

N.S.W. POLICE TRAINING CENTRE.

DETECTIVE TRAINING COURSE.

HOMICIDE.

Prepared by: Constable First Class J.G.Hill.

INDEX.

<u>SUBJECT.</u>	<u>PAGE.</u>	<u>PARAGRAPH.</u>
INTRODUCTION.	1	1
HOMICIDE.	1 - 2	2 to 4
UNLAWFUL HOMICIDES and LAWFUL HOMICIDES.	2	6 to 7
UNLAWFUL HOMICIDES. MURDER.	2 - 2	8
A. The fact of death.	2	9 to 13
B. That the death charged is homicide.	3	14 to 15
C. That an act or omission of the accused caused the death charged.	3	16 to 20
D. That such act or omission is murder within the meaning of section 18 of the Crimes Act.	3	21
i. was done or omitted with reckless indifference to human life.	4	22 to 23
ii. (A) with intent to kill some person.	4 - 5	24 to 29
ii. (b) with intent to inflict grievous bodily harm upon some person.	5	30 to 31
iii. Done in an attempt to commit, or during, or immediately after the commission, by the accused, or some accomplice with him of the acts specified.	5	32
"Done in an attempt to commit".	5	33

-2-

<u>SUBJECT.</u>	<u>PAGE.</u>	<u>PARAGRAPH.</u>
"Done during the commission of".	5 - 6	34
"Done immediately after the commission of".	6	36 to 38
"By the accused of some accomplice with him".	6 - 7	39 to 41
"An act obviously dangerous to human life".	7	42
"Acts punishable by death or penal servitude for life".	7	43
E. That such act or omission is malicious within the meaning of section 5 of the Crimes Act.	7 - 9	44 to 52
F. That the deceased died of the wound or other injury given him by the accused within a year and a day after he received it.	9	53 to 54
Punishment for Murder.	9	55 to 57
Proofs of manslaughter.	9 - 10	58
Distinction between murder and manslaughter.	10	59
A. Malice.	10	60 to 61
B. The nature of the act or omission.	10 - 11	62 to 63
(i) Voluntary Manslaughter.	11	64
(a) Killing by provocation.	11	65
(b) Killing by the use of more force than the occasion warrants either in the defence of oneself or of another or in the exercise of a lawful power of arrest or the prevention of a felony.	12	66
(c) Infanticide.	12	67
"Involuntary Manslaughter"	12 - 13	68
SUMMARY OF MANSLAUGHTER.	13	69

-3-

<u>SUBJECT.</u>	<u>PAGE.</u>	<u>PARAGRAPH.</u>
LAWFUL HOMICIDES.		
Introduction.	14	70 to 71
(2) (A) No act or omission which was not malicious, or for which the accused had lawful cause or excuse shall be within this section.	14	72
(A) Execution of Sentence.	14	73
(B) By Constables and other persons in certain circumstances.	15 - 16	74 to 79
(C) In the prevention of forcible and atrocious crimes.	16	80
(D) Defence of other persons and property.	17	81 to 83
Conclusion.	17	84 to 85
(2) (B) (i) Death by misfortune only.	17 - 18	86 to 89
(2) (A) (ii) Death caused in his own defence.	18	90 to 91

N.S.W. POLICE TRAINING CENTRE.DETECTIVE TRAINING COURSE.HOMICIDE.INTRODUCTION.

1. The system of criminal law in this State is not, as in the case of some countries and certain states of the Commonwealth of Australia, contained in a single code promulgated by legislative body. It is, on the contrary, a conglomerate mass of rules based on ancient common law of England modified and extended by the authoritative decisions of judges in the long passage of history, and vastly enlarged by the addition of statutory enactments made by parliament from time to time, to meet the needs of the moment. Blackstone wrote "Statutes are also either declaratory of the common law or remedial of some defects therein." Sir Owen Dixon, in a paper, written in 1935 said of the development of homicide "for eight centuries the course of its gradual evolution has been from an almost exclusive concern with the external act which occasioned death to a primary concern with the mind of the man who did the act." Judge Windeyer in the case Ryan V. The Queen (1967) 40 A.L.J.R. at page 502 said, "It may be that this process of common law development is as yet unfinished. But the law of homicide is codified for New South Wales in Section 18 of the Crimes Act, 1900 and it is by the provisions of that section, not by the common law that this case must be decided." (This was a charge of murder.)

HOMICIDE.

2. There are a number of definitions of homicide but for the purposes of this lesson and for all practical purposes so far as you as Detectives are concerned we will define homicide in the following way:

"Homicide is the killing of a human being by a human being."

3. The various types of homicide which existed at common law have been codified in this State and are dealt with under the statutory provisions of Section 18 of the Crimes Act, 1900 in this State.

4. Section 18 of the Crimes Act provides:

- (1) (A) Murder shall be taken to have been committed where the act of the accused, or thing by him omitted to be done, causing the death charged,
- i. was done or omitted with reckless indifference to human life, or
  - ii. with intent
    - a. to kill, or
    - b. inflict grievous bodily harm upon some person,
 or
  - iii. done in an attempt to commit, or during or immediately after the commission, by the accused, or some accomplice with him,
- of
- a. an act obviously dangerous to human life; or

after he received it.

We shall now examine the evidence necessary to establish each proof.

A. The fact of death.

9. In charges of homicide the fact of death must be established. Death is proved by an examination of the body of the deceased upon which a legally qualified medical practitioner who must carry out such examination will certify that life is extinct.

10. Where the name of a person is stated in an indictment for murder evidence must be adduced identifying that person as being the deceased person mentioned in such indictment. This is usually done by a relative of the deceased or by some person who had known the deceased sufficiently long enough to be able to positively identify him. Where evidence of identification cannot be obtained from such persons it may be established by means of fingerprint identification. However, where a person is murdered and the body is located and there is no way in which the body can be identified, as being a certain person, this does not preclude a charge of murder. Provided always of course all the other ingredients in the crime are present.

11. Another problem is sometimes occasioned in charges of murder where the body is not found. On a charge of murder, the fact of death is provable by circumstantial evidence, notwithstanding that the prisoner has made no confession of any participation in the crime. (1) Before the prisoner can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime certain and leave no ground for reasonable doubt. The circumstantial evidence should be so cogent and compelling as to convince a jury that on no rational hypothesis other than murder can the facts be accounted for. (2)

12. In the Shark Arm case an arm was found, which, according to medical evidence, was unsurgically removed from a dead body. The court accepted proof of death and the identity of the deceased was established by fingerprints and tattoo marks on the forearm.

13. Another example in this State is the Moss case at Narrromine. In this case Moss was charged with three murders and committed for trial on each charge although no bodies were found. Two joints of human vertebrae, together with some human teeth, were recovered from the remains of a fire; also metal objects, a stud and buttons. Evidence was given that one of the deceased, a man named O'Shea, had camped near there and that Moss was in the vicinity about the time the fire occurred. O'Shea suddenly disappeared and was never heard of again. Moss was proved to be in possession of all O'Shea's worldly goods and admitted having killed him and burnt his body. He was brought to trial on the charge of murdering O'Shea and evidence was also given against him of the murder of the other two men, Robinson and Bartley. This evidence was held to be admissible by the trial Judge on the grounds that it showed a designed course of conduct by the accused. Similar evidence was given in the famous "Brides of the Bath Case" in England and in the trial of Soderman for the murder of several young girls in Victoria.

B. That the death charged is homicide.

14. Again repeating the definition of homicide given in paragraph 2 of this lesson, 'homicide' is the killing of a human being by a human being. This therefore excludes suicide

(1) R v. Onufrejczyk. (1955) Q.B. 388

(2) Brown v. R. (1913) 17 C.L.R. 570 at pp. 584-586, 594-596.

or self destruction from the law of homicide. However, it does not exclude suicide pacts, which will be dealt with later in this lesson.

15. Section 20 of the Crimes Act provides -

"On the trial of a person for murder of a child, such child shall be held to have been born alive if it has breathed, and has been wholly born into the world, whether it has had an independent circulation or not."

Murder may be committed on a child still attached to its mother by the umbilical cord, and the injury causing the death may precede the birth. (3)

C. That an act or omission of the accused caused the death charged.

16. If the death can be attributed to the acts of some person and if in all the circumstances a death so caused is one which the law seeks to prevent by imposing punishment, which in this instance is murder, then it forms the actus reus of homicide necessary to establish this proof.

17. Where it is alleged that a death was caused by the prisoner's neglect to perform a duty, it is incumbent upon the prosecution to establish to the satisfaction of the judge that the prisoner was under that duty. (4)

18. There is an obligation on parents to maintain their children and this is made enforceable in this state under the provisions of the Child Welfare Act. Therefore, if a parent of a child having a legal duty to perform fails to sufficiently maintain his child or does not provide such medical aid as the child requires and as the result of this omission death results, provided all the other ingredients of murder, as defined, exist; then such omission would be sufficient to establish this proof.

19. Many persons have a responsibility to perform arising out of their employment, for example, person employed at railway crossing gates, or employees working in mines where they have a duty to keep the mine ventilated. If such persons fail to perform their prescribed duty and death is occasioned as the result of such omission, and provided all the other elements as required in the definition of murder exist then that omission would be sufficient to establish this proof. Usually the omissions referred to in this and the preceding paragraph are not the subject of murder charges but that of manslaughter and are merely quoted to give you examples of how omissions could, in certain circumstances, be sufficient to warrant a charge of murder.

20. The act or omission which causes the death charged may be by poisoning, striking, starving, drowning and a thousand other forms.

D. That such act or omission is murder within the meaning of section 18 of the Crimes Act.

21. We shall now consider the ingredients required to establish that an act or omission amounts to murder within the meaning of section 18 of the Crimes Act. We will deal with the ways in which murder may be committed as set out in paragraph 4 of this lesson.

(3) See Archbold, 34th Edn., at page 941.

(4) R v. Edwards (1838) 8 C & P, 611.

i. was done or omitted with reckless indifference to human life.

22. This type of murder is conveniently described as reckless killing but the adoption of this terminology necessitates distinguishing recklessness from both intention and negligence. The central idea of the concept of reckless killing is the combination of foresight that one's actions may cause the death of another with a decision to take that risk.

23. In the case Regina v. Stones, (1956) 72 W.N. at page 471 the question of recklessness in the crime of murder was discussed and it is now proposed to quote a portion of that judgment in order to acquaint you with the legal requirements in regard to recklessness in a charge of murder. "As was suggested by Mr. Justice Devlin in a lesson (Criminal Law Review 661, in 1954), the state of a man's mind as to intent in a criminal case can ordinarily be proved only by inference from the circumstances, and the ordinary method of inquiry is to ask what were the probable consequences of the act. Thus a standard test of a man's mind in the commission of an act is the foreseeable consequences. If he applied his mind to the consequences, and without concluding that they would probably happen (which is criminal intent) his state of mind was that he did not care whether they happened or not, that is recklessness. The task of a jury is to infer to what extent the accused appreciated the consequences his act. It seems to us that to be recklessly indifferent to human life, as stated in section 18, the state of mind of the accused is relevant and requires proof of a high degree of malice in the doer, going beyond mere negligence or a dangerous act, unless in the latter case, the act is one of violence, e.g. rape, which comes within the latter part of section 18 (1) (a) which, if death ensues, necessarily constitutes a malicious homicide."

ii. (A) with intent to kill some person.

24. Under this clause is the most common case of murder, that is, where the accused had the intention to kill the particular person, who, in fact, was killed. Before a person can form an intention to do an act he must be of sound memory and discretion, therefore murder cannot be committed by an idiot, lunatic, or an infant, unless he shows a consciousness of doing wrong, and a discretion or discernment between good and evil.

25. The intention of the party at the time when he commits an offence is an essential ingredient in a charge of murder, when relying upon this particular manner in which the crime may be committed. Intention, however, is not always capable of positive proof, it can sometimes be implied only from overt acts. As a general rule every man is taken to intend the natural and probable consequences of his own acts. However, this presumption does not extend to all acts such as in the case of accidents.

26. Where the essence or a necessary constituent of the offence is a particular intent, that intent must be proved by the Crown just as much as any other fact necessary to constitute the offence, and the burden of proving that intent remains throughout on the Crown. If the Crown prove an act the natural consequence of which would be a certain result, and no evidence or explanation is given, then the jury may, on a proper direction, find that the prisoner was guilty of doing the act with the intent alleged; but if on the totality of the evidence there is room for more than one view as to the prisoner's intent, the jury should be directed that it is for the Crown to prove the intent to the jury's satisfaction and if, on the whole of the evidence the jury either think that the intent did not exist or they are left in doubt as to the intent, the prisoner is

entitled to be acquitted. (5) Evidence of similar acts can also be used to prove intent. This will be dealt with in the lesson dealing with this subject.

27. Where an accused person has an intention to kill a particular person, but not the one who actually was killed it also comes within the scope of this clause. If A shoots at B with the intention of killing him, but misses and kills C, a person whose life he had no intention to take, then the death of C is in law treated not as a homicide by misadventure, but as murder.(6)

28. Murder can also be committed where there is an intention to kill, but without selecting any particular individual as the victim. Some early settlers in Queensland, are said to have rubbed poison into carcasses of sheep or into masses of flour, and then placed them in the bush in the hope of their being eaten by the aborigines. In 1838, seven settlers were hanged in this State for the unprovoked massacre of thirty natives by atrocities of this nature. (7)

29. To summarise this clause it can now be seen that the accused may have intended to kill:

- (A) A specific person; or
- (B) A specific person but in the act of committing the offence some innocent person suffered death; or
- (C) Although the accused had no specific victim in mind.

ii.(b) with intent to inflict grievous bodily harm upon some person.

30. Under Section 4 of the Crimes Act "Grievous bodily harm" is said to include "any permanent or serious disfiguring of the person."

31. If a person forms an intention to do grievous bodily harm to another person, even though he had no intention to kill the victim, and that person dies, that act will constitute murder for the purpose of this clause, provided of course all the other ingredients of this crime are present. (8)

iii. Done in an attempt to commit, or during, or immediately after the commission, by the accused, or some accomplice with him of the acts specified.

32. In dealing with this proof of murder we will firstly examine the ways in which the specific acts referred to in the section may be committed.

"Done in an attempt to commit"

33. In all cases where the intent to commit a crime is manifested by any overt act, the party may be indicted for an attempt to commit the offence. The question of attempts is fully dealt with in the lesson dealing with sexual offences.

"Done during the commission of."

34. The word 'during' used here is considered synonymous with the words 'in the course of' which is taken to mean the period which begins as soon as the stage of attempt has been reached, and ends at the time when the felony has been committed.

(5) Archbold, 34th Edn. at page 374.

(6) Fost, 261; 1 Hale 438, 441.

(7) Haydon's Trooper-Police of Australia.

(8) R v. Vickers. (1957) 2 Q.B. 664.



35. In the English case *R v. Betts and Ridley*, (1930) 22 Cr. Appl. R. 148, it appeared that the prisoners had agreed to waylay a man, Andrews, while on his way to take money to the bank and to push him down and rob him of the money. In a motor car they drove towards the place where they knew Andrews would pass. Ridley remained in the car at the corner, while Betts alighted and proceeded to waylay Andrews as he came with a bag containing money. Betts seized the man and struck him a blow on the head which caused his death shortly afterwards. With the bag Betts returned to where Ridley was waiting for him, and both drove away. Both men were convicted for murder. During the course of an appeal it was said by the learned judge, "While in the act of committing a felonious act of violence against the person, as he undoubtedly was, he caused death by some act done by him in the course of that felonious act of violence." It must be remembered that this is an English case and although the principle applies in this State it could only apply if the act causing the death occurred during the commission of an act obviously dangerous to human life or of a crime punishable by death or penal servitude for life.

"Done immediately after the commission of."

36. This particular clause provides for acts which are committed after the felonious act has been completed, in instances where death is occasioned to some person by the perpetrator of the felonious act in order to make good his escape or to conceal the commission of the crime.

37. Another English case illustrates this point. In *R v. Jones* (1959) 1 Q.B. 291, Jones was charged with murder of the manager of a store. He broke into the store, went upstairs and stole money from a safe. As he was about to come downstairs he heard a noise which was made by the manager returning to the premises. Jones hid at the top of the stairs where he struck the manager the blows which proved to be fatal. Jones was convicted of murder; he unsuccessfully appealed.

38. Therefore if an offender presented a revolver at a bank teller during a bank robbery in which he obtained a sum of money and then he shot the teller and killed him this would come within the scope of this clause because once he takes possession of the money the offence of robbery is then completed. However, the act which killed the teller was committed immediately after the perpetration of a felony which is punishable by penal servitude for life.

"By the accused of some accomplice with him."

39. An accomplice is any person who, either as a principal or an accessory, has been associated with another person in the commission of any offence. (9) A person may be charged with criminal homicide on the basis that he was an accomplice, in which case he need not be proved to have committed the fatal act to be convicted. Since no act of killing need be proved against an accessory, party to homicide, it follows that no question where he caused the killing arises. The criminal responsibility of an accomplice does not depend on whether homicide can be attributed to him. His responsibility is in the first place dependent, stemming from the attribution of homicide to the principal offender; and secondly, is based on a certain relationship with him.

---

(9) Osborn Concise Law Dictionary at page 6.

40. In the case of R v. Betts and Ridley, dealt with in paragraph 35 of this lesson, even though Ridley remained in the car at the corner he was still a principal in the crime in question, Betts being an accomplice. Even though Betts was responsible for killing Andrews, Ridley was charged and convicted of murder because both had a common purpose and design in committing the robbery.

41. We can therefore come to this conclusion: that, if two persons having a common purpose decide to commit a crime punishable by penal servitude for life and both persons are present acting in concert at the time the felony is committed, and during the perpetration of the felony a person is killed as the result of an act committed by one of the offenders; then both would commit the crime of murder, provided of course the act causing the death was done in committing the felony intended, and not by accident.

"An act obviously dangerous to human life."

42. In R v. Desmond Barret and others, Lord Chief Justice Cockburn said, "If a man did an act, more especially if that were an illegal act, although its immediate purpose might not be to take life, yet if it were such that life was necessarily endangered by it - if a man did such an act not with the purpose of taking life, but with the knowledge or belief that life was likely to be sacrificed by it," that was murder. (10) Thus if A, for the purpose of rescuing a prisoner, explodes a barrel of gun-powder in a crowded street and kills a number of persons with intent to explode the barrel of powder in the crowded street, 'A' commits murder, although he may have no intention at all about the people in the street, or may hope that they will escape injury. (11) Therefore if a man fired a shotgun on private property in the direction of a public street, such street being well within the range of his gun, knowing full well that there were people in that street; and a shot from the weapon hit and killed a person in the street this act could well constitute murder within the meaning of this section.

"Acts punishable by death or penal servitude for life."

43. Piracy and Treason are the only capital offences existing in this State today. However, there are a number of offences under the Crimes Act No. 40 of 1900 which provide for penal servitude for life. You can ascertain these from a perusal of the Act.

E. That such act or omission is malicious within the meaning of section 5 of the Crimes Act.

44. Another essential ingredient in the crime of murder is that the act or omission of the accused causing the death charged was done maliciously. Maliciously is defined in Section 5 of the Crimes Act.

45. We shall now examine the definition of maliciously.

"Maliciously"

- (1) Every act done of malice whether against an individual or any corporate body or number of individuals, or
  - (2) done without malice but
    - (i) a. with indifference to human life or suffering, or
    - b. with intent to injure some person or persons, or
- corporate body, in property or otherwise,

(10) Times Report, Apr. 1868.

(11) A Digest of the Criminal Law. (3rd Edn.) Stephens.

and in any such case without lawful cause or excuse,  
or

(ii) done recklessly or wantonly,

shall be taken to have been done maliciously, within the meaning of this Act, and of every indictment and charge where malice is by law an ingredient in the crime."

46. It will be seen that the word "maliciously" when used in a criminal charge may have a meaning different to the one which it bears in common speech. In common acceptance "malice" signifies a desire for revenge or a settled anger against a particular person or is an expression of hatred and ill will to an individual. However, in criminal law, for the purpose of this State, an act will be taken to have been done "maliciously" although it was done without malice (in its ordinary meaning) provided it is done in any of the ways mentioned in section 5.

47. The definition of "maliciously" in this State provides for "EXPRESS MALICE" and "IMPLIED MALICE", as set out in clauses (1) and (2) respectively of paragraph 45 of this lesson.

48. Express malice is where the accused exercises malice with an actual intention to do an injury of the same kind as that which is in fact done.

49. Implied malice is where the killing of a person comes within the scope of the circumstances set out in clause (2) of paragraph 45.

50. So far as the offence of murder is concerned the inclusion of the proof of "maliciously" seems to be superfluous because if an act or omission comes within the meaning of the definition of murder as defined in Section 18 of the Crimes Act then such act or omission is in fact done maliciously. This proposition is explained in a comparison chart set out hereunder:

<u>MURDER.</u>	<u>MALICIOUSLY.</u>
Reckless indifference to human life.	With indifference to human life or suffering.
With intent to kill or inflict grievous bodily harm upon some person.	Every act done of malice. OR With intent to injure some person, or persons, or corporate body, in property or otherwise.
An act obviously dangerous to human life.	Done recklessly or wantonly.
An act punishable by death or a crime punishable by penal servitude for life.	Every act done of malice. OR With intent to injure some person, or persons, or corporate body in property or otherwise.

51. Although it seems that every act or omission which amounts to murder within the meaning of the definition is done maliciously the converse does not apply. The fact that death occurred by means of an act which is malicious within the meaning of section 5 of the Crimes Act does not necessarily mean that that crime is murder.

52. It will also be noted that an act or omission of the accused will not be murder if the offender had lawful cause or excuse and the same provision also applies where malice is an ingredient in the crime. In regard to the term "Lawful cause of excuse" the provisions of section 417 of the Crimes Act do not apply to the offence of murder or where the term maliciously is used in a crime or offence. The onus is on the Crown to prove that the act was done without lawful excuse. (12)

F. That the deceased died of the wound or other injury given him by the accused within a year and a day after he received it.

53. This rule probably originated in the uncertainties of medical science in bygone times. The connection between a given injury and subsequent death formerly could be traced with less accuracy than nowadays, so that the lapse of a long period of time between the two rendered the likelihood of injustice to an accused correspondingly greater. Some limitation had to be laid down and the courts chose one year. The odd day was added on because of another rule that in reckoning time in criminal cases the whole of the day on which the accused inflicted the injury was to be counted in his favour as the first day of the limitation period. (13)

54. Under this proof it is necessary that the victim died of a wound or injury given him by the accused within a year and a day after he received it. If death occurs beyond this period then you are precluded from preferring a charge of murder.

Punishment for Murder.

53. Section 19 of the Crimes Act provides:

55. "Whosoever commits the crime of murder shall be liable to penal servitude for life."

MANSLAUGHTER.

56. Section 18 of the Crimes Act defines the crime of manslaughter, and states "Every other punishable homicide shall be taken to be manslaughter."

57. Manslaughter has been spoken of as "the most elastic of all crimes" for it extends from the verge of murder to the verge of excusable homicide and the variations in punishment provided in section 24 of the Crimes Act which is the punitive section dealing with manslaughter seems to indicate that such margin was in the minds of the legislators. A person convicted of manslaughter may receive a sentence ranging from imprisonment until the rising of the court up to penal servitude for life, the latter being the same penalty that is provided for murder.

Proofs of manslaughter.

58. The proofs required to establish a charge of manslaughter are the same as those in murder with two exceptions: the first being that the offence does not fall within the meaning of the definition of murder and the second being that it is not necessary to prove "Maliciously"

The proofs of manslaughter are:

- A. The fact of death.
- B. That the death charged is homicide.
- C. That an act or omission of the accused caused the death charged

(12) R v. Trimarchi, 49 W.N. 147.

(13) Australian Criminal Law. Colin Howard at page 27-8

- D. That the deceased died of the wound or other injury given him by the accused within a year and a day after he received it.

It is not proposed to discuss these proofs in this lesson as they have already been discussed in the proofs of murder.

Distinction between murder and manslaughter.

59. It is proposed to deal with the undermentioned subjects which distinguish a charge of manslaughter from that of murder and to compare and contrast these distinctions:

A. Malice.

B. The nature of the act or omission.

A. Malice.

60. The indictment for murder reads as follows -

"That A.B. on the.....day of.....in the year etc., at .....in the State of New South Wales did feloniously and maliciously murder J.N."

However, the indictment for manslaughter reads as follows -

"That A.B. on the.....day of.....in the year etc., at .....in the State of New South Wales did feloniously slay J.N."

61. It will be seen that "Malice" is not an essential ingredient in the crime of manslaughter as it is in murder. It is however, difficult to visualise circumstances surrounding a death which would not be malicious within the meaning of section 5 of the Crimes Act, which would justify a charge of manslaughter being preferred. It would seem however, that in view of the provisions of sub-section (2) (a) of section of 18 of the Crimes Act, which says "No act or omission which was not malicious of for which the accused had lawful cause or excuse, shall be within this Section", malice may be an essential ingredient in a charge of manslaughter, because both the offence of murder and manslaughter are defined in the section. Section 18 does not provide any punishment but merely defines the crimes of murder and manslaughter for the purpose of the Crimes Act, and also provides exceptions and provisos to these offences, and manslaughter is not one of these exceptions. Due to the fact that 'Maliciously' is not mentioned in the indictment for manslaughter and the courts have accepted this indictment for many years we do not suggest that you consider that 'Malice' is an essential ingredient in the crime of manslaughter.

B. The nature of the act or omission.

62. If the act or omission does not come within the scope of the definition of murder as set out in paragraph 4 of page 2 of this lesson and provided the act or omission is not excluded from the provisions of section 18 by the provisos of that section, i.e. those set out in paragraph 4 of this lesson in clause (2), then such an act or omission would amount to manslaughter. We can therefore come to the conclusion that a killing, which is not murder but is by its nature unlawful, in that it is not excused by the provisions of section 18 of the Crimes Act, will amount to manslaughter or some lesser offence such as infanticide or culpable driving.

63. Manslaughter is traditionally and usefully described as either:

- (i) voluntary, or
- (ii) involuntary.

We shall now proceed to examine these types of manslaughter.

"(i) Voluntary Manslaughter."

64. Voluntary manslaughter is a killing which prima facie amounts to murder but is reduced to manslaughter by reason of some mitigating circumstances. The categories of voluntary manslaughter are:

- (a) killing upon provocation;
- (b) killing by the use of more force than the occasion warrants either in defence of oneself or of another or in the exercise of a lawful power of arrest or the prevention of a felony;
- (c) infanticide.

We shall now examine the types of voluntary manslaughter.

65. (a) Killing by provocation:

Statutory provision is made for the reduction of of murder to manslaughter under section 23 of the Crimes Act, which sets out -

"(1) Where, on the trial of a person for murder, it appears that the act causing death was induced by the use of grossly insulting language, or gestures, on the part of the deceased, the jury may consider the provocation offered, as in the case of provocation.

(2) Where, on any such trial, it appears that the act or omission causing death does not amount to murder, but does amount to manslaughter, the jury may acquit the accused of murder, and find him guilty of manslaughter, and he shall be liable to punishment accordingly:

Provided always that in no case shall the crime be reduced from murder to manslaughter, by reason of provocation, unless the jury find -

- (a) That such provocation was not intentionally caused by any word or act on the part of the accused;
- (b) That it was reasonably calculated to deprive an ordinary person of the power of self-control, and did in fact deprive the accused of such power, and,
- (c) That the act causing death was done suddenly, in the heat of passion caused by such provocation without intent to take life."

A perusal of this section discloses that in all charges of murder there is open to the accused a defence of "provocation". It must be clearly understood that no provocation whatever can render homicide lawful within the meaning of section 18 of the Crimes Act, but provocation may, as the section shows, reduce the offence to manslaughter.

66. (b) Killing by the use of more force than the occasion warrants either in the defence of oneself or of another or in the exercise of a lawful power of arrest or the prevention of a felony.

A person is entitled to use a degree of force appropriate to the circumstance to defend himself or someone whom he is entitled to protect, or property, or to prevent the commission of a felony or to exercise a lawful power of arrest. If the circumstances are such that he is justified even in killing, by definition he commits no crime by doing so; but if he is justified in using only some degree of force short of killing another, and he kills by using excessive force, he may be guilty of either murder or manslaughter. If he knew that he was using more force than was reasonable in the circumstances he is guilty of murder, but if he thought he was using no more force than the situation warranted he is guilty only of manslaughter. (14)

This question has also been discussed in the lesson dealing with common assaults.

67. (c) Infanticide:

Provision is made in section 22A of the Crimes Act whereby the crime of infanticide may be reduced from murder to manslaughter. This is dealt with in the lesson dealing with infanticide.

"Involuntary Manslaughter."

68. Involuntary manslaughter is where there is no intention to kill or even hurt anybody. It is proposed to deal with this type of manslaughter under the following categories:

- (a) Unlawful acts likely to cause bodily harm which is not grievous;
- (b) Manslaughter by omission;
- (c) Manslaughter by criminal negligence.

We shall now proceed to consider these types of involuntary manslaughter.

(a) Unlawful acts likely to cause bodily harm which is not grievous.

If the accused did not intend to kill or cause grievous bodily harm, and he did not know, nor ought to have known, that his act was likely to cause death or grievous bodily harm and the act does not come within the meaning of murder as defined in section 18 of the Crimes Act then the charge is one of manslaughter. In *R v. Larkin* (1943) K.B. 194. the jury were held to have been rightly directed that, even on his own account of the facts, the accused was guilty of manslaughter. He said he flourished an open razor with the intention of frightening a man who had had immoral relations with the deceased, a woman with whom the accused had been living, and she blundered against the blade and was killed. An intention to alarm will suffice and the like intention to cause physical harm. It need not have been directed against the deceased.

At one time it was the law that death occasioned by any unlawful act would amount to manslaughter, although such act was not likely to cause physical harm or

alarm to anyone. It seems clear now, however, that the act causing the death must be dangerous, in the sense that it is likely to injure someone, as well as unlawful. (15)

(b) Manslaughter by omission.

These are cases in which the unintentional causing of death by breach of a duty owed to someone who is in the custody of the accused may amount to manslaughter just as it would amount to murder if death was caused intentionally, or in circumstances in which the accused must have contemplated it as the probable result of his omission.

If a person has assumed the protection of another who is helpless owing to age, insanity or disease, a duty to provide sufficient care and medical attention is placed upon the custodian, and if death results from a breach of such duty then manslaughter will be committed. (16) A duty may also exist by virtue of the occupation of the accused. Thus in the case *R v. Lowe* (1850) 3 Car. & Kir. 123, the accused was an engineer who was in charge of a lift in a mine. He left it in the care of an ignorant boy while it was in use, and this occasioned the death of the deceased. Lord Campbell, C.J. was clearly of the opinion that a man may, by a neglect of an active duty, render himself liable to be convicted of manslaughter. This duty is also imposed by attendants to close railway level crossing gates and failure to close the gates, where there is no lawful cause or excuse, amounts to manslaughter.

(c) Manslaughter by Criminal Negligence.

The number of cases in which a person may be guilty of manslaughter because of his failure to act is limited, but if death is caused by the performance of a positive act, the case may be one of manslaughter by criminal negligence. The degree of negligence necessary to establish a charge of manslaughter has been discussed in the lesson dealing with manslaughter by criminal negligence. In modern times, most cases of manslaughter by criminal negligence arise out of the use of motor cars. To illustrate this type of manslaughter it is proposed to give a quotation from 4 Blackstone's Commentaries 192; *R v. Hull* (1664), Keil 40. "When a workman flings down a stone or piece of timber into the street, and kills a man; this may be either, misadventure, manslaughter, or murder according to the circumstances under which the original act was done; if it were in a country village, where few passengers are and he calls out to all people to have care, it is misadventure only; but if it were in London, or other populous town, where people are continually passing, it is manslaughter, though he gives loud warning; and murder, if he knows of their passing, and gives no warning at all." Even though this case is more than three centuries old it still seems to be good law and comes within the statutory definitions of murder and manslaughter under section 18 of the Crimes Act.

SUMMARY OF MANSLAUGHTER.

69. As you no doubt have observed it is difficult for anyone to define accurately the crime of manslaughter. Therefore we can come to this conclusion that if a homicide does not come within the meaning of murder as defined in Section 18 of the Crimes Act and the act was not within the provisos of sub-section (2) of Section 18 of the Crimes Act then the crime is manslaughter.

(15) *R v. Franklin*. (1883) 15 Cox C.C. 163.

(16) *R v. Istan*. (1893) 1 Q.B. 450. *R v. Bonnyman* (1942) 28 C.A.R. 131.



LAWFUL HOMICIDES.

Introduction.

70. In former times it was necessary to distinguish between lawful homicide which was "justifiable" and that which was "excusable". In the latter case the goods of the accused were forfeited to the Crown and the instrument causing the death had to be surrendered as a deodand. Excusable homicide comprised cases of death by misadventure, and in a "chance medley". This term was seldom used with precision but included the case in which death was caused in a fight, for the origin of which the accused was partly to blame, notwithstanding the fact that he retreated as far as he could before inflicting the fatal blow. The doctrine no longer has any place in the law of homicide. Forfeiture of goods, land and the chattel causing the death cannot be enforced in this State by virtue of the provisions of section 465 of the Crimes Act and also sub-section (2) (b) of section 18 of the Crimes Act. The distinction between justifiable and excusable homicide is now obsolete and in this lesson it is intended to deal with lawful homicides as provided for in section 18 of the Crimes Act.

71. Sub-section (2) of section 18 of the Crimes Act which is set out in paragraph 4 of this lesson sets out the types of homicide which are lawful. We shall now consider clauses 2 (A) and 2 (B) in paragraph 4 of this lesson.

(2) (A) No act or omission which was not malicious, or for which the accused had lawful cause or excuse shall be within this section.

72. It is now proposed to deal with the types of lawful homicide which come within the scope of this sub-section. The types of homicide with which we shall deal are set out hereunder:

- (A) Execution of Sentence;
- (B) Constables and other persons in certain circumstances;
- (C) Prevention of forcible and atrocious crimes;
- (D) Defence of other persons and property.

It is now proposed to deal with these types of lawful homicide.

(A) Execution of Sentence.

73. Where a criminal is executed by the proper officer in pursuance of a lawful sentence imposed by a competent court the homicide is lawful. If on the other hand a person is executed by another, not being the appointed officer for such execution or where the execution is not done in strict conformity with the sentence, for instance if an officer beheads one who is adjudged to be hanged it is murder. (17) Therefore where a person is executed by the proper officer in the proper manner it is not a punishable homicide for the death of the prisoner was done with lawful cause.

(B) By Constables and other persons in certain circumstances.

74. Where an officer of justice is endeavouring to execute his duty and he kills a man this is lawful homicide, manslaughter or murder according to the circumstances.

75. At one time the circumstances were: where an officer of justice, or other person acting in his aid forcibly resists and kills the person who resist or prevents him from exercising his duty, were quoted by old authorities as being a lawful homicide. However, it must be remembered that this principle dates back many centuries. It should be noted that there has been some substantial historical development in the law relating to the limits of severity permitted to officers of the law and others in advancing public justice. Capital punishment was the punishment for so many crimes that there was a great temptation for an offender to proceed to violent measures in order to escape his arrest, with the hope of being able to disappear and evade pursuit. It was therefore regarded as reasonable and proper for officers of justice and private persons also to proceed to great lengths in endeavouring to prevent the escape of persons who had committed felonies or who were resisting lawful arrest. In modern times the existence of a police organisation which covers the whole country, highly trained and equipped with all the aids which the sciences can provide, has very much narrowed the field within which it could be held necessary or reasonable to use deadly force in the apprehension of offenders, or conversely in self-defence against an illegal arrest. (18)

76. Force may be used against someone resisting or escaping from arrest, and a homicide caused by the exercise of lawful force in such circumstances may be justifiable. It is, however, essential that no more force should be used than the necessity of the occasion requires; a homicide caused by unlawful force is unlawful, although the fact that the accused was trying to arrest or detain his victim might justify a verdict of manslaughter instead of murder. (19)

77. The killing of a person who is endeavouring to escape from lawful arrest is only justifiable if the arrest is for a felony. If it is for a misdemeanour, the killing will be murder reducible to manslaughter if there is provocation. (20) In this case Forster was an excise officer who was charged with murder. He had arrested a smuggler who assaulted him with a stick after he had been arrested. The smuggler threatened him again, and Forster shot at his legs. This was ineffective and, believing that the smuggler was about to attack him again, Forster said that he would shoot him if he did. The smuggler did attack him, and Forster shot and killed him. In his summing up to the jury in this case Holroyd Judge said, "An officer must not kill for an escape, where the party is in custody for a misdemeanour; but, if the prisoner had reasonable ground for believing himself to be in peril of his own life or of bodily harm, and no other weapon was at hand to make use of, or if he was rendered incapable of making use of any such weapon by the previous violence that he had received, then he was justified. If an affray arises, and blows are received, and weapons are used in heat, and death ensues, although the party may have been at the commencement, in the prosecution of something unlawful, still it would be manslaughter in the killer; though manslaughter only. In the present case it is admitted that the custody was lawful. The jury are then to say, whether, under the circumstances, the deceased being in the prosecution of an illegal act, and having made the first assault, the prisoner had such reasonable occasion to resort to a deadly weapon to defend himself, as any reasonable man might fairly and naturally be expected to resort to." In this case Forster was held guilty of manslaughter.

(18) Russell on Crime. (12th Edn.) at pages 431-2.

(19) Introduction to Criminal Law. Cross and Jones at page 130.

(20) R v. Forster. (125) 1 Lew. C.C. 187.

78. Where a warrant under which the officer of justice is acting is not sufficient to justify him arresting or detaining a prisoner, or where he has no warrant at all, and the case is one in which he has not a law authority to arrest without warrant and he kills the person he is endeavouring to apprehend then such officer is guilty of an unlawful homicide. It may be murder or manslaughter depending on the circumstances, the intent and the degree of force used. (21)

79. There is a common law right to suppress riots and to use such force as is reasonably necessary to disperse the rioters assembled. The degree of force which may be used depends on the nature of the riot, and must always be moderated and proportioned to the circumstances of the case, and to the end to be obtained. The taking of life can only be justified by the necessity of protecting persons or property against various forms of violent crime, or in the case of persons whose conduct has been felonious. (22)

(C) In the prevention of forcible and atrocious crimes.

80. A forcible and atrocious crime is a serious crime attended by force or violence. Homicide is lawful if committed by one who reasonably believes that there is no other means of preventing the commission of a violent felony. In the case *R v. Rose* (1884) 15 Cox, C.C. "The accused was charged with murder. The evidence was that he was living with his mother and father, and that his father, a man of great physical strength, frequently quarrelled with his mother, whom he believed to have been unfaithful. The accused was a boy of 21, and there was no doubt that he would have been worsted in a fight with his father. In the night when the deceased met his death, the accused's mother called out murder, and there was evidence of a violent quarrel between the accused's father and mother; the father forced the mother to the top of the stairs and threatened to knife her. The accused shot and killed his father, and there was no evidence of the presence of a knife."

In summing up to the jury Lopes J. said -

"Homicide is excusable if a person takes away the life of another in defending himself, if the fatal blow which takes away life is necessary for his preservation. The law says not only in self-defence such as I have described may homicide be excusable, but also it may be excusable if the fatal blow inflicted was necessary for the preservation of life. In the case of parent and child, if the parent has reason to believe that the life of a child is in imminent danger by reason of an assault by another person, and that the only possible, fair, and reasonable means of saving the child's life is by doing something which will cause the death of that person, the law excuses that act. It is the same of a child with regard to a parent; it is the same in the case of a husband and wife. Therefore, I propose to lay the law before you in this form; If you think, having regard to the evidence, and drawing fair and proper inferences from it, that the prisoner at the bar acted without vindictive feeling towards his father when he fired the shot, if you think that at the time he fired that shot he honestly believed, and had reasonable grounds for the belief, that his mother's life was in imminent peril, and that the fatal shot which he fired was absolutely necessary for the preservation of her life, then he ought to be excused, and the law will excuse him from the consequences of the homicide. If, however, on the other hand you cannot come to the conclusion, if you think, and think without any reasonable doubt, that it is not a fair inference to be drawn from the evidence, but are clearly of opinion that he acted vindictively, and had not such a belief as I have described to you, or had not reasonable grounds for such a belief, then you must find him guilty of murder."

(21) See Archbold 34th Edn. at page 970. Russell on Crime. 12th Edn. at page 431.

(22) Russell on Crime. 12th Edn. at page 272.

(D) Defence of other persons and property.

81. A person must only use so much force as is reasonably necessary to turn a mere trespasser out of his house. Where it appeared that a person upon returning home found the deceased in his house, and desired him to withdraw, but he refused to go: upon this, words arose between them and the prisoner, becoming excited, proceeded to use force, and, by a kick which he gave to the deceased, caused his death. The person was charged with manslaughter and convicted. (23)

82. In another case the prisoner having been greatly annoyed by persons trespassing upon his farm, repeatedly gave notice that he would shoot anyone who did so, and at length discharged a pistol at a trespasser, and wounded him in the thigh which led to erysipelas, and the man died. The prisoner was convicted of murder. (24)

83. In a recent Victorian case R v. McKay, (1957) V.R. 560, A.L.R. 648, the accused lived with his wife and family on a poultry farm in an outer suburb of Melbourne, which he managed for his father. A considerable quantity of poultry had been stolen from the farm. A system of bells was installed which rang in the house when intruders entered the pens. The thefts continued. The accused kept a .22 calibre rifle fully loaded on the wardrobe in his bedroom. About 6.15a.m. on the 9th September, 1956, the alarm bells rang. The accused arose, dressed, took his loaded rifle and went towards the fowl pen. He saw an intruder, but the intruder could not, in his position, see the applicant, and at a distance of about 140-150 feet from the intruder the applicant aimed at and shot the intruder. The intruder started to run and the applicant continued to fire at him. The intruder had taken three fowls and had them in his possession when the first shot was fired, but he dropped them before he fell and died. The accused was charged with murder and he was found not guilty of murder but guilty of manslaughter.

Conclusion.

84. A person is entitled to use a degree of force appropriate to the circumstances to defend either himself or someone whom he is entitled to protect, or property, or to prevent the commission of a felony, or to exercise a power of arrest. If a person justified in using only some degree of force short of killing another, and he kills by using excessive force, he may be guilty of either murder or manslaughter. If he knew he was using more force than was reasonable in the circumstances he is guilty of murder, but if he thought he was using no more force than the situation warranted he is guilty only of manslaughter. (25)

85. Before a homicide may be regarded as lawful the person concerned must show that his act or omission causing the death was not malicious or that he had lawful cause or excuse. It must also be remembered that in each of the cases mentioned the Coroner is bound to hold an inquest and he must be satisfied in his own mind that the death was not malicious or that the person causing the death had lawful cause or excuse. If the coroner is not satisfied of these elements the person causing death is liable to be arraigned to stand his trial for murder or manslaughter.

(2) (B) (i) Death by misfortune only.

86. Death may often be caused by misadventure or misfortune where someone is doing a lawful act without negligence. An obvious instance is afforded by the case of death resulting from a lawful operation carried out with due care by a doctor. Further examples are the causing of death by the lawful acts done in the course of a lawful game, such as football.

(23) R v. Wild. (1837) 2 Lew. 214.

(24) R v. Moir (1825) Roscoe, Cr. Ev. (16th Edn.) 796.

(25) Australian Criminal Law. Colin Howard. at page 80

87. An instance of death caused by "innocent horseplay" comes within the scope of this type of homicide. In the case *R v. Bruce* (1847) 2 Cox C.C.262, the accused who had been drinking came into his master's shop, and pulled a boy off a cask where he was sitting, he put his arm round the boy's neck and spun him round. They came together out of the shop when the boy broke away and, in consequence, the prisoner reeled out into the road and knocked against a woman who was passing. She was killed, but, after ascertaining that the boy regarded the whole matter as a joke the learned Judge directed the jury that they must acquit the prisoner.

88. Another example which comes to mind is where a man drives a motor vehicle along a street. He is obeying and driving in accordance with the provisions of the Motor Traffic Act. The speed at which he is travelling is safe according to the circumstances prevailing. Suddenly, a drunken man falls from the footpath onto the roadway in front of and in the path of his motor vehicle. The drunken person is killed. This would be death by misfortune and the homicide would be lawful.

89. Homicide by misfortune occurs when a man happens unfortunately to kill another, without either intention of causing any unlawful bodily harm, or any realisation that such harm to anyone may result from what he is doing. Therefore, if people, in following their common occupations and using due care to prevent any damage to anyone's person which as reasonable men they foresee may arise, should accidentally and unexpectedly kill anyone, such killing would be homicide by misfortune.

(2) (A) (ii) Death caused in his own defence.

90. This particular portion of section 18 of the Crimes Act only provides an exemption from punishment for a person who kills another in his own defence. That is why defence of property and members of a person's family have been dealt with elsewhere in this lesson.

91. In order that a homicide may be lawful on the ground of self-defence, the accused must have believed on reasonable grounds, that his life was in danger and force used by him must have been reasonably necessary for his protection. This means that someone who is being attacked may often be required to retreat before resorting to force, and this is especially true when there has been a fight for which both parties are to blame. When force is being used to enter the accused's house unlawfully, there is no need for him to retreat before taking counter measures, but force should only be employed when there is no other means of protecting his property available to the accused. (26)

\* \* \* \* \*

N.S.W. POLICE TRAINING CENTRE.DETECTIVE TRAINING COURSE.HOMICIDE - PART I.

Prepared by: Detective Sergeant First Class B.Doyle.

INDEX.

<u>SUBJECT.</u>	<u>PAGE.</u>	<u>PARAGRAPH.</u>
INTRODUCTION.	1	1 to 2
DUTIES OF UNIFORMED POLICE. WHEN THE TELEPHONE MESSAGE IS FIRST RECEIVED.	1 - 2	3
DUTIES OF UNIFORMED POLICE. ON ARRIVAL AT THE MURDER SCENE.	2 - 3	4
DUTIES OF UNIFORMED POLICE. DON'T -	3 - 4	5
INITIAL C.I.B. ACTION.	4	6 to 11
DUTIES OF FIRST DETECTIVES AT SCENE.	4 - 5	12
IF THE VICTIM SHOWS SIGNS OF LIFE.	5	13
WHETHER THE VICTIM IS DEAD OR ALIVE.	5 - 6	14
DUTIES OF MAIN BODY OF DETECTIVES AT THE SCENE.	6 - 7	15

N. S. W. POLICE TRAINING CENTRE.DETECTIVE TRAINING COURSE.HOMICIDE - PART I.INTRODUCTION.

1. The general subject of homicide investigation is so complex that it has been decided to divide your lectures into three parts, and in those parts to trace the correct line of Police action from the very commencement of the inquiry to the conclusion of the case. Part I will deal with the initial segments.

2. You may query the necessity for outlining the duties of uniformed Police, bearing in mind that this is a Detective Training Course. The obvious answer, of course, is that it is essential that you should know the duties of other sections of the Force before you can have a perfect knowledge of your own. Also, at various times you will be in complete charge of homicide investigations, and uniformed Police working with you will be looking to you for guidance and direction. That is why I say you must know their job as well as your own.

3. DUTIES OF UNIFORMED POLICE.WHEN THE TELEPHONE MESSAGE IS FIRST RECEIVED:

a. Correctly write down the whole of the details which the caller is in a position to give. Listen to what he is saying, and whilst he is still on the telephone think about any action which should be taken IMMEDIATELY. For example, whilst your caller is still speaking to you, the offender may still be there, or committing further violence, or he may have escaped in a certain direction.

If there is IMMEDIATE ACTION to be taken, take it, and then keep talking to your caller.

b. Instruct the caller, if applicable -

To remain at the scene, and to keep guard until the arrival of the Police.

Ask him to keep all witnesses and the suspect present, if he is able to do it.

c. Try and keep the caller on the telephone whilst you inform your own immediate superior, but make sure you FIRST obtain all possible information.

Above all, obtain the caller's name, address, telephone number, and his location for immediate interview.

d. When the call is finished, inform your immediate superior of what has been said, and what you HAVE ALREADY DONE in the way of immediate action.

e. Call in your Detectives. Let them have the full particulars immediately. If they are not located immediately, send a wireless patrol car or other car.

(2).

f. Record the telephone message fully.

4. DUTIES OF UNIFORMED POLICE.

ON ARRIVAL AT THE MURDER SCENE:

a. Clear the scene of "sight-seers" and other unauthorised people. Guard the scene. Detail essential people - those connected with the deceased or his death.

b. Note in your official notebook -

- i. Time of your arrival;
- ii. Weather conditions;
- iii. Persons present;
- iv. Other relevant information.

c. Confirm the death without moving the body.

Call a medical practitioner to establish death, but make sure that he does not move the body (if possible), and ensure that he does not unnecessarily handle the body or change its appearance.

d. If the victim is still alive, ensure that medical aid and an ambulance are called immediately.

Note the names and addresses and telephone numbers of the medical attendants.

Ascertain what facts can be given by the victim.

DON'T ask him leading questions which would render your evidence inadmissible.

Remember that your few simple questions to him and his answers may become a very important verbal dying declaration.

Have someone with you, if possible, when speaking to him. He may never speak again.

(Be ready for this. Don't miss the opportunity to have a brief conversation with the victim before he goes away in the ambulance. Make yourself familiar NOW with Police Instruction No. 20 in relation to Dying Depositions and Dying Declarations, also the relevant Sections of the Crimes Act, which are outlined in another lecture of this Course).

e. If the victim is removed, clearly mark the original position with chalk, crayon, or other suitable material.

f. If you are first on the scene, take a good look at the situation, assess it briefly, and then get onto the telephone or radio to your superior, and notify him of the known facts.

But do not leave the scene for this purpose unless it is guarded by a member of the Service. If necessary, send your message through a suitable civilian.

g. On arrival at the scene, remember that the two main questions to ask are, "What happened?", and "Why?".

Do not launch a full scale interrogation at that



(3).

stage. Those two questions will probably get you through.  
Note what is said in reply.

- h. Obtain the names, addresses, telephone numbers, (private and business) of persons present, or who arrive on the scene.  
Request them to remain until your first Detectives arrive.  
Try and stop them from conversing together, particularly if in any way suspect.
- i. Make a visual examination of the scene, but without disturbing or interfering with it in any way.  
Make notes in your official notebook of what you see, even to the extent of making a rough sketch.
- j. If the victim is dead -  
  
Touch nothing else at the scene;  
Keep everyone from the close proximity in order to prevent interference, and preserve the evidence.
- k. Endeavour to ascertain the identity of the suspect, and if he is present, see he does not leave the scene, but do not arrest him unless absolutely necessary. Do not interview him, but note everything he says and does.  
  
Particularly note his appearance and conduct, ensure he remains present, and segregate him from the other people present.
- l. Prevent the destruction of any evidence.
- m. Stand by on guard until the Detectives arrive, and remain to assist them by giving a clear and brief account of what you have observed and ascertained. They will appreciate it.
- n. If you have made any mistakes, that is, if the body or other exhibits have been removed, be sure and advise the C. I. B. men of this fact.  
**THIS IS EXTREMELY IMPORTANT.**
- o. If possible, remain in radio communication with your own headquarters unless a telephone is available.

#### 5. DUTIES OF UNIFORMED POLICE:

##### DON'T -

- a. Don't touch anything.  
  
(If it is necessary to use any telephone fitted to the scene, try and do so without obliterating any fingerprints which may be thereon).
- b. Don't permit anyone, including the press, to interfere with anything, or remain where they are likely to damage evidence at the scene.
- c. Don't allow spectators to throw cigarette butts or anything else about the scene.

(4).

- d. Don't trample about the scene yourself, or permit others to do so.
- e. Don't leave the scene under any circumstances whatever, unless in immediate pursuit of the offender.
- f. Don't talk or offer theories to anybody, bar the Detectives.
- g. Don't permit any alteration to the scene in any shape or form whatsoever.
- h. Don't allow anybody to wash glasses, etc. and see that no use is made of the sink, bathroom, kitchen and toilets.
- i. Don't try to carry out a full-scale interrogation of the suspect, but note everything he says and does, also his appearance.
- j. Don't arrest the suspect unless there is no alternative, and then do so only if the evidence is sufficient to justify it.
- k. Don't panic and worry.

#### 6. INITIAL C. I. B. ACTION.

Having covered the functions of the uniformed section of the Force, the next matter to be thought about is the initial action to be taken by the C. I. B. men, and by that, of course, is meant the first Detectives called in, regardless of where they are attached.

7. When the original message or information is received by the Detectives, correctly record the call in the exact words used by the caller or informant. Note the exact time and date, and ask for the fullest information, including the name of the deceased, particulars of any person suspected, location of the crime, how recently death took place, and when and where the caller can be located.

8. Verbally convey the message to the most senior Detective on duty, so that the Divisional or Sub-District Officer can be notified, also Sub-District Detective-Inspector, District Superintendent, C. I. B. Headquarters, etc. Detectives should be despatched to the scene immediately. Note the particulars of the staff despatched, and the equipment and vehicles taken. Alert other staff, and give brief notification of particulars.

9. Consider the commencement of a running sheet, and consider communications.

10. Ensure the adequate guarding of the scene until the arrival of the O. I. C. of the investigation, Scientific, Ballistics, Fingerprint and Photographic experts.

11. Notify the O. I. C. of uniformed Police so that immediate action can be taken regarding road check points or search for suspect vehicles, etc.

#### 12. DUTIES OF FIRST DETECTIVES AT SCENE.

- a. Proceed immediately to the scene.
- b. Make observations en route of persons leaving the area, registered numbers of vehicles, etc.

(5).

- c. Note time of arrival, and weather conditions.
- d. Clear the immediate homicide scene, and this includes Police.
- e. Establish death without moving the body. Call for a medical practitioner if this has not already been done.
- f. Ascertain whether body has been moved or interfered with.
- g. When approaching body, do so carefully and by an indirect path.

13. IF THE VICTIM SHOWS SIGNS OF LIFE:

- A. Call ambulance, and arrange for an experienced member of the Detective Branch to accompany the victim.
- B. If victim is conscious, make immediate attempt to obtain verbal or written dying declaration. Remember the main essentials of a dying declaration as required by the Crimes Act, No. 40 of 1900, and ask, "By whom?", "How?", "When?", "Where?", and "Why?".

14. WHETHER THE VICTIM IS DEAD OR ALIVE:

- a. Prior to removal, make an outline with chalk or crayon of the position of the body on the floor or ground.
- b. Take action to preserve the entire area.
- c. Establish identity of victim at first opportunity.
- d. Advise your Station by radio or telephone of the immediate situation as it appears.
- e. Guard the scene. On no account is the scene to be left unguarded, unless in immediate pursuit of the offender. If assistance is required, obtain the services of suitable civilians.
- f. See that nothing is disturbed. Make sure that the kitchen, sink, bathroom, basins, toilets, etc. are not used, and that no household utensils are used.
- g. Detain all witnesses, or at least establish their names, addresses, and telephone numbers. Ascertain brief facts from the witnesses. Separate them, if possible, and ask them not to converse with each other on this matter.
- h. Take very early action to obtain from witnesses detailed and signed statements at the Police Station.
- i. Separate the suspect from all others, and keep him well under observation. Do not embark on a large scale interrogation at that point, but note any admissions he may make, also his conduct and appearance.
- j. DO NOT HURRY INTO MAKING AN ARREST UNLESS IT IS

(6).

ABSOLUTELY ESSENTIAL, and then only take that action if you have proof.

- k. Whilst awaiting the arrival of senior Detectives, including the O. I. C. of the investigation, Scientific Detectives, and the main investigating body, note -

Position of body and its appearance;  
Conduct and appearance of suspect and witnesses;  
Position of all relevant objects, including -

Doors,  
Windows,  
Lighting,  
Blinds,  
Weapons.

- l. Note particularly whether main power supply is switched "on" or "off", and if "off" the time of the stoppage of electric clocks.
- m. Prepare a rough sketch of the scene, showing the location of body and other important exhibits.
- n. Endeavour to ascertain motive.
- o. If deceased is divorced, living apart, or has been living in a de facto union, take very urgent action to check on movements and location of other member of the union.
- p. Prepare an accurate and concise summary of the facts so that you can pass on the exact story to those Officers within the Department who are to be officially notified of it.
- q. Note in your official notebook all important matters, including -

Exhibits moved or touched;  
Articles taken from the scene, etc., and by whom.

#### 15. DUTIES OF MAIN BODY OF DETECTIVES AT THE SCENE.

The main body of Detectives at the scene usually consists of the senior Detective in charge of the Division or Sub-District, Detectives detailed to work on the inquiry, and Police from the Fingerprint, Scientific, Photographic and Ballistic Sections. They have been referred to in this lecture as the "main body" in order to distinguish them from those who were first at the scene and who took the initial, preliminary action. Duties of this main body of Detectives include -

- a. The O. I. C. of the investigation must assume full charge at the scene until he hands over to other Scientific men and Detectives to carry on with their respective examinations.
- b. The O. I. C. of the investigation ought at this stage to appoint some member of the Service to accompany the body to the morgue.
- c. Check that the scene is properly established and guarded. Those guarding the scene should be

(7).

clearly told exactly what the scene is, and which areas are out of bounds to civilians, pressmen, and Police alike.

- d. Remove all Police personnel not required in the immediate vicinity.
  - e. Arrange for press reporters and photographers to remain at a suitable distance so that the scene is not disturbed, and investigations not interrupted. At the same time, make arrangements with the press not to write or photograph any particular thing, the photographing or reporting of which would hinder the conduct of the investigation.
  - f. Ensure that the scene is visited by the G. M. O. and the body seen by him there, even though a previous medical practitioner may have pronounced life extinct.
  - g. Ensure that proper examinations of the scene are carried out by fingerprint, ballistics, or other scientific experts, as required. Ensure adequate photography of all relevant aspects, and that draftsman takes sufficient particulars for full plans later.
  - h. Call for any additional equipment urgently required.
  - i. Ensure the removal of the body subsequently, and thorough search of body and clothing.
  - j. Ensure full search of scene itself.
  - k. Establish weapon used, and locate it.
  - l. Ascertain motive, and re-construct. Do this by a discussion and free exchange of ideas of all present.
-

N.S.W. POLICE TRAINING CENTRE.DETECTIVE TRAINING COURSE.HOMICIDE - PART II.

Prepared by: Detective Sergeant First Class B.Doyle.

INDEX.

<u>SUBJECT.</u>	<u>PART.</u>	<u>PARAGRAPH.</u>
DUTIES OF THE O.I.C. OF THE SCENE.	1	1 to 10
DUTIES OF THE O.I.C. OF THE BODY.	1 - 3	11 to 13
DUTIES OF THE O.I.C. OF THE INVESTIGATION.	3	14
BEFORE PROCEEDING TO THE SCENE.	3 - 4	15

N. S. W. POLICE TRAINING CENTRE.DETECTIVE TRAINING COURSE.HOMICIDE - PART II.1. DUTIES OF THE O. I. C. OF THE SCENE.

It is not proposed to outline at length in this particular lecture the precise duties of the O. I. C. of the homicide scene because elsewhere in this series you will have a detailed lecture from an experienced member of the Scientific Investigation Bureau in relation to the examination of crime scenes. However, as these series of lectures about homicide are intended to cover all aspects, mention is briefly being made of the duties of the O. I. C. of the scene, as distinct from the scientific search of the scene itself.

2. After the preliminary examination has been made, the taking of photographs finished, the search for fingerprints concluded, and sketch plan and measurements taken, the main search for clues takes place in earnest. Up to this stage, nothing should be disturbed or removed unless the position is noted. Special attention is to be paid to the condition and place of articles and furnishings.

3. The main search is to be carried out by whatever number of men is considered necessary for the search. The main body of Detectives at the scene should closely collaborate on this point with the Scientific expert.

4. See to the safety and custody of all exhibits. Exhibits should be properly and carefully handled, placed in suitable containers or wrappings, and adequately labelled to show where found, by whom, time and date, nature of exhibit, to whom handed, and time and date. It is essential that great care be given to what has been set out in this particular paragraph.

5. Guards should be placed over the scene and retained there until such time as the O. I. C. of the investigation directs otherwise.

6. Body not to be shifted until authorised by the O. I. C. of the investigation.

7. Body to be placed on a new sheet of clear plastic prior to removal on ambulance stretcher to the morgue.

8. In inclement weather, suitable protective covering to be obtained and provided to shelter the scene.

9. Arrange the taking of inventory or inventories of property in room or rooms at the scene.

10. On completion of search of scene, adequate running sheet entries, showing result of search, by whom carried out, etc. to be delivered to running sheet operator. Separate running sheet entries to be furnished by each separate specialist.

11. DUTIES OF THE O. I. C. OF THE BODY.

Members of the Scientific Investigation Bureau are highly trained in their own field, and in most cases are in a position to assist greatly with matters appertaining to the body and its removal. However, it is not possible

(2).

for them to assume responsibility for the body on all occasions, and for that reason some idea of the duties of the O. I. C. of the body is set out below:

12. Notify the District Coroner of the particulars of the death, and ascertain his wishes.
13. Generally, work under the direction of the O. I. C. of the investigation, and -
  - a. On arrival at the scene, ascertain if the body has been moved or interfered with. If this has taken place, do NOT attempt to restore scene and body to their original positions, but make full inquiries so that the original scene can be reconstructed LATER.
  - b. Remain with the body and at no time leave it unattended.
  - c. Ensure that body is not interfered with until after photographs have been taken.
  - d. The body to be removed only at the direction of the O. I. C. of the investigation.
  - e. Record all facts concerning the body, position of limbs, appearance, wounds, clothing. (You must be in a position later to give evidence on any aspect regarding the body itself). Make a sketch, correctly recording the body's position. Before the body is removed, mark the outline with chalk or crayon, or other suitable material.
  - f. In company with the O. I. C. of the investigation, make a preliminary search of the body to preserve any evidence which might otherwise be lost when the body is moved. This preliminary search ought to cover scrutiny of documents in pockets to assist in establishing identity.
  - g. If hands are clasped, secure plastic bags over them for protection until post mortem examination is held.
  - h. When directed by the O. I. C. of the investigation, remove body to morgue. Accompany the body. Take possession of the plastic sheet in which it is wrapped.
  - i. On arrival at the morgue, do not leave the body unattended.
  - j. Secure all clothing taken from body at morgue, and deliver to scientific experts for examination.
  - k. Action subsequently to be taken with deceased's property in accordance with Standing District Instruction No.78.
  - l. Complete forms P. 79a (Report of Death to Coroner), and deliver same to Coroner's Office.
  - m. Arrange for a firm time and date for the holding of a post-mortem examination by the Government Medical Officer, and use all efforts to have the post-mortem carried out at the earliest opportunity. Notify the O. I. C. of the investigation of the time and date decided.



(3).

- n. Ensure the proper identification of the body by a relative or other person closely associated with the deceased. Arrange for this identification to be made to the Police and to the G. M. O.
- o. If body is not identified, arrange for fingerprinting of it. Also consider the necessity for a portrait of deceased to be taken at morgue, for use in canvasses, etc., and subsequent inquiries.
- p. Ensure that photographer is at the p. m. to photograph wounds and injuries, particularly photography of head wounds after removal of head hair, etc.
- q. During the p. m., note the wounds discovered, and endeavour to obtain firm opinion from the G. M. O. in relation to exactly how they were caused, type of instrument, etc.
- r. Obtain a signed statement from the person identifying the body, for delivery to the O. I. C. of the running sheet.
- s. Be responsible for the informing of the next-of-kin of the death.
- t. Complete running sheet entries showing all action so far taken.

#### 14. DUTIES OF THE O. I. C. OF THE INVESTIGATION.

The senior member of the Service who is placed in charge of the entire investigation has a big responsibility because on him the whole conduct of the inquiry depends. Men who have been placed in charge of the scene, body, etc. have individual functions to perform, but the O. I. C., as well as supervisory duties, has a function peculiar to his own position as the senior member leading, and included in those duties are -

#### 15. BEFORE PROCEEDING TO THE SCENE.

- a. Confirm that all necessary initial action has been taken or set into motion, and that the first of the Detectives have been despatched to the scene.
- b. Ascertain the identities of members of the Service attending or who have attended, also particulars of equipment and transport already taken into use.
- c. Notify the Divisional Inspector or Sub-District Inspector, and ensure that District Superintendent is notified if in the country districts. In the Metropolitan District, ensure that Sub-District Detective-Inspector is notified, so that he will notify the C. I. B. Superintendents, Metropolitan Superintendent and Commissioner of Police.
- d. Arrange setting up of investigation headquarters.
- e. Appoint running sheet operator, with whatever assistance he requires. Running sheet kits to be obtained from C. I. B. Inquiry Office, and

(4).

additional typewriters from Typewriter Pool in Commissioner's Office (if unavailable locally).

- f. Notify O. I. C. of Division or Sub-District of assistance required from the uniformed branch, having regard to the need for road blocks, check points, scene guards, or area patrols.
  - g. Arrange all transport required.
  - h. Obtain sufficient staff for investigation, including local staff and assistance from C. I. Branch Headquarters, if necessary.
  - i. Alert experts for an early appearance at the scene.
  - j. Confirm the immediate action already taken, or order additional action not already taken.
  - k. Detail O. I. C. of Scene and O. I. C. of Body.
  - l. Don't under-estimate the value of uniformed Police assistance which may be obtained at the various stages, particularly in initial stages. Bear in mind the assistance which may be obtained from the Special Traffic Patrol, especially where a vehicle is being sought; also checks by the Motor Squad from the Department of Motor Transport.
  - m. Consider whether there is any necessity for an immediate release to newspapers in relation to possible description of a suspect, vehicle, etc. Bear in mind the possibility of using all news media to advantage, including radio-taxi services (particularly in large towns) in an effort to locate the suspect or vehicle.
  - n. Consider any other equipment which is not at hand, and which is obviously urgently required. Consider other sections of the Service, such as Rescue Squad, Skin Divers, etc.
-

N.S.W. POLICE TRAINING CENTRE.DETECTIVE TRAINING COURSE.HOMICIDE - PART III.

Prepared by: Detective Sergeant First Class B.Doyle.

INDEX.

<u>SUBJECT.</u>	<u>PAGE.</u>	<u>PARAGRAPH.</u>
DUTIES OF THE O.I.C. OF THE INVESTIGATION.	1	1
AFTER PROCEEDING TO THE SCENE.	1 - 3	2 to 24
DUTIES OF THE O.I.C. OF INVESTIGATION. AFTER THE ARREST -	3 - 4	25 to 33
DUTIES OF THE O.I.C. OF EXHIBITS.	4 - 5	34
DUTIES OF THE RUNNING SHEET OPERATOR.	5	35 to 37

N. S. W. POLICE TRAINING CENTRE.DETECTIVE TRAINING COURSE.HOMICIDE - PART III.1. DUTIES OF THE O. I. C. OF THE INVESTIGATION.

The two previous lectures on the subject of general investigation of homicide have dealt with the duties of the different ones up to the stage of the senior member of the Service who is to be O. I. C. taking over completely. The last lecture reached the stage where it set out broadly the duties of the O. I. C. of the investigation before proceeding to the crime scene, and it is now proposed to deal with the functions of the senior man in charge -

AFTER PROCEEDING TO THE SCENE.

2. Advise the O. I. C. of the Division or Sub-District of the situation so that he may advise the various Superintendents in channels to the Commissioner of Police.
2. Arrange additional staff deemed necessary at that stage.
3. Check the organisation of the investigation headquarters, that is, the situation from which the men are working, the running sheet set-up, and so on.
4. If no satisfactory premises available, or if it is necessary to centre the inquiry at a location remote from Police premises, consider the use of the Mobile Police Station.
5. Arrange for an opportunity for the second in charge and other senior investigators to go to the scene to get first-hand knowledge of the commission of the offence.
6. Arrange sufficient staff to attend to the various phases of inquiries, and detail them for these duties.
7. Endeavour to make one pair responsible for each phase.
8. Give serious thought to PHASE WORK, and in particular to the following phases of the investigation:
  - Local canvasses;
  - Road checks;
  - Laundries and dry-cleaners,
  - Transport, taxi ranks, omnibuses, etc;
  - Possibly doctors and hospitals,
  - Suburban, country and interstate Police broadcasts;
  - Informants,
  - Identity,
  - Relatives, associates of deceased;
  - Antecedents of deceased, mode of living, employments;
  - Medical (including psychiatric) history of deceased;
  - Special pawnslips, and tracing of missing property,
  - AND ANY OTHER PARTICULAR PHASE OR AVENUE WHICH IS PECULIAR TO THIS INVESTIGATION.
9. Arrange staff to attend to general inquiries and sundry information coming to hand by way of letter, telephone, people calling personally at Police Stations, etc., and the most extensive and important phase of all, i. e., suspect interrogation and elimination.

Arrange staff for other relevant matters not particularly covered in the phases suggested above, or phases suggesting

(2).

themselves from exhibits found at the scene, or on the body, or in the light of circumstances peculiar to that particular homicide.

11. Organise inquiries in proper sequence and chronology, so that all urgent matters are attended to in the first instance.

12. Even though a certain suspect may appear to be very "promising", ensure that all other work is kept up to date, and very thorough inquiries made in regard to all other suspects and outstanding matters. It is a great mistake in a homicide investigation to "put all your eggs in the one basket".

13. Ensure that there is no unnecessary handling of exhibits.

14. Give urgent thought to specific matters which it is desired should be probed by the medical officer carrying out the post-mortem examination.

15. Attend post-mortem examination, and make such requests to the medical officer before the commencement, or during the p. m.

16. In most instances, Government Medical Officers are experienced in this field, but if not, ensure that proper thought and attention are given to -

- a. Description of the body, external appearance, bruises, injuries, lacerations, discolouration, body temperature, likely time of death, body imperfections, teeth, height, build, colour of hair and eyes, indications of old injuries, scrapings from under fingernails; examination of hands for anything clasped in them, particularly hairs.
- b. X-ray of body, if X-ray is available in the mortuary.
- c. Photographs of entire body, and particularly photographs of injuries.
- d. Samples of blood and hair, including head and pubic, possibly also chest hair, armpits, etc., depending on circumstances.
- e. Description of dental work, including photographs and X-ray of jaws (especially if deceased not identified).
- f. If not identified, consider fingerprints, foot prints, and palm prints. If not identified, consider fingerprinting of articles in deceased's room, etc.
- g. Examination and measurement of wounds. Exploration of them for length and direction, also photography of same.
- h. Ensure recovery of bullet or fragments; ensure no marking of bullet during process of recovery.
- i. Establish cause of death.
- j. Ensure that clean containers only are used for samples, and that there is no contamination of samples.
- k. Ensure that adequate samples are obtained of

(3).

stomach contents, liver, urine, spleen, kidneys, and that they are subsequently despatched through the Scientific Bureau to the Medico-Legal Laboratory.

17. Consider obtaining Municipal Council or Department of Lands maps, and/or aerial maps from RAAF or private aerial photography companies.
18. Remain at, or in close contact with, investigation headquarters during the conduct of the inquiry.
19. Check all statements and information obtained, and detail investigators to follow up leads suggesting themselves.
20. Ensure that staff is adequately informed of developments; arrange conferences, invite suggestions, cultivate team spirit, and eliminate dissention.
21. Arrange press, radio, and television releases, as required. Come to some understanding with both the Superintendents in charge of the District and the C. I. Branch concerning press releases, so that they are made by one Officer only. Ensure that press are not over-informed about evidence, particularly scientific evidence and findings.
22. Generally - supervise the work of all staff engaged on the inquiry. Utilize Policewomen to best advantage, as required. Ensure the availability of senior investigators to make urgent journeys concerning valuable leads coming to hand at short notice by day or night.
23. Closely watch the movement, handling, and correct despatch of exhibits to the most suitable expert for examination.
24. Ensure that the staff is put onto regular hours as soon as possible, and not allowed to become strained and unnecessarily over-worked in the early stages of the inquiry. Prepare early for a long investigation.

DUTIES OF THE O. I. C. OF INVESTIGATION:

AFTER THE ARREST -

25. See that the offender is fingerprinted, palm-printed, and, if necessary, footprinted. Arrange Special Photograph of offender. Have Fingerprint Information Form completed.
26. Arrange medical examination by G. M. O.
27. Ensure that the offender is interviewed thoroughly, and questioned by experienced Detectives.
28. Ascertain whether offender is prepared to indicate to Police where offence committed, where weapons discarded, where exhibits can be located, and other locations having an important bearing on the evidence. If so, arrange for him to be taken there under proper escort.
29. Ascertain whether offender is prepared to allow G. M. O. to remove samples of his hair, blood, fingernail scrapings, etc., according to the circumstances of the case. If so, arrange for written authority to be obtained from him in accordance with Police Instruction 24 (13) (f).
30. Arrange proper search of offender's clothing, body, his home, locker at place of employment, his motor vehicle,

(4).

also possibly week-ender, etc., or other place suggested in the particular circumstances.

31. Notify the Divisional or Sub-District Officer of arrest and circumstances, so that information may be passed on through channels to the Commissioner of Police.

32. Supervise preparation of brief of evidence for Court, including statements, exhibits, photographs, plans, scientific certificates. It may be necessary to apply in writing for the assistance of an experienced Police Prosecutor, and to have several conferences with him relating to the evidence, witnesses, and exhibits.

33. Satisfy yourself that the offender's possible connection with other outstanding crimes has been fully and satisfactorily explored. This particularly applies in cases where the crime has no domestic or matrimonial basis, such as where there has been an attack on a woman or child, or armed attacks on persons not immediately associated with the offender. Consult M. O. Section concerning previous similar outstanding crimes.

#### DUTIES OF THE O. I. C. OF EXHIBITS.

34. It is not expected that every murder investigation will be of such duration and of such magnitude that it will be necessary to appoint an O. I. C. of exhibits. In smaller and restricted inquiries this function can well be carried out by the O. I. C. of the running sheet in conjunction with the investigators. If an O. I. C. of exhibits is appointed, it is not intended that it should occupy his entire time after the preliminary stages of the inquiry have passed, but during the time he is functioning as such he is to -

a. Personally accept physical possession of all exhibits and miscellaneous property from the time they are first brought to the Police Station and handed to him. They are to be properly parcelled in brown paper or other suitable wrapping, plastic bags, etc., and clearly labelled with full particulars of exactly what they are. The importance of this sub-paragraph cannot be over-emphasised because on occasions in the past it has frequently happened that as many as forty and fifty knives have come into the possession of Police on one investigation. In other instances there have been as many as a dozen pairs of men's trousers, and so on.

b. If articles are taken by members of the Scientific Investigation Bureau, Ballistics Section, Fingerprint Section, etc., the O. I. C. of exhibits (or the O. I. C. of the running sheet, whichever the case may be) is to keep a careful record of the movement of the exhibit or property, and be in a position at all times to state the exact location of an exhibit, and its reason for being there.

It will be the duty of members of the Scientific Investigation Bureau, Ballistics and Fingerprint Sections, etc. to fully acquaint the O. I. C. of Exhibits of the movement of exhibits. At the conclusion of any scientific or other examination, the O. I. C. of exhibits is to be notified so he can repossess the article, and have it recorded as an exhibit or miscellaneous property, and locked in the exhibit room.

(5).

- c. When exhibits are labelled with exhibit labels, the ordinary particulars may be WRITTEN on the front of the label in the ordinary way, but it is also a very good idea to TYPE on the back of the label the fullest particulars identifying it. These labels should be kept attached to the parcel until after the trial has concluded. The back of the label should contain typed particulars of the brief description of the exhibit, by whom found, where found, and date. The typed particulars should be sufficient for the proper identification of it later in Court by a Police Prosecutor and a Crown Prosecutor. This is particularly important for the same reason as has been set out in paragraph 34 (a) of this lecture.
- d. At the completion of an inquiry, and/or when an arrest has been made, the O. I. C. of the investigation will indicate his requirements concerning the storage of exhibits. It may be thought necessary for the O. I. C. of exhibits or the running sheet operator to care for them throughout the Petty Sessions hearing and the trial. On the other hand, the O. I. C. of the investigation, depending on circumstances, may direct otherwise. The importance of the careful handling and labelling of exhibits cannot be over-stressed.
- e. Be responsible for the ultimate disposal of all exhibits and miscellaneous property at the conclusion of the trial, and when approval has been obtained for so doing, both from the O. I. C. of the investigation and the Clerk of the Peace.
- f. If no arrest is made, and the murder is not cleared up, the exhibits will be held indefinitely in the care and control of the O. I. C. of exhibits until such time as he is otherwise directed by the O. I. C. of the investigation.

### 35. DUTIES OF THE RUNNING SHEET OPERATOR.

The subject of maintenance and compilation of running sheets is so complex that it has been arranged for you to receive a separate lecture on it. Accordingly, it is not proposed in this lecture to say anything about the duties of the running sheet operator respecting the running sheet itself. However, it is pointed out that the O. I. C. of the running sheet should confer with the O. I. C. of the entire investigation before setting up headquarters, and consider -

- a. Space available for staff and vehicles;
- b. Accessibility;
- c. Communications; direct telephones, Police extensions and public lines, radio, etc;
- d. Privacy for working and interviews;
- e. Security for records.

36. It may be that a sub-station may be more suitable than a head-station, or it may be necessary to set up operational headquarters in certain circumstances in an empty hall or house, or in the Mobile Police Station.

37. Apart from his normal duties on running sheets, he is responsible for the preparation of rosters for staff and vehicles, as indicated by the O. I. C. of the investigation. He is responsible for all matters on the clerical and recording side of the investigation. He will frequently be in charge of the exhibits, as outlined earlier.