.
- Seized documents include internal memoranda, cash invoices and copies of sales orders for CD-ROMs.
- Downloaded customer list from Summit's computer and copies of emails and computer logs.
- Installed a high capacity data storage device, the *lomega* zip drive, in the computer. A total of 507 files, of which 503 were confidential and proprietary were copied
- Raid Team locked up some factory workers in the rooms in the premises when raid was conducted.

# Yong Pung How CJ:



- Overzealous raid team. There are limits to what a raiding party is entitled to do in a legal system in which one is presumed to be innocent until shown otherwise.
- Warrant issued from High Court Judge, GP Selvam quashed. A High Court judge does not have the power to sit as a Magistrate in the inferior court.
- Observation by the Court:
  - Most documents that were seized from the premises of Summit were not acknowledged with police acknowledgement slips.
  - During the return date before a magistrate, proper record of who is holding what (possession of documents) were not set out.
  - Downloading from Summit's computer causes evidence to be tampered by third parties and the veracity of the evidence is put to doubt.



# Suggestions/Advice

- Supervision of the raid team should not be the solicitors of the applicant of the raid.
- Appoint a supervisor (usually a neutral solicitor from another firm) to supervise the raid.
- All documents should be collected in a box and properly identified and sealed.
- All storage devices should be individually tagged and sealed. No downloading required on site.

## c. Art 9(3) - Issue of Discovery

- Discovery – Disclosure of info by Police or Prosecution
- No legal obligation to disclose any information to the accused person
- This lack of information makes it difficult for defence counsel to advise the accused and properly prepare his defence.
- What defence lawyers need most are statements — from their clients and witnesses — written by the police in the course of an investigation. Their clients can have difficulty recalling what they said in their statements to the police, which may have been given as long as 18 months before their court appearance.
- NB: audiovisual recording of cautioned statement – can be viewed by accused's advocate upon request (see s 23(6)(a) CPC)

# Prosecution's Response

- Prosecution - if an accused person is telling the truth, he should be able to recollect for his counsel what he told the police.
- Use of Statements - In recent years, it has become "fashionable" for the prosecution to impeach (i.e. call into question) the credibility of an accused person if he deviates from his statements.
- If a judge agrees with the impeachment, it has a direct and adverse impact on an accused person's case and defence.

<https://www.asiaone.com/News/Latest%2BNews/Singapore/Story/A1Story20121002-375034.html>

<https://www.straitstimes.com/singapore/courts-crime/ler-teck-siang-the-doctor-in-hiv-registry-leak-incident-in-court-for-appeal>

<https://www.straitstimes.com/singapore/love-lies-leak>

# 3. Police Statements



Photo by: <https://tinyurl.com/y476gaq3>

- Police generally take several types of statements:
  - First Information Report (police report)
  - Witness statements (from person(s) acquainted with facts of case)
  - Cautioned Statement (confession)
- Statements must be made **without threat, inducement or promise**



# Police Statements - Cautioned Statement

“You have been charged with [or informed that you may be prosecuted for] – (set out the charge)

Do you want to say anything about the charge that was just read to you? If you keep quiet now about any fact or matter in your defence and you reveal this fact or matter in your defence only at your trial, the judge may be less likely to believe you. This may have a bad effect on your case in court. Therefore it may be better for you to mention such fact or matter now. If you wish to do so, what you say will be written down, read back to you for any mistakes to be corrected and then signed by you.”

# Lim Siong Khee v PP

- Email that caused the police to commence investigation – Lim hacked ex-girlfriend's computer and stalked and harassed her after breakup.
- "Yan Cheng, actually you are the importance woman to me. Since the day we know each other, I had treated you well and response to all yours needs. But I dont understand why must you give me pressure after our returned. In our 20 days happy times together in Germany and UK, if you had say that you dont love me. Why must you still allow me to have \* SPECIAL RELATION everyday. You shouldnt upgrade me to such status, when you started to reject our relationship. Did you consider my feeling and how seriously you hurt me. I dont think God will forgive such a shameless woman. Will Steven Toh become the next victim. And I will never forgive you."
- Lim forwarded above emails including the above using his ex-girlfriend's account to her friends with all the lurid details.



# Lim's response

- Lim claimed that he was induced to give a statement recorded from him on 11 May 99.
- Apparently, Lim claim that the recording officer (Sgt Zainon) had induced him by telling him that he could leave as soon as he completed his statement.
- Sgt Zainon stated that on 11/5/99 she had commenced the recording of the statement from the accused at 11.45 am at her office in Geylang Police Division. The recording ended at 2.30 pm.
- The accused had turned down a break for lunch as he preferred to complete the statement first. The accused also chose to read his statement after the recording and made some amendments to it. The accused then affirmed it to be true and correct and signed it. Sgt Zainon stated she did not make any threat, inducement or promise to the accused in the course of recording this statement.

# In the Courtroom

- In Court, the accused took the stand and claimed that he was in a hurry to conclude the statement and leave the premises as he had to see some clients to discuss some business opportunity. He stated that he had a lunch appointment with one Lim Chan Huat. He added that one Ms Helen Yeo had called him at 12.38 pm on 11/5/99, as evidenced by D6, to make an appointment as well. He was to return her call when he finished.
- He claimed that Sgt Zainon kept prolonging his stay at the station and told him that he could leave once he admits to the words that 'he held Ms Chong's shoulders and that he may go crazy and rape her' found in his statement.

# The Court held:

The Court ruled that the accused made the statement voluntarily.

The following are the Court's reasons:

- Court accepted the evidence of Sgt Zainon. I found the accused's claims, namely that he had to leave the station in a rush as he had other appointments to attend to, to be an unlikely story. The accused had been asked to attend to investigations on 11/5/99 on itself.
- There would have been ample opportunity for him to re-schedule whatever appointments he may have had.
- The accused's claims that he was in a hurry is also not consistent with him taking time to read over his statement and making the numerous amendments in the statement.

# The Court held:

- The accused was also proved to be lying when the prosecution adduced evidence to show that it was not Ms Helen Yeo who had called him at 12.38 pm on 11/5/99 as claimed by him.

# Police Statements

Teacher accused of pocketing S\$40,000 of students' funds tells court she gave police statement 'under duress'



[https://www.todayonline.com/singapore/teacher-accused-pocketing-s40000-students-funds-tells-court-she-gave-police-statement?cid=h3\\_referral\\_inarticlelinks\\_03092019\\_todayonline](https://www.todayonline.com/singapore/teacher-accused-pocketing-s40000-students-funds-tells-court-she-gave-police-statement?cid=h3_referral_inarticlelinks_03092019_todayonline)

# Police Statements

14 year old commits suicide after being questioned by police on alleged molestation case. Review of procedures for questioning youth.



<https://www.straitstimes.com/singapore/death-of-14-year-old-experts-welcome-police-review-on-procedures-for-questioning-youth>



## 4. Charging the Accused



- Once police have completed their investigation, the Investigation officer will submit his investigation papers to the AGC for the public prosecutor to consider whether to initiate a criminal prosecution
- Once a decision has been made to proceed, the case will be prepared for trial. The charge or charges are then drafted

# Drafting the Charge

- The Charge notifies the accused of the offence for which he is to be prosecuted.
- It is fundamental to ensure that the charge is clear and sufficiently precise for the accused to know exactly what he is being accused of so that he may be able to answer the case against him.

# What is stated in a Charge

The Charge must state:

- Accused Name,
- Gender / Age,
- NRIC,
- The date, time and place of the alleged offence
- Provision of the law and nature of the alleged offence (including manner of committing offence)
- Punishment of the offence

# Sample Charge

You, Muhammad Nuzaihan bin Kamal Luddin, m/17 yrs NRIC No S8140891B, are charged that you, in the month of July 1998, in Singapore, did knowingly cause an unauthorised modification to the contents of the computer of Singapore Cable Vision Ltd, namely the server Brahms, to wit, by modifying the content of the computer file, namely, 'inetd.conf', without the authority of the system administrator, and you have thereby committed an offence punishable under s 5(1) of the Computer Misuse Act (Cap 50A).

# General Rules regarding Charges

- One offence per charge
- Amendments to charge - any amendments or irregularities will not invalidate the proceedings (unless there has been a failure of justice)
- Sometimes a “Joinder” of charges e.g. of similar offences may be permitted provided the accused is not prejudiced
- This is often useful in “plea bargaining”, so that certain charges are proceeded upon and certain taken into consideration



ST PHOTO: LIM YAOHUI)

## 5. Trial Procedure

- Criminal Trial procedure is conducted in different ways in the State Courts and the High Court
- A High Court trial is normally preceded by a committal hearing/preliminary inquiry conducted by a magistrate to determine whether there is sufficient grounds to commit to trial
- Cases tried by State courts do not need committal hearings/preliminary inquiries and are called “summary trials”. These are dealt with in 2 ways



# Summary Trials : PG Cases

- ❑ The procedure is set out in Section 158 of CPC as follows:
- ❑ Accused is brought before the court, the charge is read out and explained to him and he is asked whether he pleads guilty. If he choose to remain silent, this has the effect of a not guilty plea.
- ❑ If he pleads guilty:
  - Prosecution reads out the statement of facts, charge
  - He admits the facts, charge
  - Court accepts his plea, record the plea after ascertaining he understands the nature and consequence of this admission
  - Court convicts him
  - Plea of mitigation made on his behalf
  - Sentence is passed and trial concludes

[https://www.youtube.com/watch?v=x\\_0m2JtZQ6A](https://www.youtube.com/watch?v=x_0m2JtZQ6A)

<https://www.youtube.com/watch?v=KtsX7PrRwN8>

# Summary Trials : Accused “Claims” Trial

If accused pleads not guilty, a full-length trial commences, as follows:

- ❑ The prosecution opens its case by calling its witnesses one by one. Each witness is examined, cross-examines and re-examined
- ❑ Throughout the trial, the prosecution has to prove its case beyond a reasonable doubt
- ❑ At the conclusion of the prosecution’s case, the accused may submit that there is “no case to answer” in that the prosecution has failed to make out all the ingredients of the charge and the prosecutor may reply to the submission.
- ❑ Arguments by both sides are then presented.
- ❑ The court will then decide, and, if satisfied prosecution has not made up a prima facie case, acquit the accused

# Summary Trials : Accused “Claims” Trial

- If the court decides the prosecution has made out a case, it will call upon the accused to present his defence
- The court may also decide whether the charges need amendment at this stage before calling the accused to give his defence.
- The defence will then open its case and call its witnesses who are examined, cross-examined and re-examined
- The accused may choose to give evidence or remain silent. The first option means he renders himself open to X-examination. The second option allows the court to draw whatever inference from the silence it wants to
- Closing submission by defence and prosecution's right of reply
- Judgment, conviction, plea in mitigation and sentencing

# High Court Trials



Photo by: <https://tinyurl.com/y92frb87>

- Once the magistrate has concluded the Committal Hearings (previously known as ‘preliminary inquiries’) and is satisfied that there is sufficient evidence to commit to a High Court Trial, the trial will be fixed for trial in the High Court
- The procedure is very similar to full-length Summary trial, with minor variations

\*In January 2011, amendments to CPC provided for criminal case disclosure (i.e. Prosecution required to disclose materials to Defence prior to trial). This applies to cases in High Court and a significant number of cases tried in State Courts.

# Post trial : Appeals

- Either prosecution or the accused dissatisfied with the decision may file a “notice of appeal”
- The accused may appeal against both conviction and sentence and the prosecution may appeal against the accused acquittal or sentence in that it is manifestly inadequate

<https://www.straitstimes.com/singapore/courts-crime/nus-undergrad-who-molested-woman-will-not-begin-probation-pending-outcome-of>

End of Lecture Part 2