



14th BILETA Conference: CYBERS Crime, Criminal Justice and the Inte

Monday, March 29th & Tuesday, March 30th, 1999.
College of Ripon & York St. John, York, England.

Police conduct in the obtaining of evidence, application of the Codes of Practice, and judicial discretion in the determining of admissibility of such evidence.

Larry Mead
School of Humanities, Languages and Law,
University of Derby.

In any criminal trial the onus is on the prosecution to prove the guilt of the accused beyond reasonable doubt. The police in endeavouring to accumulate evidence of sufficient weight to achieve a conviction, have in some instances adopted improper methods or tactics, or even themselves commit civil wrongs or crime. Common law, statute and Codes of Practice contain obligations and guidance relating to police conduct when they are investigating crime. The European Convention and an International Covenant compliment this in dealing with rights of the individual. Police conduct can be significant in determining whether or not the evidence they obtain is admissible. This paper considers the usage of judicial discretion where the acceptability of police conduct in the obtaining of the evidence is questioned. Emphasis is placed on police investigative work carried out at a police station.

ADMISSIBILITY OF IMPROPERLY OBTAINED EVIDENCE AT COMMON LAW.

The early common law position in relation to the admissibility of evidence highlighted the relevance of the evidence rather than how it was obtained. In *R v Leatham* (1861)^[1] we find the statement of Crompton J., "It matters not how you get it; if you steal it even, it would be admissible". Whilst this view was not wholeheartedly supported by the judiciary, over a hundred years on; in *R v Sang* [1980]^[2], it was stated that there was "no discretion to refuse to admit relevant admissible evidence on the ground that it was obtained by improper or unfair means. The court is not concerned with how it was obtained".

This view did not apply in relation to confessions, and further; to significantly soften the effectiveness of the statement, the court acknowledged that the judiciary have a discretion to exclude relevant evidence, particularly bearing in mind the judges duty to ensure a fair trial. (Polyviou (1981).

ADMISSIBILITY OF IMPROPERLY OBTAINED EVIDENCE AND STATUTE.

In Section 78 of the Police and Criminal Evidence Act 1984 (PACE) judicial discretion was identified in relation to the admissibility of evidence. The section provides"the court may refuse to allow evidence on which the prosecution proposes to rely to be given....". In relation to this paper and the basis for the evidence being deemed inadmissible, the section provides that the court should

reach its decision"having regard to all the circumstances, including the circumstances in which the evidence was obtained..."; and the usage of the evidence "would have such an adverse effect on the fairness of the proceedings....", that its exclusion is justified. Where a court makes a decision on a question of admissibility and fairness; on appeal such a decision would only be reversed if reasonableness has been excluded, *Associated Provincial Picture Houses Ltd. v Wednesbury Corp.* [1948][³] 1 KB 223. Both article 6.1 of the European Convention on Human Rights identifying the individuals right to a fair trial, and article 8, in addressing the manner in which the evidence was obtained, are of significance in relation to the application of section 78. More generally the principles of the Convention are of value also, see *R v Khan* [1996][⁴] The wording of section 78 is wide and has been regarded as highlighting the power of the judiciary in providing a fair trial for the accused, which existed before the introduction of PACE. The scope of the sections wording results in there being a link or element of overlap with further content of the statute. Section 82(3) identifies judicial discretion to exclude evidence where the prejudicial effect outweighs its probative force. (see Gelowitz 1990 on the scope of the section 78 discretion, and also Hunter 1994). Also, appropriate for mention is section 76 which addresses requirements in relation to the admissibility of confessions. Section 78 has in fact been used to a great extent where the admissibility of confession evidence is addressed. Indeed sec 78 has been described as the most important section in (PACE), (Zander 1995).

THE ROLE AND SIGNIFICANCE OF THE CODES OF PRACTICE.

Beyond this legislation, the Codes of Practice, implemented under sec.66 of PACE, provide information of acceptable and appropriate conduct by the police in the obtaining of evidence. A breach of a code will not necessarily have the effect of causing the evidence obtained from being declared inadmissible. Again judicial discretion has to be acknowledged. It has been suggested that in some instances code content, such as detainee`s rights, might have been incorporated into PACE. (See Bevan and Lidstone [1996]). The need for guidance and clarity in determining police procedures is necessary and justifiable in some instances. But whilst one might regard the Codes as providing guidance rather than the imposition of obligatory requirements; if notable disregard for the Codes was apparent, the questions regarding the purpose and significance of the Codes could be validly raised.

WHY COMPLIANCE WITH THE CODES IS IMPORTANT.

To justify the need for compliance with the codes the view can be put forward that the police should act in accordance with the law and the Codes otherwise respect for such will diminish or be lost. The achieving and maintaining of such respect can be assisted through an outward display of correctness, fairness and standards of quality in the administration of justice. The maintenance of values, integrity in the administration of criminal justice, with moral and ethical standards that may well be seen as a basis for, and justify the respect of the general public. It is important that the public have confidence in the criminal justice system, and conduct by the police in seeking evidence which falls short of standards which would generally be accepted could have a notable adverse effect on the level of confidence existing. A considerable amount of police work takes place at the police station which is an environment to which the public in the main are unaccustomed. Also, an element of secrecy might be alleged in relation to investigative activities at the police station. Given the setting and surroundings of the police station and the control which the police have over events, this may be cited as leading to a possible abuse of power. The codes are directed towards the protection of those individuals in police custody who are therefore seen as vulnerable. It is codes C,D and E which are of relevance to police station procedures. [4a]. The codes provide procedures applicable throughout a persons period of being held in custody, and relate to police activity including searches, formal interviews, identification parades, and the showing of photographs to witnesses are identified in the codes. Other procedures identified include a denial of access to legal representation sec. 58 (C6;

Annex B), Art. 6 European Convention on Human Rights (Murray v U.K.(1996),)[⁵] unauthorised detention beyond lawful time limits (C15), and the right not to be held incommunicado sec. 56 (C5; Annex B), R v Parris (1989)[⁶]. Whilst detailed guidance of appropriate procedures is provided in the codes, more generally, the requirement for records to be kept, principally the custody record and interview records, serve to afford protection to the detainee. In some instances the codes allow the police to exercise discretion. With regard to identification evidence, the formal identification parade can be used. However, if the police believe this procedure impractical, they could consider merits in a group identification, video identification or confrontation situation being used. The possibility does then exist for the defence to challenge the police view of impracticality of the formal identification parade. The codes need not be seen as providing solely guidance for the police and protection for the detainee. Particularly in relation to the maintenance of records, evidence of proper police conduct can be available and so afford the police protection. Note in Mitchell v R [1998],[^{6a}], police formally questioned a suspect at a police station in the presence of a lawyer. He was subsequently charged. At his trial he alleged that he had been subjected to beatings, electric shock and other ill treatment. Whether or not the allegation had any merit; this issue had to be considered in the proceedings. Of course if such an allegation is found to be without merit, the prosecution`s case can be aided rather than hampered.

JUSTIFICATION FOR DEPARTURE FROM COMPLIANCE WITH THE CODES.

It is argued by some that where the police uncover important evidence, but in doing so breach the Codes, such conduct should be tolerated and the evidence found be deemed admissible, particularly where the crime involved is of a serious nature. R. v Latif [1996][⁷]. Protection of the public, and the general benefit to society have been put forward as justifying the usage of improperly obtained evidence. Again the nature and the severity of the crime being investigated can be used to enhance this view. Beyond this, recognition of the difficult task often facing the police when investigating a crime can be seen as justifying methods of investigation adopted, and a failure to comply with the Codes totally as being justified. Just as wrongdoers may well lie and endeavour to deceive the police, so the police may see such conduct on their part as justified; again with the interests of the public at large being considered. These interests were satisfied in Treadaway v Chief Constable of West Midlands (1994)[⁸] where the police were guilty of assaults on an accused person. A more narrow basis for valid departure from code requirements could be an awareness that valuable evidence will be lost or destroyed without speedy police action.

The evidence obtained from the accused assisted the prosecution case and a conviction resulted. Note however, that whilst evidence may be deemed admissible, the conduct of the police may result in an order being made that the police pay exemplary damages. Police resources and budgetary constraints may well have a bearing on procedures and investigatory methods adopted.

PROTECTION OF HUMAN RIGHTS.

The requirements for the protection of human rights would seem to support the need for compliance with the codes. However, whilst article 8 of the European Convention on Human Rights identifies the right of privacy of the individual, this is then qualified. The qualification in article 8.2 provides that, "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the well-being of the country, for the prevention of disorder or crime, for the protection of health and morals, or for the protection of the rights and freedoms of others",[⁹]. Differing views on acceptable police conduct were found in Govell [Michael] v U.K. (14th January 1998) where the court found a breach of Art. 8 had occurred ,where the relevant chief constable and the Police Complaints Authority had taken no action as a result of the police conduct. Here, the police had drilled a hole into a living room wall from an adjoining property in order to fix up a listening device; camera equipment was also installed by the police. [^{9a}]. Authorisation is needed for

police usage of surveillance equipment. The rank of the officer able to give such authorisation differs depending upon the police conduct sought. Beyond the issue of conduct which might relate to phone-tapping, video camera usage and/or tape-recordings, the question of whether the police seek permission to so act in a public place or seek evidence on private premises is relevant. A good deal of the article 8.2 qualification is open to interpretation in a variety of ways. It would appear to form a basis for justifying a departure by the police from required or proper procedures in some instances. So long as the conduct is in accordance with the law; justification for the relevant conduct on the basis of protecting rights or interests is needed. Thus enforcing the significance of judicial discretion, and both the common law position and interpretation of sec. 78. Fairness is not specifically identified. The right of the individual to privacy is also identified in the International Covenant on Civil and Political Rights. Article 17(1) provides that, "no one shall be subjected to arbitrary or unlawful interference with his privacy.....nor to unlawful attacks on his honour or reputation". Building on this, article 17(2) contains the statement that "everyone has the right to the protection of the law against such interference or attacks".

POLICE INVESTIGATIVE ACTIVITY AND BROAD GROUNDS FOR EXCLUSION OF EVIDENCE OBTAINED.

Conduct of the police which reveals non-compliance with the requirements of the law and the codes can take many forms. This could include deception through statements, conduct or omission; denial of rights, failure to comply with required procedures at an interview or where an identification parade or usage of photographs for the purpose of identification is being undertaken, or the usage of electronic surveillance. "Sting" operations, as in *Williams v D P P* [1994][10], where a party was "invited" to take cigarettes from a van, in that the rear door had been deliberately left open with the cigarettes in view; or eavesdropping; see *Sultan Khan* [1996][11] are further examples of where police conduct may be alleged to fall short of that required in the carrying out of investigations into crime. We have seen how at common law the courts were reluctant to exclude evidence irrespective of how it was obtained, remember the statement in *R v Leatham* (1861) ante, quoted in *Kuruma son of Kanui v R* [1955][12], that it does not matter how you get evidence "...if you steal it even, it would be admissible". Qualification of this statement and recognition of judicial discretion was found in a number of cases however. With section 78 of "PACE" significantly maintaining the common law position, the judiciary have in some instances identified criteria for the exclusion of evidence. In *Scott v R* [1989][13], Lord Griffiths stated that the providing of a fair trial could justify the exclusion of some evidence. The use of trickery or malpractice is not necessary, *Callis v Gunn* (1964)[14]. In *R v Sang* [1980] ante, amongst other factors considered, the court acknowledged the need to exclude evidence where its prejudicial effect outweighed its probative value; note sec 82(3) PACE, whilst in *Jeffery v Black* [1978][15] the exercising of the discretion was seen as warranted where the police acted in a morally reprehensible way. Often police conduct forms the basis for consideration of the degree of departure from acceptable conduct rather than providing a basis for unquestionable exclusion of the evidence obtained. Relevant, beyond the nature of police conduct can be either the police played an active or passive role, and also, the issue of police intent to knowingly act in an improper or illegal way.

POLICE CONDUCT DECEPTION AND TECHNOLOGY.

The Codes of Practice contain a significant amount of detailed procedural requirements. Whilst such requirements relate to a wide range of police investigatory activities, the application of such in the developing area of technology usage can be identified specifically. The police have for a considerable time used recorded interviews and conversations in the gathering of evidence, but advances in technology have assisted both the criminal and the police. As to the permitted usage of such by the police, Lord Quinton wrote, "Criminality has been greatly strengthened by technical advances in recent years. The police need to be able to respond to this effectively". [15A] (see *Carter* (1997) at pp. 474-475). Where an accused for example, in formal interview at a police station

consistently makes replies of "no comment" to questions put, is it fair and acceptable for the police to look to obtaining taped information through informal discussion with officers at a police station, or conversations with friends or family in the same environment?. This issue raises the need to consider the European Convention on Human Rights and the International Covenant on Civil and Political Rights in relation to rights of privacy at a police station. Whilst the right to consult a solicitor in private is protected, no similar right attaches to other conversations. In Sultan Khan (1996) ante, the House of Lords attached little value to the right to privacy of an accused, when allowing evidence obtained through the usage of an electronic listening device which had been placed on the exterior of a building^[16], (see Carter 1997). In Bailey and Smith (1993) ^[17], a conversation containing incriminating evidence between two defendants, which took place in a police cell was taped, likewise in Stewart (1970)^[18], a defendant made incriminating comments during a conversation in a police cell. The comments were made to a cell-mate, but a police officer in an adjoining cell overheard what was said. Also, in Keeton (1970)^[19], a police officer overheard incriminating statements made by a defendant at a police station when making a telephone call to his wife. A tape-recorded conversation containing incriminating statements was deemed admissible in *R v Maqsd Ali, R v Ashiq Hussain* [1966]^[20], where suspects voluntarily went into a room with police officers and were then left alone to have a conversation. Marshall J. said in this case at p 469 "The criminal does not act according to the Queensbury rules. The method of the informer and of the eavesdropper is commonly used in the detection of crime. The only difference here was that a mechanical device was the eavesdropper". Note however, in *H* (1987)^[21], how the protection of rights of the accused and addressing the need for fairness in proceedings resulted in police evidence being deemed inadmissible. Here following a formal police interview in which no incriminating evidence was introduced, a more devious method of achieving evidence was used with a conversation being staged between the victim and alleged wrongdoer, which was recorded by the police and did contain incriminating matter, deemed inadmissible. Possibly of further relevance in finding the evidence inadmissible here was the deliberate untruth on the part of the victim as to whether or not the conversation was being taped. (Ashworth (1998)). The use of telephone tapping to obtain incriminating evidence has been given specific consideration. The dangers of abuse in such usage and the implications in relation to the European Convention on Human Rights article 8 have been highlighted. The *Malone v United Kingdom* case (1984)^[22], which addressed the potential problems in telephone tapping, was followed by the Interception of Communications Act 1985. A notable factor of significance in determining where tapping may be appropriate is the seriousness of the offence being investigated. In *R v Johnson* [1995]^[22a], the court acknowledged that voice identification, often acquired with the aid of technology, was becoming recognised as a part of police identification procedures. Prior to 1990 little authority in this area existed. The need for safeguards with such evidence have been recognised; particularly in the light of dangers existing in formal identification and the value recognised there in guidelines which exist. See *R v Turnbull* [1977]^[22b]. Where technology is used and a permanent record of events or statements is available; if the evidence, albeit improperly obtained, be deemed admissible, a jury may well attach significant weight to such, *R v Smurthwaite* [1994]^[23]. (Grevling (1997)).

DISTINGUISHING FAIRNESS IN POLICE CONDUCT AND FAIRNESS IN A TRIAL.

Where a party is permitted to introduce evidence which has been obtained in a way which shows a "deliberate breach of procedures laid down in an official code of practice" the proceedings become unfair, see *R v Quinn* [1990]^[24]. Use of the word "deliberate" perhaps reduces the scope of the statement, which on the surface is extremely wide. The codes have been stated to be "for the protection of those who are vulnerable because they are in the custody of the police", Jelen & Katz (1990)^[25]. A breach of the codes of practice would then appear to strike at the issue of fairness. The exclusion of evidence to achieve fairness need not be based on any improper police conduct or breach of the codes. (*Callis v Gunn* ante). A distinction can be drawn between the obtaining of evidence in an unfair way, and the introduction of that evidence causing the proceedings to be unfair. (May 1988). Unfairness in the obtaining of the evidence may not result in unfairness through the

usage in court of that evidence, *R v Khan* [1996] ante. Unfortunately, the courts often fail to give explanations for ruling evidence inadmissible in pursuing fairness in the proceedings.

HOW DO WE DETERMINE WHERE THE LINE IS DRAWN BETWEEN IMPROPERLY OBTAINED EVIDENCE WHICH IS DEEMED ADMISSIBLE AND THAT WHICH IS INADMISSIBLE ?

To recall initially a broad basis upon which the admissibility of evidence can be determined; the nature and extent of the breach(s) of the Codes and the extent to which breaches have occurred can be weighed up alongside the seriousness of the offence before the court. Breach of a code does not constitute a criminal offence. A substantial and significant breach can justify evidence being deemed inadmissible. Conduct which falls into this category may not often be clearly identifiable as such. Equally, a display of bad faith can be the basis for evidence being deemed inadmissible; but again a question of degree and an element of discretion can arise. Certainly where a crime is of a serious nature the courts have tended to be reluctant to exclude evidence, *R v Latif* [1996] ante.

Relevant here however, can be the value of the evidence obtained alongside the extent to which the code was breached. With a serious crime committed, significant breach of the code may not render evidence obtained inadmissible. In *R v Khan* [1994] ante, evidence was deemed admissible, with the court acknowledging that the seriousness of the crime being investigated was of importance and was seen to outweigh the improper conduct of the police. In this case breach of privacy, trespass to property and also damage to such; along with the usage of listening devices in private premises were found in the conduct of the police. The value of evidence which the police anticipate discovering through improper conduct may be of significance in justifying a decision to so act. Equally, a factor to be borne in mind by the police is the consequence where improper investigatory acts result in little or perhaps no evidence of value being obtained. A significant amount of the code content is regarded as fundamental in being subject to legislation. The number of breaches occurring can be the influencing factor when considering admissibility, however, in the main it appears it is the nature of the breach which will have the greatest effect on the courts ruling, *R v Stewart* [1995][26]. The case of *H* (1987) ante, might be seen as illustrating a situation where the judiciary could validly justify a ruling of admissibility or inadmissibility of the evidence on the basis of that discussed. The court held the evidence inadmissible. Likewise, in the Canadian case of *Hebert* (1990)[27], evidence was deemed inadmissible; here due to the police officer involved actually causing the incriminating evidence to be provided through questioning rather than having a passive role. The police officer introducing deception by acting undercover. Looking to further police involvement in the obtaining of evidence, instances of the police actually inciting a crime may justify the exclusion of evidence, "... there is arguably an abuse of process and resultant unfairness in upholding a conviction arising through incitement, whoever initiates the conspiracy". (See *Sharpe* [1994]). Where a charge is broad in its scope and certainly goes beyond the crime resulting from police incitement, this may well enhance the likelihood of the evidence being admissible. (See *J. Smith* 1995). The case of *Teixeira De Castro v Portugal* (9th June 1998)[27a] reveals somewhat differing views on the admissibility of evidence where the police incite crime or act as an agent provocateur. The crime of obtaining cannabis resulted from undercover police officers requesting the suspect provide them with the drug. In the Portuguese domestic courts, it was accepted that existing legislation did not prevent such police conduct, and the values being upheld justified such conduct. It was decided however, that Article 6 of the European Convention had been breached. In the United Kingdom, the questions, how active was the role of the police, and did they actually entice the commission of the crime with which the individual is charged appear to be factors of notable significance. Examples of improperly obtained evidence being deemed admissible are plentiful; a search carried out by an police officer of a rank lower than that appropriate did not render the evidence obtained inadmissible in *Kuruma, Son of Kaniu v R* [1955][28], evidence obtained following an illegal arrest, of a party having an excess of alcohol in the body was admissible in *Fox v Chief Constable of Gwent*[1986] [29], and in *R v Apicella* (1985)[30], a sample obtained from a suspect without his consent was deemed admissible. Non-compliance with the codes would seem clearly justifiable in some

instances. Certainly it would seem that conduct by the police should be condoned in cases such as *R v Hughes* [1994]^[31]. Here, an illegal search was carried out where but for the speedy action of the police, evidence of value would have been destroyed. Police conduct has been seen as justifying the exclusion of evidence in domestic cases including *Matto v Wolverhampton Crown Court* [1987]^[32] where a specimen was obtained from a suspect on his own land. Worthy of note here perhaps is the police officers clear awareness that they were not acting within the powers bestowed in them. Again in *ITC Film Distributors v Video Exchange Ltd.* [1982]^[33] police evidence was deemed inadmissible where it was obtained in contempt of court. In these two cases we have it seems a clear base for the judicial discretion being exercised. Many cases seen however, highlight circumstances which can form the basis for differing views rather than a generally acceptable broad justification for the exclusion of the evidence. A contentious area exists where the police obtain a document as a result of a trick. This could be deemed inadmissible, see *Jeffery v Black* [1978]^[34] and *R v Payne* [1963] ^[35]. In this area where clearly an issue of degree and the discretionary factor are of significance, the need to ensure fairness for the accused in the trial is a factor borne in mind.

THE OBTAINING OF CONFESSIONS.

One notable area where conduct of the police may be claimed improper or in breach of the code, is where a confession has been obtained. PACE 1984 sec.82(1) defines a confession to include: "any statement wholly or partly adverse to the person who made it, whether made to a person in authority or not and whether made in words or otherwise". In the early stages of the development of rules of evidence confessions were generally admissible. However, it was seen necessary that the person "shall willingly without violence confess", 1 Edw (1547)^[36], and the need to exclude evidence of confessions where they were not freely given was highlighted in the mid-eighteenth century, when it was said that where "a confession forced from the mind by the flattery of hope, or by the torture of fear,.....no credit ought to be given to it....", *R v Warickshall* (1973)^[37]. Today PACE 1984 sec. 76 is applicable, (with sec. 78 being frequently used also). Sec76(1) identifies the right to introduce confession evidence so far as it is relevant. Sec. 76(2) however identifies instances where a confession will not be allowed as evidence. Where "oppression", which includes torture, inhuman or degrading treatment and the use or threat of violence is used the evidence will be inadmissible. Further, particularly pertinent in relation to the requirements of the codes, is the negating of the value of evidence, if a confession is obtained where "circumstances existing at the time, ...render unreliable any confession which might be made by him in consequence thereof", sec 76(2) (b). The factors of significance in determining the admissibility of such improperly obtained evidence overlap with that of relevance where the evidence does not amount to a confession. In *R v Mason* (1988)^[38] a confession was inadmissible where the conduct relevant had an "adverse effect on the fairness of the proceedings"; in the *Heron* case (1993)^[39] where an accused was tricked through lies, the confession provided was inadmissible, and in *R v Stagg* (1994)^[40], a positive attempt to incriminate a suspect through "deceptive conduct of the grossest kind" resulted in the evidence obtained being deemed inadmissible. (See Ashworth 1998). We see commonly found criteria in all three cases upon which the admissibility of evidence can be considered, but equally we find the extent of the improper conduct a factor of significance.

CONCLUSION

From application of the common law to interpretation of PACE; and both the content of the European Convention on Human Rights and the Human Rights Act 1998 certain features are maintained. The need to achieve fairness in the proceedings, the importance of protecting rights and interests, and generally the desire to protect the general public remain dominant. If we accept that there is no need for sporting conduct by the police in the investigation of crime; is the idea of 'set a thief to catch a thief' appropriate?. With application of judicial discretion in determining the admissibility of evidence, is a competition between the victim, or the state on the one hand, and the defendant on the other validly recognised?. (See Hocking (1998)). Lord Steyn acknowledged that

while no court will approve readily "of trickery and deception being used, there are some circumstances in which one has to recognise, living in the real world, that this is the only way in which some people are ever going to be brought to trial".^[41] see Hocking (1998). The significance of weighing up the severity of a crime with the investigative methods adopted by the police has in the past and still does play a part of note. The codes might be seen as assisting the courts in enabling them to determine the extent to which the police have departed from that which is identified as proper. Equally they can be seen as assisting the police in identifying how they can and should undertake their work within considered and identified acceptable confines.

FOOTNOTES

[1] (1861) 8 Cox C C 498 at page 501.

[2] [1980] A. C. 402 at page 437.

[3] [1948] 1 K. B. 223.

[4] [1996] 3 WLR Lord Nolan at pp. 174-175.

[4a] Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers (Code), Code of Practice for the Identification of Persons by Police Officers (Code D), Code of Practice relating to Tape Recordings (Code E).

[5] (1996) 22 EHR 29 ECHR

[6] (1989) Cr App Rep 68.

[6a] [1998] 2 W L R 839.

[7] [1996] 1 W L R 104.

[8] (1994) Times 25th October.

[9] also contained in the Human Rights Act 1998 Sched. 1 Art 8.

[9a] (14th January 1998) (No 27237/95).

[10] [1994] 98 Cr App Rep 209.

[11] [1996] 3 W L R 162.

[12] [1955] A. C. 197 at page 203.

[13] [1989] A. C. 1242.

[14] (1964) 1 Q. B. 495.

[15] [1978] Q. B. 490.

[15a] see Lord Quinton letter in the Times January 28th. (1997).

[16] see Police Act 1997 for content on procedures (1984 Home Office guidelines applied in Sultan

Khan 1996.

[17] (1993) 97 Cr App Rep 365.

[18] (1970) 54 Cr App Rep 210.

[19] (1970) 54 Cr App Rep 267.

[20] [1966] 1 Q. B. 688

[21] (1987) Crim L. R. 47.

[22] A 82 1984.

[22A] [1995] 2 Cr App R 41.

[22B] [1977] Q.B. 224.

[23] [1994] 1 ALL E R 876.

[24] [1990] Crim L R 581 per Lord Lane CJ.

[25] (1990) Cr. App Rep. 456 page 464 per Auld J.

[26] [1995] Crim L R 500 C.A..

[27] (1990) 2 SCR 151.

[27a] (9th June 1998) (44/1997/828/1034).

[28] [1955] A.C. 197.

[29] 1986] A.C. 281.

[30] (1985) 82 Cr App Rep 295.

[31] [1994] 1 WLR 876.

[32] [1987] RTR 337.

[33] [1982] Ch 431.

[34] [1978] Q.B. 490 at page 498.

[35] 1963] 1 ALL E R 848.

[36] 1 Edw. VI Cl 2 S 22 91547).

[37] (1973) 1 Leach 263.

[38] (1988) 86 Cr App Rep 349.

[39] (1993) The Times November 22nd.

[40] (1994) Central Criminal Court - for transcript.

[41] [1996] 1 ALL E R 353 at p. 358 per Lord Steyn.

REFERENCES.

Ashworth. Excluding evidence as protecting rights. (1977) Crim L R 723.

Ashworth. Should the police be allowed to use deceptive practices? (1998) 114 LQR 108.

Bevan and Lidstone, Ken Lidstone and Clare Palmer; The Investigation of Crime. 2nd Ed. (1996) Butterworths.

Carter. Evidence obtained by using a covert listening device (1997) 113 LQR 468.

Cross and Tapper ed. Tapper. Evidence. 8th. Ed. (1995) at pp. 538-540..

Gelowitz. Section 78 of the Police and Criminal Evidence Act 1984: Middle ground or no man`s land. (1990) 106 LQR 327.

Grevling. Fairness and the exclusion of evidence under section 78 Police and Criminal Evidence Act 1984. (1997) 113 LQR 667.

Hocking. Journal of Criminal Law vol.62 (October 1998).

Hunter. Judicial discretion: Section 78 in practice.. [1994] Crim L R 558.

May. Fair play at trial... [1988] Crim L R 722.

Polyviou. Illegally obtained evidence and R. v Sang... - Crime, Proof and Punishment. ed Tapper. (1981).

S. Sharpe. Covert police operations and the discretionary exclusion of evidence [1994] Crim L R 793.

Smith J. Criminal Evidence (London Sweet and Maxwell 1995 p 192).

Zander. The Police and Criminal Evidence Act 1984.3rd Edition (1995).