

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND
TOBAGO

B E T W E E N:

TERRENCE THORNHILL

Appellant

- and -

THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO

Respondent

RECORD OF PROCEEDINGS

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From Clinton Bernard, Deputy Solicitor General
To The Registrar, Supreme Court, Red House,
Port-of-Spain.

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No.32 of 1978

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :-

TERRENCE THORNHILL

Appellant

- AND -

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Respondent

RECORD OF PROCEEDINGS

No. 1

No.1

10

Notice of Motion dated 1st November
1973

Notice of
Motion dated
1st November
1973

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE No.2765 of 1973

IN THE MATTER of the Constitution of Trinidad and
Tobago, being the Second Schedule to the Trinidad
and Tobago (Constitution) Order in Council, 1962

AND

20

IN THE MATTER of the Application of TERRENCE
THORNHILL (a person alleging that certain
provisions of sections 1, 2, 3, 4, 5 and 7 of the
said Constitution have been, are being or likely to
be contravened in relation to him) for redress in
accordance with section 6 of the said Constitution.

NOTICE OF MOTION

30

TAKE NOTICE that the High Court of Justice at the
Red House in the City of Port-of-Spain will be
moved on Friday the 14th day of December, 1973, at
the sitting of the Court at the hour of 9.00
o'clock in the forenoon or as soon thereafter as
Counsel can be heard by Counsel on behalf of the
above-named applicant, Terrence Thornhill, for the
following relief, namely:-

1.

No.1
Notice of
Motion dated
1st November
1973

1. A Declaration that the prevention of, and hindrance and denial to, the applicant while being arrested and detained between 1.30 p.m. on Wednesday, 17th October, 1973 and 12.45 p.m. on Saturday, 20th October, 1973 from retaining and/or instructing a legal adviser of his own choice and/or from holding consultation with him constitutes a contravention in relation to the applicant of his right thereto guaranteed and protected by the constitution.

10

2. A Declaration that all matters and things which may have transpired in relation to the applicant and in particular all statements oral or written which may have been given by, or taken from, the applicant while he was so under arrest and in detention are illegal, unconstitutional, ultra vires, null and void and of no effect.

3. An Order:

- (a) restraining the respondents and each of them from in any way making use of any one or more of such statements in any prosecutions and/or proceedings whatsoever in relation to the applicant or otherwise;
- (b) directing that all such written statements be handed up and delivered over to the court for destruction;
- (c) directing that no use whatsoever be made of any such statements oral or written in any prosecutions and/or proceedings in relation to the applicant or in which the applicant might be concerned.

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30

And that such order as to the costs of and incidental to this application may be made as the Court shall think fit.

AND FURTHER TAKE NOTICE

That the Grounds of this application are as follows:-

- (1) That on the 17th day of October, 1973 at Riverside Road, Curepe, the applicant the said Terrence Thornhill, was arrested by a combined party of Policemen and Soldiers, detained, and taken by them in their custody to the St. Joseph Police Station and later to Criminal Investigation Department Office, Police Headquarters, Port-of-Spain.

40

(2) That on Monday, 22nd October, 1973 the applicant, the said Terrence Thornhill, was taken and appeared before His Worship Lionel Holder, Esquire, sitting Magistrate of the 3rd Magistrates Court, Port-of-Spain, when sundry indictable criminal charges were formally read to him whereupon he was remanded (and to date remains) in custody to appear to answer the said charges at various Magistrates Courts in Trinidad. No.1
Notice of
Motion dated
1st November
1973

10 (3) That (i) on Friday, 26th October, he was taken and appeared before the sitting Magistrate of the Magistrates Court, Tunapuna on certain of the said charges when he was remanded in custody to appear at an adjourned date;

20 (ii) that he is due to appear before the sitting Magistrate in the 3rd Magistrates Court, Port-of-Spain, on the 1st day of November, 1973 to answer certain others of the said charges.

(4) That on the night of the said 17th October, 1973 at the St. Joseph Police Station the Police Authorities concerned refused to allow Counsel for the applicant to consult with him as legal adviser and client. Thereafter and at all material times the said Police Authorities continued to deny the applicant access to said Counsel to instruct and/or hold communications with and/or receive advice from him in breach of the said applicant's legal rights in the premises guaranteed and protected by the Constitution.

30 (5) During the arrest and detention aforesaid the applicant, the said Terrence Thornhill, despite and in the face of the denial by the said Police Authorities of his rights aforesaid, was prompted and made to give several statements, both oral and in writing, in relation to the said charges and otherwise.

40 Dated this 1st day of November, 1973.

GITTENS SMART & CO.
Solicitors for the Applicant

To: The Registrar of the Supreme Court of Judicature

AND

50 To: Senior Supt. Wilfred Allman, Supt. Samuel George, Asst. Supt. Clinton Whitehead, Asst. Supt. Alec Heller, Insp. Osmond Kerr, Insp. Calvin Trotman, Sgt. Regis No. 5087, Cpl. Leache No. 5775 all in care of Police Headquarters, St. Vincent Street, Port-of-Spain.

No.2
Amended
Notice of
Motion
dated 1st
November
1973

No.2
Amended Notice of Motion dated 1st
November 1973

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE No.2765 of 1973

IN THE MATTER of the Constitution of Trinidad and
Tobago, being the Second Schedule of the Trinidad and Tobago (Constitution) Order in Council, 1962. 10

AND

IN THE MATTER of the Application of TERRENCE
THORNHILL (a person alleging that certain provisions
of sections 1, 2, 3, 4, 5 and 7 of the said
Constitution have been, are being or likely to be
contravened in relation to him) for redress in
accordance with section 6 of the said Constitution.

AMENDED NOTICE OF MOTION

TAKE NOTICE that the High Court of Justice at the Red House in the City of Port-of-Spain will be moved on Friday the 14th day of December, 1973, at the sitting of the Court at the hour of 9.00 o'clock in the forenoon or as soon thereafter as Counsel can be heard by Counsel on behalf of the above-named Applicant, Terrence Thornhill, for the following relief, namely:- 20

1. A Declaration that the prevention of, and hindrance and denial to, the applicant while being arrested and detained between 1.30 p.m. on Wednesday, 17th October, 1973 and 12.45 p.m. on Saturday, 20th October, 1973 from retaining and/or instructing a legal adviser of his own choice and/or from holding consultation with him constitutes a contravention in relation to the applicant of his right thereto guaranteed and protected by the constitution. 30
2. A Declaration that all matters and things which may have transpired in relation to the applicant and in particular all statements oral or written which may have been given by, or taken from, the applicant while he was so under arrest and in detention are illegal, unconstitutional, ultra vires, null and void and of no effect. 40
3. AN ORDER:
 - (a) restraining the respondents and each of them from in any way making use of any one or more

of such statements in any prosecutions
and/or proceedings whatsoever in
relation to the applicant or otherwise;

No.2
Amended Notice
of Motion dated
1st November 1973

- (b) directing that all such written state-
ments be handed up and delivered over to
the court for destruction;
- (c) directing that no use whatsoever be made
of any such statements oral or written
in any prosecutions and/or proceedings in
relation to the applicant or in which the
applicant might be concerned.

10

And that such order as to the costs of and
incidental to this application may be made as the
Court shall think fit.

AND FURTHER TAKE NOTICE

That the Grounds of this application are as
follows:-

20

(1) That on the 17th day of October, 1973 at
Riverside Road, Curepe, the applicant the said
Terrence Thornhill, was arrested by a combined
party of Policemen and Soldiers, detained and
taken by them in their custody to the St.
Joseph Police Station and later to Criminal
Investigation Department Office, Police Head-
quarters, Port-of-Spain.

30

(2) That on Monday, 22nd October, 1973 the applicant,
the said Terrence Thornhill, was taken and
appeared before His Worship Lionel Holder,
Esquire, sitting Magistrate of the 3rd Magistrates
Court Port-of-Spain when sundry indictable
criminal charges were formally read to him where-
upon he was remanded (and to date remains) in
custody to appear to answer the said charges at
various Magistrates Courts in Trinidad.

40

(3) That (i) on Friday, 26th October, he was taken
and appeared before the sitting Magistrate of
the Magistrates Court, Tunapuna on certain of
the said charges when he was remanded in custody
to appear at an adjourned date;

(ii) that he is due to appear before the
sitting Magistrate in the 3rd Magistrates Court,
Port-of-Spain on the 1st day of November, 1973
to answer certain others of the said charges.

(4) That on the night of the said 17th October, 1973
at the St. Joseph Police Station the Police

No.2
Amended
Notice of
Motion
dated 1st
November
1973

Authorities concerned refused to allow Counsel for the applicant to consult with him as legal adviser and client. Thereafter and at all material times the said Police Authorities continued to deny the applicant access to said Counsel to instruct and/or hold communications with and/or receive advice from him in breach of the said applicant's legal rights in the premises guaranteed and protected by the Constitution.

- (5) During the arrest and detention aforesaid the applicant, the said Terrence Thornhill, despite and in the face of the denial by the said Police Authorities of his rights aforesaid was prompted and made to give several statements, both oral and in writing, in relation to the said charges and otherwise. 10

Dated this 1st day of November, 1973.

GITTENS SMART & CO.
Solicitors for the Applicant

To: The Registrar of the Supreme Court of Judicature 20

AND

To: Senior Supt. Wilfred Allman, Supt. Samuel George, Supt. Randolph Burroughs, Asst. Supt. Clinton Whitehead, Asst. Supt. Alic Heller, Asst. Supt. Herman Gittens, Insp. Osmond Kerr, Insp. Calvin Trotman, Insp. Carlisle Broome, Insp. Gladstone Jones, Sgt. Regis No. 5087, Sgt. Allan Joseph No. 3625 Sgt. Aldwyn Aguillera No. 5089, Sgt. Robert Celestin No. 4555, Cpl. Leache No. 5775 all C/o Police Headquarters, St. Vincent Street, Port-of-Spain. 30

No.3
Affidavit of
Wayne Smart
dated 8th
1973

No. 3

Affidavit of Wayne Smart dated 8th
1973

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE No.2765 of 1973

IN THE MATTER of the Constitution of Trinidad and Tobago, being the Second Schedule to the Trinidad and Tobago (Constitution) Order in Council, 1962 40

AND

IN THE MATTER of the Application of TERRENCE

THORNHILL (a person alleging that certain provisions of sections 1, 2, 3, 4, 5 and 7 of the said Constitution have been, are being or likely to be contravened in relation to him) for redress in accordance with section 6 of the said Constitution.

No.3
Affidavit of
Wayne Smart
dated 8th
1973

I, WAYNE SMART of No. 78 Queen Street in the City of Port-of-Spain in the Island of Trinidad, Solicitor, hereby make oath and say as follows:-

- 10 1. The facts deposed to herein, save as otherwise stated, are within my personal knowledge.
2. On Thursday, 18th October, 1973 at about 5.15 p.m. I accompanied one Stanley John, a Barrister-at-Law, to the St. Joseph Police Station. On arrival at the St. Joseph Police Station we saw the parents of Terrence Thornhill, I remained in the compound of the said St. Joseph Police Station while the said Stanley John entered the Charge Room thereof.
- 20 3. Some minutes later the said Stanley John came out from the Charge Room and joined me and Mr. and Mrs. Thornhill in the compound outside.
4. The said Stanley John, Mr. and Mrs. Thornhill and myself remained in the compound and/or gallery of the St. Joseph Police Station between approximately 5.30 p.m. and 7.30 p.m. when we left the St. Joseph Police Station.
- 30 5. During the time that we were so waiting, at about 6.00 p.m., Stanley John in my presence and hearing approached Asst. Supt. Whitehead in the compound of the St. Joseph Police Station. Stanley John asked him whether he (Asst. Supt. Whitehead) would allow him (Stanley John) to give the said Terrence Thornhill some sandwiches and milk which Mr. and Mrs. Thornhill had brought for him. Asst. Supt. Whitehead said that if it was left to him Thornhill would have no visitors and see no one and have no food until he was charged. He then added, "Don't be afraid we won't starve him". Asst. Supt. Whitehead further stated that Thornhill would probably be charged by Friday afternoon.
- 40 6. Later that evening at about 7.20 p.m. Asst. Supt. Whitehead came up to Stanley John who was still in the compound of the St. Joseph Police Station and enquired of him whether he was waiting for Supt. Burroughs. Stanley John told Asst. Supt. Whitehead that it must be clear that that was the reason that he was there, in view of what he (Stanley John) had stated to him (Asst. Supt. Whitehead) earlier. Asst.

No.3
Affidavit
of Wayne
Smart dated
8th
1973

Supt. Whitehead told Stanley John that Supt. Burroughs had gone to Fyzabad where there had been a shooting and he had no idea when he would be returning.

7. At about 7.30 p.m. I left the St. Joseph Police Station with the said Stanley John in a car. As we left the said Police Station we crossed a motor car coming into the Station. Stanley John got out and spoke to the policeman who was the driver of this car.

10

8. At about 3.00 p.m. on Friday, 19th October, 1973 I accompanied Stanley John to the C.I.D. Port-of-Spain. We were received by Supt. Wilfred Allman of the C.I.D. We requested the opportunity to see and hold communication with Terrence Thornhill. Supt. Allman stated that we could not see the said Terrence Thornhill as the investigation had reached a stage where any interview with Terrence Thornhill and his Legal Adviser would impede the investigation. Supt. Allman said, however, that there were people higher up whom we might try and that he himself would try to make a visit possible on the following morning, Saturday, 20th October, 1973.

20

SWORN at No.28, St. Vincent)
Street, Port-of-Spain this) WAYNE SMART
8th day of 1973)

Before me,

DARNLEY C. JORDAN
Commissioner of Affidavits

30

Filed on behalf of the Applicant.

No.4
Affidavit of
Stanley John
dated 8th
December 1973

No. 4

Affidavit of Stanley John dated 8th
December 1973

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE No.2765 of 1973

IN THE MATTER of the Constitution of Trinidad and Tobago, being the Second Schedule to the Trinidad and Tobago (Constitution) Order in Council, 1962

40

AND

IN THE MATTER of the Application of TERRENCE THORNHILL (a person alleging that certain provisions

of sections 1, 2, 3, 4, 5 and 7 of the said Constitution have been, are being or likely to be contravened in relation to him) for redress in accordance with section 6 of the said Constitution.

No.4
Affidavit of
Stanley John
dated 8th
December 1973

I, STANLEY JOHN of No.6 Henry Pierre Street in the City of Port-of-Spain, in the Island of Trinidad, Barrister-at-Law make oath and say as follows:-

- 10 1. The facts deposed to herein, save as otherwise stated, are within my personal knowledge.
2. At about 4.00 p.m. on the 17th October, 1973, I heard a Radio Bulletin stating that my cousin, one Terrence Thornhill had been shot in an alleged shoot-out with the Police in Caura.
3. Shortly after the said bulletin I received a telephone call from the home of Terrence Thornhill. As a result of the said telephone call I went to Thornhill's residence where the father of the
20 said Terrence Thornhill requested me to act professionally on behalf of his son Terrence Thornhill.
4. As a result of the matters contained in Paragraphs 2 and 3 herein, I left in my capacity as a Barrister-at-Law for the St. Joseph Police Station where I arrived at about 5.30 p.m.
5. On arrival I introduced myself to some of the policemen on duty at the Police Station and enquired about the said Terrence Thornhill.
- 30 6. I was informed by the said policemen and verily believed that the said Terrence Thornhill was safe and uninjured, but they stated that I would not be permitted to see or speak to him.
7. Later that evening at about 9.00 p.m. I returned to the St. Joseph Police Station accompanied by my father one Carlton John and my brother one Brian John. I spoke to Inspector St. Louis in the compound of the St. Joseph
40 Police Station and requested permission to speak to Terrence Thornhill. Inspector St. Louis took me to Superintendent Burroughs who was also then in the compound of the St. Joseph Police Station. I introduced myself to Superintendent Burroughs and asked him for permission to see and hold communication with the said Terrence Thornhill.
8. Superintendent Burroughs then accompanied me

No.4
Affidavit of
Stanley John
dated 8th
December 1973

from the compound into the Charge Room where I saw Terrence Thornhill seated on a bench. Terrence Thornhill was at that time surrounded by policemen. The Charge Room was lit only by two lanterns as there was a power failure at that time. More or less as I entered the Charge Room, Superintendent Burroughs mentioned to me that Terrence Thornhill had had nothing to eat for a while and suggested that I might get him something to eat.

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9. As a result of the suggestion of Superintendent Burroughs, I left the St. Joseph Police Station and got something to eat for the said Terrence Thornhill. On my return I went to where he was sitting on the said bench and gave him the food. He was handcuffed on one side to one Anthony Baker and on the other side to a railing behind the bench. He enquired after the various members of his family and whether they were distressed by the events surrounding his arrest.

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10. Within five minutes of my having commenced this conversation with Terrence Thornhill I was told by a policeman that I would have to leave as they (the Police) had things to do. As I departed, in the presence of the said policemen I told Terrence Thornhill that I would come to see him on the following day, Thursday, 18th October, 1973, and he agreed to this proposal.

11. On Thursday, 18th October, 1973 at about 8.30 a.m. I telephoned the St. Joseph Police Station and asked to speak to Superintendent Burroughs but was informed that he was out. I then asked for Superintendent George and was told that he also was away from the St. Joseph Police Station. At about 10.00 a.m. on the said Thursday, 18th October, 1973 I went to the St. Joseph Police Station as I had arranged with the said Terrence Thornhill the previous evening. Thornhill's parents were also present arriving within minutes after my arrival. Shortly after my arrival at the St. Joseph Police Station, Superintendent Samuel George arrived at the Police Station. Superintendent George went up to Thornhill's parents in the compound of the Station and spoke to them. I was then in the gallery of the Station. Superintendent Samuel George came into the gallery some few minutes after commencing his conversation with Thornhill's parents. I spoke to him and told him I had come to see Thornhill as his Legal Adviser. Superintendent George asked me to wait a while and he went into the Charge Room.

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12. About half an hour later Superintendent George

sent a sentry to call me into the Charge Room.
When I entered the Charge Room he was seated at
the desk in the Charge Room. Superintendent George
then told me that "these men" (referring to the
said Terrence Thornhill Anthony Baker and one Earle
Williams who were in the Charge Room) had been
brought to the Station on very serious offences and
any interview at this stage by a lawyer would be
likely to impede the investigations and he refused
me permission to hold any communication with the
said Terrence Thornhill

No.4
Affidavit of
Stanley John
dated 8th
December 1973

13. During the course of the afternoon of Thursday,
18th October, 1973 I telephoned Superintendent
Burroughs on several occasions without succeeding
in reaching him. Finally, at about 4.00 p.m. on
the said 18th October, 1973 I succeeded in reaching
him by telephone at the St. Joseph Police Station.
I told him I had not been permitted to see the said
Terrence Thornhill earlier that day. Superintendent
Burroughs told me that he was then interviewing the
said Terrence Thornhill and that Terrence Thornhill
had said the same thing. I then requested permission
to see the said Terrence Thornhill later in the day.
I explained to Superintendent Burroughs that my
visit would have to be around 5.00 p.m. because of
traffic conditions. Superintendent Burroughs agreed
that I should be allowed to see and speak with
Terrence Thornhill in my capacity as his Legal
Adviser. I further requested Superintendent
Burroughs that if it should transpire that he would
not be at the St. Joseph Police Station at the time
of my proposed visit, he would have instructions
that I should be permitted to see and speak to the
said Terrence Thornhill as his Legal Adviser.
Superintendent Burroughs gave me this assurance.
He also agreed that the parents of the said Terrence
Thornhill could see their son that afternoon if they
so wished.

14. At or around 5.15 p.m, accompanied by Mr. Wayne
Smart, Solicitor in the firm of Gittens, Smart & Co.,
I arrived at the St. Joseph Police Station. The
parents of Terrence Thornhill were also there. On
arrival at the St. Joseph Police Station I spoke to
a sentry in the Charge Room. I informed him that
Superintendent Burroughs had agreed that I could hold
communication with Terrence Thornhill as his Legal
Adviser. The sentry shook his head. When the sentry
shook his head Terrence Thornhill shouted from his
position in the Charge Room that Superintendent
Burroughs had said that he (Terrence Thornhill) could
talk to his parents and his lawyer when they came.
The sentry said he could not allow it because
Superintendent Burroughs had not left any such instructions.

No.4
Affidavit
of Stanley
John dated
8th December
1973

15. I then saw Assistant Superintendent Clinton Whitehead. I explained to him that Superintendent Burroughs had agreed that I be permitted to hold communication with Terrence Thornhill and to receive instructions and to advise him as his Legal Adviser. Assistant Superintendent Whitehead said he could not allow it. Again Terrence Thornhill shouted out that Superintendent Burroughs had said that he could talk to his parents and his lawyer when they came.

16. I then left the Charge Room of the St. Joseph Police Station. I joined Mr. and Mrs. Thornhill and the said Wayne Smart who were outside. We waited outside until about 6.00 p.m., when I approached Assistant Superintendent Whitehead who was then in the Compound of the Station. I asked him whether he would allow me to give the said Terrence Thornhill some sandwiches and milk which his parents had brought him. Assistant Superintendent Whitehead said that, if it was left to him, Thornhill would have no visitors and see no one and have no food until he was charged. He then added, "Don't be afraid, we won't starve him". He further stated that Thornhill would probably be charged by Friday afternoon. I asked him when Superintendent Burroughs would be returning and he said he did not know. 10 20

17. I, Wayne Smart and Thornhill's parents waited until about 7.20 p.m. in the hope that Superintendent Burroughs might return. At about 7.20 p.m. Assistant Superintendent Whitehead approached me in the Compound of the Station and enquired of me whether I was waiting for Superintendent Burroughs. I told him that it must be clear that that was the reason that I was there, in view of what I had stated to him earlier. Assistant Superintendent Whitehead told me that Superintendent Burroughs had gone to Fyzabad where there had been a shooting and he had no idea when he would be returning. 30

18. At about 7.30 p.m. Mr. and Mrs. Thornhill in one car and Wayne Smart and I in another car left the St. Joseph Police Station. As we left the said Police Station we crossed a motor car which I had understood (while waiting in the Station) to have left to pick up Superintendent Burroughs. I spoke to the Corporal who was driving the said car and I was informed by the said Corporal and verily believed that Superintendent Burroughs had not yet returned from Fyzabad I then left the Police Station and proceeded to Port-of-Spain. 40

19. On Friday, 19th October, 1973 I once again telephoned the St. Joseph Police Station and was informed by someone on duty there and verily believed that Terrence Thornhill was no longer at the said Police Station. At about 11.00 a.m. on the said Friday, 50

19th October, 1973 I received a telephone call from the father of the said Terrence Thornhill who informed me and whom I verily believed that Terrence Thornhill was then at the C.I.D., Port-of-Spain. After receiving this information I sought to gain access and to hold communication with the said Terrence Thornhill at the C.I.D., Port-of-Spain with a view to receiving his instructions and advising him as his Legal Adviser. Despite my attempts so to do, I received no assistance at the C.I.D., Port-of-Spain, and was not allowed access to the said Terrence Thornhill.

No.4
Affidavit of
Stanley John
dated 8th
December 1973

20. At about 3.00 p.m. on Friday, 19th October I once again went to the C.I.D., Port-of-Spain accompanied by the said Wayne Smart, Solicitor. On this occasion we were received by Superintendent Wilfred Allman of the C.I.D. I requested permission as his Counsel to see and hold communication with the said Terrence Thornhill. The said Superintendent Allman stated that we could not see the said Terrence Thornhill as the investigation had reached a stage where any interview between Terrence Thornhill and his Legal Adviser would impede the investigation. Superintendent Allman said, however, that there were people higher up whom we might try and that he himself would try to make a visit available to me and Mr. Wayne Smart on the following morning Saturday, 20th October, 1973.

21. At about 9.30 a.m. on the following morning (Saturday, 20th October, 1973) I went to the C.I.D., Port-of-Spain. I was admitted into the presence of the said Terrence Thornhill who was sitting at a table in a room at the C.I.D. Sitting next to him at the said table was Assistant Superintendent Whitehead. I was informed by a Police Officer whose identity I do not recall and verily believed that preparations were being made for identification parades. I was only in the room with the said Terrence Thornhill for a period of about two minutes when I was informed by Assistant Superintendent Whitehead that he was expecting Thornhill's parents. I left to go in search of Thornhill's parents. Accompanied by Thornhill's parents whom I found in the compound of Police Headquarters, I returned to the room where Thornhill had been with Assistant Superintendent Whitehead but he was no longer there. I saw him in another room with policemen.

22. I entered this room with Thornhill's parents. No sooner had we entered this room that Assistant Superintendent Whitehead came in and said "You've seen him and we have lots of work to do"

No.4
Affidavit
of Stanley
John dated
8th
December
1973

23. As I had been informed that there were going to be identification parades, I asked a police officer (whose identity I do not recall) whether I could witness the identification parades. He told me yes, but that I must say nothing and take no part in the proceedings.

24. The said identification parades did not conclude until 12.30 p.m. on the said 20th October, 1973. Upon the conclusion of the identification parades I was informed by the said Superintendent Wilfred Allman that I could hold communication in private with the said Terrence Thornhill.

25. Since my first attempts on the 17th October, 1973 and despite the agreement and/or undertakings given by Superintendent Burroughs as aforesaid and the joint entreaties of myself and the said Terrence Thornhill as hereinbefore described, the interview proffered by Superintendent Allman at 12.30 p.m. on Saturday, 20th October, 1973 was the first opportunity that I was permitted to consult with the said Terrence Thornhill as his Legal Adviser. This interview lasted for thirty minutes or thereabouts.

SWORN at No.28 St. Vincent Street,)
Port-of-Spain, this 8th day) STANLEY H.W. JOHN
of December, 1973)

Before me,

DARNLEY C. JORDAN
Commissioner of Affidavits

Filed on behalf of the Applicant.

No.5
Affidavit
of Terrence
Thornhill
dated 10th
December
1973

No. 5

Affidavit of Terrence Thornhill dated
10th December 1973

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE No.2765 of 1973.

IN THE MATTER of the Constitution of Trinidad and Tobago, being the Second Schedule to the Trinidad and Tobago (Constitution) Order in Council, 1962.

AND

No.5
Affidavit of
Terrence
Thornhill dated
10th December
1973

IN THE MATTER of the Application of TERRENCE THORNHILL
(a person alleging that certain provisions of
sections 1, 2, 3, 4, 5 and 7 of the said
Constitution have been, are being or likely to be
contravened in relation to him) for redress in
accordance with section 6 of the said Constitution.

10 I, TERRENCE THORNHILL of Gallus Street, Woodbrook, in
the City of Port-of-Spain in the Island of Trinidad
hereby make oath and say as follows:-

1. The facts deposed to herein, save as otherwise
stated, are within my personal knowledge.

2. On Wednesday, 17th October, 1973 I, with others,
was arrested by a party of policemen at Riverside
Road, Curepe, and taken to the St. Joseph Police
Station.

20 3. On arrival at the Police Station I was placed
on a bench in the Charge Room and handcuffed to the
railing. Some hours later one Anthony Baker who was
one of the persons who had been arrested with me was
brought in. My right hand was then handcuffed to
Baker's left hand and my left hand was handcuffed to
a vertical bar behind the bend on which I was placed.
Sometime during the evening of the said 17th October,
1973 I saw my cousin, Stanley John, who is a
Barrister-at-Law come to the Police Station with my
Uncle Carlton John and my cousin Brian John. At the
30 time that I saw them the Charge Room was dark as there
was a power failure. The room was lit by two lanterns.

4. The said Stanley John proceeded into that part
of the Charge Room where I was sitting handcuffed as
aforesaid and he questioned the fact of my arrest, and
I expressed my concern as to how the family was taking
it. Stanley John had brought some food to eat. I
started to eat it.

40 5. Within five minutes of the above conversation
having commenced and with nothing more than the above
having been said, Stanley John was told by a
policeman that he would have to leave me and that he
could not hold further communication with me. The
Charge Room was full of policemen.

6. Stanley John departed. Upon departing, in the
presence and hearing of several policemen, the said
Stanley John said he would return on the following
day. viz., Thursday, 18th October, 1973 and in the
presence and hearing of the said policemen I agreed

No.5
Affidavit
of Terrence
Thornhill
dated 10th
December
1973

to his proposal to visit me the following day so that I should have the opportunity of retaining him and instructing him and holding communication with him in connection with my arrest and all matters relating thereto.

7. On Thursday, 18th October, 1973 about mid-morning the said Stanley John (hereinafter called "my Legal Adviser") came to the St. Joseph Police Station as had been agreed between us on the previous night in the presence and hearing of the Police. I saw him speaking to Supt. George. I heard Supt. George say that "these men" (meaning me, Baker and Williams) had been brought to the Station on very serious charges. There was further conversation between Supt. George and my Legal Adviser but I do not now recollect all of it.

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8. At about 4.00 p.m. on the said Thursday, 18th October, 1973 I was taken from the bench in the Charge Room where I had been placed and was escorted into a small room in the said Police Station which said room is to the north of the Charge Room of the said Police Station.

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9. In this room was Supt. Burroughs. He engaged me in a long conversation about a number of topics. During the said conversation, I informed him that my Legal Advisor had come to the Police Station by agreement to see me and advise me but that I had not been allowed to see him or to hold communication with him. Supt. Burroughs informed me that I should have been allowed to see my Legal Adviser. During the course of the conversation Supt. Burroughs was called away. On his return Supt. Burroughs assured me that everything would be alright as he had just received a telephone call from my Legal Adviser complaining that he (my Legal Adviser) had not been permitted to see me earlier in that day and that my Legal Adviser had requested permission from him (Supt. Burroughs) to hold communication with me that afternoon. Supt. Burroughs informed me that he had agreed with my Legal Adviser that my Legal Adviser should be allowed to see me that afternoon so that I could instruct him, hold communication with him and have him advise me.

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10. At about 4.45 p.m. on the said 18th October, 1973, Supt. Burroughs left the room in which we were having the conversation and I was escorted to the bench in the Charge Room where I was handcuffed to the rail as aforesaid.

11. At about 5.00 p.m. on the said 18th October, 1973, my Legal Adviser came to the Police Station.

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My parents arrived shortly before my Legal Adviser. From my position on the said bench I saw him talking to the policeman at the Charge Desk. I saw the policeman shaking his head and I concluded that he was denying my Legal Adviser access to me. I then raised my voice and addressed the policeman. I informed him that Supt. Burroughs had said that I could talk to my Legal Adviser and parents when they came and that it had been arranged. The policeman stated that he could not permit it as Supt. Burroughs had not left any instructions to this effect. I then told the policeman at the desk that Supt. Burroughs had said so in the presence of another policeman and I pointed out that other policeman who was at that time present in the Charge Room.

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12. More or less immediately subsequent to the above events in the preceding paragraph, I saw my Legal Adviser speaking to one of the senior officers at the Police Station. It was Supt. Whitehead. I repeated to the said senior officer that Supt. Burroughs had said that I could talk to my Legal Adviser and my parents when they came and that it had been arranged but despite my said entreaties I was not permitted to hold communication with my Legal Adviser and to instruct him and have him advise me.

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13. My Legal Adviser and my parents were in and around the St. Joseph Police Station and came into the Charge Room of the Police Station from time to time during the period 5.00 p.m. to approximately 7.00 p.m. Apart from being able to exchange smiles with them I was not allowed to hold any communication with any of them. After 7.00 p.m. I did not see either my Legal Adviser or my parents in the said Charge Room and I concluded that they had left the Police Station.

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14. At 9.00 p.m. on the said 18th October, 1973 Asst. Supt. Whitehead interrogated me and took down on yellow foolscap paper certain answers that I gave. This interrogation continued until 1.30 a.m. This interrogation took place in the same room in which I had had the said discussion with Supt. Burroughs.

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15. At about 4.00 a.m. on the 19th October, 1973 I was taken to Police Headquarters, St. Vincent Street, Port-of-Spain. Police Headquarters from early morning on Friday, 19th October, 1973 until approximately 6.30 p.m. statements were taken from me by Asst. Supt. Whitehead, Asst. Superintendent Heller and Insp. Osmond Kerr. During the whole of the

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Affidavit
of Terrence
Thornhill
dated 10th
December
1973

19th October, 1973 I did not see my Legal Adviser, although I was informed by certain policemen at Police Headquarters and verily believed that he (my Legal Adviser) was in the precincts of Police Headquarters at various times during the course of that day.

16. By Saturday, 20th October, 1973 all the statements that I had given to the Police had already been taken. Identification parades were held from about 10.00 a.m. on the said 20th October, 1973. Just prior to the said identification parades, my Legal Adviser entered a room in the C.I.D. where I was seated at a table with Asst. Supt. Whitehead. It was impossible for me to have any confidential communication with my Legal Adviser who was only in the room for approximately two minutes. After the said identification parades which were concluded at 12.30 p.m. a number of criminal charges were preferred against me by the following complainants: Asst. Supt. Alic Heller; Asst. Supt. Herman Gittens; Insp. Calvin Trotman No. 3581; Insp. Carlisle Broome; Insp. Gladstone Jones; Sgt. Rudolph Regis No. 5087; Sgt. Allan Joseph No. 3625; Sgt. Aldwyn Aguillera No. 5089; Sgt. Robert Celestin No. 4555; Cpl. Rudolph Leache No. 5775. These charges include inter alia various charges of shooting with intent to murder, unlawful possession of ammunition, armed robbery and wounding with intent to do greivous bodily harm.

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17. The said statements taken by Asst. Supts. Whitehead and Heller and Inspector Osmond Kerr are statements taken by them during purported enquiries into the subject matter of the said several charges, but the said statements were taken from me in the circumstances hereinabove set forth. I am advised by Counsel that the taking of the statements in the above circumstances constitute an infringement and/or abrogation of my constitutional rights and I crave the leave of this Honourable Court that the said statements may be destroyed or otherwise for the relief in the motion herein contained.

40

SWORN at No.103, Frederick)
Street, Port-of-Spain, this)
10th day of December, 1973)

TERRENCE THORNHILL

Before me,

DARNLEY C. JORDAN
Commissioner of Affidavits

Filed on behalf of the Applicant.

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE No.2765 of 1973

10 IN THE MATTER of the Constitution of Trinidad
and Tobago, being the Second Schedule to the
Trinidad and Tobago (Constitution) Order in
Council, 1962

AND

IN THE MATTER of the Application of TERRENCE
THORNHILL (a person alleging that certain
provisions of section 1, 2, 3, 4, 5 and 7 of the
said Constitution have been, are being or likely
to be contravened in relation to him) for redress
in accordance with section 6 of the said
Constitution.

20 I, SAMUEL GEORGE, of 39, John Shaw Avenue, Arima,
Superintendent of Police, have read what purport
to be the affidavits of Stanley John, Terrence
Thornhill, and Wayne Smart and in reply thereto
make oath and say as follows:-

1. The facts deposed to herein, save as other-
wise stated are within my personal knowledge.

30 2. I am a Superintendent of Police in charge of
the Northern Division with Head Office at Divisional
Headquarters, Arima. The St. Joseph Police Station
forms part of the Northern Division.

3. On the 18th and 19th days of October, 1973
while Superintendent (now Senior Superintendent)
Burroughs and I were of equal rank I was in fact
the officer in command of the Northern Division.

40 4. At about 2 p.m., on the 17th October, 1973,
in consequence of information which I received I
went to Riverside Road, Curepe, where I saw a party
of policemen and Army Personnel under the command
of Superintendent Burroughs as he then was. I
also saw the dead body of a man who I was informed
was one Guy Harewood lying on the river bank.
From there I immediately went to the St. Joseph
Police Station where I saw one Terrence Thornhill
sitting on a bench in the Charge Room.

5. At the said St. Joseph Station I was informed
and verily believed that the said Terrence Thornhill

No.6 was detained at the St. Joseph Police Station in
Affidavit of connection with a shooting incident at the said
Samuel George Riverside Road, Curepe, and that in addition
dated 28th investigations were being conducted by the Police
March 1974 into several other alleged offences involving the
said Terrence Thornhill.

6. On the morning of the 18th October, 1973 I
returned to the St. Joseph Police Station where I
saw Terrence Thornhill seated on a bench in the
Charge Room. 10

7. Later that said morning an adult male and female
called at the said Station. They claimed to be
Mr. and Mrs. Thornhill and the parents of the said
Terrence Thornhill. They were accompanied by Mr.
Stanley John whom I knew before through his father,
one Carlton John, who is my personal friend.

8. The said Stanley John informed me that he was a
cousin of the said Terrence Thornhill; that he,
along with Mr. and Mrs. Thornhill wished to see and
talk with the said Terrence Thornhill; and that they
wished so to do since they had heard over the
wireless that the said Terrence Thornhill was shot
and wounded and wanted to ascertain from him whether
everything was alright with him. 20

9. Mr. John did not inform me at any time whatever
that he was acting as legal adviser to Terrence
Thornhill. Nor did the said Terrence Thornhill
intimate to me at any time that Mr. Stanley John was
his legal adviser and wished to see him as such. In
fact Mr. Stanley John had specifically told me that
he had not come to see the said Terrence Thornhill
in a professional capacity, but had merely come to
the station on the basis of the facts set out in
paragraph 8 herein. Even if the said Stanley John
had done so I would have refused his request for the
reason set out in paragraph 10 herein. 30

10. I had good cause to believe that any discussion
at that stage between Mr. Stanley John and/or Mr. and
Mrs. Thornhill with the said Terrence Thornhill was
reasonably likely to impede and/or hinder the progress
of the Police investigations. I therefore disallowed
the request and so informed Mr. John and Mr. and Mrs.
Thornhill, I told Mr. John and Mr. and Mrs. Thornhill
that in taking this action I was guiding myself by
the Judges' Rules. In the presence Sergeant Jack who
had fetched a copy of the said Judges' Rules at my
request, I showed the said Stanley John the said Judges'
Rules and the particular paragraph thereof. 40

11. That to the best of my knowledge, information and
belief Terrence Thornhill was involved in certain armed 50

robberies at the time and arrangements were being made by the police for the holding of certain Identification Parades. Investigations by the police had reached a crucial stage, as arrangements were being made for the conduct of certain Identification Parades on which the said Terrence Thornhill was to be placed.

No.6
Affidavit of Samuel George dated 28th March 1974

10 12. I had however indicated to the parties that they were free to bring the said Terrence Thornhill meals and clothing if they so desired.

SWORN at the Red House)
Port-of-Spain, by the) (s) S. GEORGE
above-named Samuel) Superintendent of Police
George, this 28th day of)
March, 1974)

Before me,
(s) R.L. BYNOE
Commissioner of Affidavits

Filed on behalf of the Respondents.

20

No. 7
Affidavit of Wilfred Allman dated
28th March 1974

No.7
Affidavit of Wilfred Allman dated 28th March 1974

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE No.2765 of 1973.

IN THE MATTER of the Constitution of Trinidad and Tobago, being the Second Schedule to the Trinidad and Tobago (Constitution) Order in Council, 1962

30

AND

IN THE MATTER of the Application of TERRENCE THORNHILL (a person alleging that certain provisions of sections 1, 2, 3, 4, 5 and 7 of the said Constitution have been, are being or likely to be contravened in relation to him) for redress in accordance with section 6 of the said Constitution.

I, WILFRED ALLMAN, of No. 102 Saddle Road, Maravel, Superintendent of Police, Trinidad and Tobago Police

No.7
Affidavit of
Wilfred
Allman dated
28th March
1974

Service, have read what purport to be the affidavits of Stanley John, Terrence Thornhill and Wayne Smart and in reply thereto make oath and say as follows:-

1. The facts deposed to herein save as otherwise stated are within my personal knowledge.

2. On Friday, 19th October, 1973 the applicant Terrence Thornhill was brought to the Criminal Investigation Department, Port-of-Spain, as a suspect involved in a number of crimes alleged to have been committed in Port-of-Spain and elsewhere, and was being interviewed by Assistant Superintendents Heller and Whitehead in connection with the said alleged crimes. 10

3. At about 4 p.m. on the said 19th October, 1973, Messrs. Stanley John and Wayne Smart came to my office. There, the said Stanley John asked to see Terrence Thornhill. Having checked and found that Assistant Superintendent Heller was actually recording at the particular time a statement in writing from Terrence Thornhill, I then informed Messrs. John and Smart that I could not interrupt the investigation at that stage, but that they should wait until Assistant Superintendent Heller was finished recording his statement in writing from Terrence Thornhill. One of the two gentlemen inquired how long they would have to wait before seeing Terrence Thornhill. I told them that I could not say exactly how long, but assured them that I would arrange for them to speak with Terrence Thornhill as soon as convenient. 20 30

4. The said Stanley John and Wayne Smart then indicated that it was not possible for them to remain but inquired whether they could return to see Thornhill the following day.

5. On the evening of the said 19th, items of clothing and refreshments brought to the Station by Thornhill's relatives on Thornhill's behalf, were duly delivered to Thornhill.

6. On Saturday 20th October, 1973 at about 9 a.m. Mr. Stanley John came to see me at my office, and I allowed him to speak to the said Terrence Thornhill. 40

7. Mr. Stanley John never disclosed to me at any time whatever during his visits to the Criminal Investigations Department, Port-of-Spain, that he was acting as Legal Adviser to Terrence Thornhill, nor that he wished to interview Terrence Thornhill in his capacity as Legal Adviser.

8. Terrence Thornhill never informed me at any time whatever that Mr. Stanley John was his Legal Adviser, nor that Mr. John wished to interview him as his Legal Adviser.

No.7
Affidavit of
Wilfred Allman
dated 28th March
1974

10 9. I had no information whatever from any person or any source that Mr. Stanley John was acting as Legal Adviser to Terrence Thornhill during his visits to the Criminal Investigation Department, Port-of-Spain.

10. The said Terrence Thornhill is allegedly involved in some 16 offences - A list of the offence is appended and marked "A".

SWORN at the Red House, Port-of-Spain,)
by the above-named WILFRED ALLMAN,) WILFRED ALLMAN
this 28th day of March, 1974.) Superintendent
of Police

Before me

20 (s) R.L. BYNOE
Commissioner of Affidavits

Filed on behalf of the Respondents.

"A"

LIST OF CHARGES PROFERRED AGAINST TERRENCE THORNHILL BY THE POLICE

Date	Offence	Complainant	Whether statement taken and by Whom	Remarks
31/5/72	Robbery of Firearms at Forest Reserve	A.S.P. Gittens	Nil	
25/5/72	Robbery with Aggravation at Barclays Bank, UWI	Insp. Trotman	Yes.A.S.P.Whitehead	
15/11/72	Robbery of a car at Malic	Insp. Trotman	Yes%A.S.P.Whitehead	
15/11/72	Robbery with Aggravation at C.I.B.C., Woodbrook	Insp. Trotman	Yes.A.S.P.Whitehead	
22/2/73	Robbery at Barclays Bank, Tragarete Road	A.S.P.Heller	Yes.A.S.P.Heller	
24/3/73	Shooting with intent at Caura Hills	5087 Sgt.Regis	Nil.	
24/3/73	do.	5087 Sgt.Regis	Nil.	
24/3/73	do.	5087 Sgt.Regis	Nil.	
31/5/73	Robbery at Textel Station, Blanchisseuse	5089 Sgt.Aguillera	Yes.A.S.P.Heller	
31/5/73	Setting off Explosives at Blanchisseuse	5089 Sgt.Aguillera	Yes.A.S.P.Heller	
31/5/73	Wounding with intent at Blanchisseuse Road	Insp. Broome	Yes.A.S.P. Heller	By Shooting
31/5/73	Wounding with intent at Blanchisseuse Road	Insp. Broome	Yes.A.S.P. Heller	By Shooting
31/5/73	Wounding with intent at Blanchisseuse Road	Insp. Broome	Yes.A.S.P.Heller	By Shooting
31/5/73	Wounding with intent at Blanchisseuse Road	Insp. Broome	Yes.A.S.P.Heller	By Shooting
7/8/73	Setting off Explosives at Matelot Police Station	4555 Sgt. Celestine	Yes.A.S.P.Whitehead	By Shooting
12/6/73	Robbery of a knife at Heights of Gunapo	5089 Sgt. Aguillera	Nil.	
7/8/73	Robbery of Firearms at Matelot Police Station	4555 Sgt. Celestine	Yes.A.S.P.Whitehead	
27/8/73	Wounding with intent at Valencia	Insp. Jones	Yes.A.S.P.Heller	By Shooting

This is the list referred to as marked "A" in the Affidavit of Wilfred Allman sworn to before me this day of March, 1974.

.....
Assistant Commissioner of
Police "Crime"

(s) R.L.BYNOE
Commissioner of Affidavit.

24.

No.8

Affidavit of Randolph Burroughs dated
28th March 1974.

No.8

Affidavit of
Randolph
Burroughs
dated 28th
March 1974

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE No.2765 of 1973.

10 IN THE MATTER of the Constitution of Trinidad and
Tobago, being the Second Schedule to the Trinidad
and Tobago (Constitution) Order in Council, 1962

AND

IN THE MATTER of the Application of Terrence
Thornhill (a person alleging that certain provisions
of sections 1, 2, 3, 4, 5 and 7 of the said
Constitution have been, are being or likely to be
contravened in relation to him) for redress in
accordance with section 6 of the said Constitution.

20 I, RANDOLPH BURROUGHS, of 16, Scott Street, St.
Augustine, Senior Superintendent of Police have
read what purport to be the affidavits of Terrence
Thornhill, Stanley John and Wayne Smart, and in
answer thereto make oath and say as follows:-

1. That the facts deposed to herein, save as
otherwise stated, are within my personal knowledge.

2. On the 17th and 18th days of October, 1973, I
held the rank of Superintendent of Police.

30 3. On the 17th and 18th days of October, 1973, I
was neither attached to the St. Joseph Police
Station nor was I the officer in command of that
Station. The officer in such command was
Superintendent Samuel George.

4. At about 1.50 p.m. on Wednesday, 17th October,
1973 as a result of information received, I headed
a combined party of policemen and members of the
Trinidad and Tobago Regiment on an exercise which led
to a house situate at Riverside Road, Curepe.
Included in this combined party were Assistant
Superintendent Clinton Whitehead, No. 3625, Sergeant
Alan Joseph, and No. 5775, Corporal Leach.

40 5. On arrival at the said Riverside Road, Curepe,
a shootout ensued between members of my party and
occupants of the said house, which resulted in the
death of Guy Harewood and the arrest of Terrence
Thornhill who had on his person a .38 revolver containing

No.8
Affidavit of
Randolph
Burroughs
dated 28th
March 1974

five live rounds in its chambers, and an additional six rounds of .38 ammunition on his person.

6. At the time of his arrest, Thornhill was told of the fact of his arrest and the reasons for his arrest.

7. Thornhill, in addition to being charged with Shooting with Intent to Murder, Possession of an Unlicensed Firearm, and Possession of Ammunition, was detained for questioning in connection with a number of crimes alleged to have been committed throughout the Country.

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8. To my knowledge some of these crimes were being investigated by the following Police Officers:-

Assistant Superintendents Heller, Whitehead and Gittens;
Inspectors Kerr, Trotman, Broome and Jones;
Sergeants Regis No. 5083, Aguillera No. 5089
and Celestine No. 4555.

9. At about 9.10 p.m., the same day (Wednesday, 17th October, 1973), I saw Mr. Stanley John in the compound of the St. Joseph Police Station. Mr. Stanley John introduced himself to me as the cousin of Terrence Thornhill, who he understood, was wounded and requested permission to see the said Terrence Thornhill, Mr. John told me that his visit was not professional, but purely as a relative of the Thornhill family.

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10. I permitted Mr. John to speak with Terrence Thornhill who assured Mr. John that he was not wounded, and I advised Mr. John that he was free to bring meals and refreshments to the said Terrence Thornhill if he so desired.

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11. On Thursday, 18th October, 1973, I received a telephone call from the said Stanley John. Mr. John indicated that he wished to see the said Terrence Thornhill and that he would be arriving at about 5.00 p.m. the said day at the St. Joseph Police Station. I told him that he was free to speak to Terrence Thornhill. I left the St. Joseph Police Station at about 5.05 p.m., the said day, but up to that time the said Mr. John had not yet arrived.

40

12. Thereafter, Terrence Thornhill was taken to the Criminal Investigation Department, Port-of-Spain, to be interviewed in connection with other alleged offences.

13. At no time did Mr. John tell me that he was acting

as Legal Adviser to Terrence Thornhill; neither did the said Terrence Thornhill nor any other person tell me that he or any other person had retained the said Mr. Stanley John as his Legal Adviser.

No.8
Affidavit of
Randolph
Burroughs
dated 28th
March 1974

10 SWORN by the above named)
RANDOLPH BURROUGHS at)
Red House, St. Vincent) (s) R. BURROUGHS
Street, Port-of-Spain,) Senior Superintendent
this 28th day of March,) Police
1974.)

Before me,

R.A. BYNOE.
Commissioner of Affidavits

Filed on behalf of the Respondents.

No.9

Affidavit of Alic Heller dated
28th March 1974

No.9
Affidavit of
Alic Heller
dated 28th
March 1974

20 TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No.2765 of 1973.

IN THE MATTER of the Constitution of Trinidad and Tobago, being the Second Schedule to the Trinidad and Tobago (Constitution) Order in Council, 1962

AND

30 IN THE MATTER of the Application of TERRENCE THORNHILL (a person alleging that certain provisions of sections 1, 2, 3, 4, 5 and 7 of the said Constitution have been, are being or likely to be contravened in relation to him) for redress in accordance with section 6 of the said Constitution.

I, ALIC HELLER, of Ferari Street, San Juan, Assistant Superintendent of Police have read what purport to be the affidavits of Stanley John, Terrence Thornhill and Wayne Smart, and in reply thereto make oath and say as follows:-

40 1. The facts deposed to herein, save as otherwise stated are within my personal knowledge.

2. I was the officer in charge investigating a

No.9
Affidavit
of Alic
Heller dated
28th March
1974

number of crimes involving one Terrence Thornhill.

3. I took certain statements in writing from Terrence Thornhill in this matter. Before taking the said statements, I cautioned him and he elected to give the said statements.

4. I never prompted Terrence Thornhill to give me any or all of the said statements.

5. I never made any threats, or promises or used any force to induce the said Terrence Thornhill to give me the said statements.

10

SWORN at the Red House, Port-)
of-Spain, by the above named) (s) A. HELLER
ALIC HELLER, this 28th day of) Assistant Superintendent
March, 1974.) of Police

Before me,
(s) R. L. BYNOE
Commissioner of Affidavits

Filed on behalf of the Respondents.

No.10
Affidavit
of Clinton
Whitehead
dated 28th
March 1978

No.10

20

Affidavit of Clinton Whitehead
dated 28th March 1978

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE No. 2765 of 1973.

IN THE MATTER of the Constitution of Trinidad and Tobago, being the Second Schedule to the Trinidad and Tobago (Constitution) Order in Council, 1962

AND

30

IN THE MATTER of the Application of TERRENCE THORNHILL (a person alleging that certain provisions of sections 1, 2, 3, 4, 5 and 7 of the said Constitution have been, are being or likely to be contravened in relation to him) for redress in accordance with section 6 of the said Constitution.

I, CLINTON WHITEHEAD, of Bocaro Road, Freeport Assistant Superintendent of Police, Trinidad and Tobago, Police Service read what purport to be the affidavits

of Stanley John, Wayne Smart and Terrence Thornhill and in reply thereto make oath and say as follows:-

No.10
Affidavit of
Clinton
Whitehead
dated 28th
March 1978

1. The facts deposed to herein, save as otherwise stated are within my personal knowledge.
2. At about 1.15 p.m. on Wednesday, 17th October, 1973, Terrence Thornhill was arrested by a combined party of policemen and soldiers at Riverside Road, Curepe, and taken to the St. Joseph Police Station where he was detained.
3. On Thursday, 18th October, 1973 I was standing in front of the St. Joseph Police Station when I saw a gentlemen who introduced himself to me as Mr. Stanley John, a cousin of the Applicant, Terrence Thornhill. Mr. John informed me that Superintendent Burroughs had told him that he could see Terrence Thornhill. I told Mr. John that I had received no such instructions and that I could not permit the request.
4. Mr. John did not tell me that he was Legal Adviser of Terrence Thornhill. Sometime later, Mr. John told me that he had some milk and other refreshments for Terrence Thornhill, and I referred him to the Second Division Officer in Charge of the St. Joseph Police Station.
5. I deny that I told Mr. Stanley John that had it been left to me, Thornhill would have no visitors, see no one, and have no food until he was charged. I did not exclaim: "Don't be afraid, We won't starve him". I never said that Thornhill would probably be charged by Friday afternoon or made any remarks to that effect.
6. No request was made to me by Terrence Thornhill's parents to allow them to hold communication with Terrence Thornhill.
7. On Friday, 19th October, 1973, I among other police officers interviewed Terrence Thornhill at the Criminal Investigation Department, Port-of-Spain. He gave several statements to the Police. I took some of them. They were all cautioned statements.
8. I did not nor did any other officer in my presence or at all to my knowledge ever prompt the said Terrence Thornhill to give any of the statements which had been taken from him. Nor did I or any other officer in my presence or at all to my knowledge ever threaten, use force upon or make promises to the said Terrence Thornhill to induce the said Terrence Thornhill to make the said statements.

No.10
Affidavit
of Clinton
Whitehead
dated 28th
March 1974

9. To my knowledge Inspector Kerr who witnessed some of the statements taken by me is out of the Country.

10. Mr. Stanley John never informed me that he was acting as a legal adviser to Terrence Thornhill, Terrence Thornhill never intimated to me that Mr. Stanley John was his legal adviser. Mr. and Mrs. Thornhill never indicated to me that Mr. Stanley John was at the time legal adviser to Terrence Thornhill and wished to hold communication with Terrence Thornhill in that capacity.

10

11. Terrence Thornhill, at the Criminal Investigation Department, Port-of-Spain told us not only about offences about which we were inquiring but also freely and voluntarily spoke to us about offences in which he was involved, but about which we were not inquiring, for example, the Robbery at Textel Station, Blanchisseuse, the Robbery at Barclays Bank, at the University of the West Indies. He himself volunteered all information.

20

SWORN by the above named CLINTON)
WHITEHEAD at Red House, Port-of-) (s) C. WHITEHEAD
Spain, this 28th day of March,) Assistant Superin-
1974.) tendent of Police

Before me,
(s) R.L. BYNOE
Commissioner of Affidavits

Filed on behalf of the Respondents

No.11
Affidavit
of David
Jack dated
29th March
1974

No. 11

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Affidavit of David Jack dated 29th
March 1974

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE No.2765 of 1973

IN THE MATTER of the Constitution of Trinidad and Tobago, being the Second Schedule to the Trinidad and Tobago (Constitution) Order in Council, 1962

AND

40

IN THE MATTER of the Application of TERRENCE THORNHILL (a person alleging that certain provisions of sections 1, 2, 3, 4, 5 and 7 of the said Constitution have been,

are being or likely to be contravened in relation to him) for redress in accordance with section 6 of the said constitution.

No.11
Affidavit of
David Jack
dated 29th
March 1974

I. DAVID JACK, of Enterprise Village, Chaguanas, have read what purport to be the affidavits of Stanley John, Terrence Thornhill and Wayne Smart and in reply thereto make oath and say as follows:-

10

1. The facts deposed to herein, save as otherwise stated, are within my personal knowledge.

2. I am a Sergeant of Police No.5341 attached to the Northern Division.

3. On the morning of the 18th day of October, 1973, I saw one Mr. Stanley John at the St. Joseph Police Station in conversation with Superintendent George, the officer in charge of the Area.

20

4. That Superintendent George asked the said Mr. Stanley John whether he was there as Counsel to Terrence Thornhill who was at that time detained at the St. Joseph Police Station. Mr. Stanley John replied no that he was there as a cousin of the said Terrence Thornhill. At no time did I hear Mr. Stanley John say that he was the legal adviser of Terrence Thornhill.

5. That I was instructed by Superintendent George to bring a copy of the Judges' Rules to him, which I did in compliance with his instructions.

30

SWORN at the Red House,)
Port-of-Spain, by the above) (s) DAVID JACK
-named DAVID JACK, this) (Sgt. No.5341)
29th day of March, 1974.)

Before me,
(S) R.L. BYNOE
Commissioners of Affidavits

Filed on behalf of the Respondents.

No.12

Affidavit of Samuel Thornhill dated 8th
April 1974.

No.12
Affidavit of
Samuel
Thornhill dated
8th April 1974

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TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE No.2765 of 1973

No.12
Affidavit
of Samuel
Thornhill
dated 8th
April 1974

IN THE MATTER of the Constitution of Trinidad and
Tobago, being the Second Schedule to the Trinidad
and Tobago (Constitution) Order in Council, 1962

AND

IN THE MATTER of the Application of TERRENCE
THORNHILL (a person alleging that certain provisions
of sections 1, 2, 3, 4, 5 and 7 of the Constitution
have been, are being or likely to be contravened in
relation to him) for redress in accordance with
section 6 of the said Constitution. 10

I, SAMUEL THORNHILL of 4, Gallus Street, Woodbrook in
the City of Port-of-Spain, retired School Principal,
make oath and say as follows:-

1. The facts herein deposed are true and correct
and within my personal knowledge save as otherwise
stated.

2. I am the father of the Applicant herein Terrence
Thornhill (hereinafter called "the Applicant"). 20

3. He is the youngest of my four children. The
others are as follows:-

Thomas Thornhill of 50, Western Circle, West-
moorings, Cocorite.

Myrna Thornhill of 4, Gallus Street, Woodbrook,
Port-of-Spain.

Maureen Bartholomew of Rowland Road, West-
moorings, Cocorite.

4. On Wednesday, 17th October, 1973 at about 4.05
p.m. I received a telephone call from a friend who
informed me that he heard a news flash to the effect
that the Applicant had been shot and apprehended by
the Police. Immediately upon receipt of this telephone
call, I telephoned my nephew one Stanley John who is
a Barrister-at-Law. As a result of the said telephone
call the said Stanley John came to my residence at 4,
Gallus Street aforesaid. 30

5. On his arrival I requested him to ascertain the
whereabouts of the Applicant and instructed him to act
as the Applicant's Lawyer. 40

6. On Thursday, 18th October, 1973 shortly after
10.00 a.m. I went, accompanied by my wife to the St.
Joseph Police Station (hereinafter called "the
Police Station"). On arrival we saw Stanley John in
the compound of the Police Station.

7. Shortly after my arrival at the Police Station a police officer arrived in a car. He came out of the car and introduced himself as Superintendent George and enquired what we were doing in the compound of the Police Station. I told him that I had come to see the Applicant and, after a few minutes general conversation, he requested me to wait in the compound of the Police Station.

No.12
Affidavit of
Samuel
Thornhill dated
8th April 1974

10 8. Superintendent George left me and went into the Police Station. Sometime later I saw Stanley John go into the Charge Room of the Police Station.

9. Shortly after Stanley John had entered the Charge Room I was called into the Charge Room. I entered the Charge Room. Superintendent George was seated at a desk behind the counter and at that time Stanley John was somewhere near the threshold of the Charge Room which gives on to a gallery.

20 10. Superintendent George asked me to come to where he was seated and invited me to have a seat at his desk. I had a seat.

30 11. Superintendent George then began talking about Police Regulations. I told him that the Regulations were very interesting but that I wanted to know if I would be permitted to see the Applicant. He replied no, as investigations were still in progress. At that time I could see the Applicant handcuffed and seated on a bench some few yards away. I asked Superintendent George whether Mr. John, the lawyer I had retained for the Applicant, could speak to the Applicant. To this Superintendent George replied "He Worse". Thereupon, I left the Police Station accompanied by my wife.

40 12. Later on the said Thursday, 18th October, 1973, I returned to the Police Station at about 5.00 p.m. accompanied by my wife. I went to the Charge Room and spoke to the policeman on duty. I told him that Superintendent Burroughs had agreed that I could speak to the Applicant. He said that he had no such instructions and therefore I would not be permitted to speak to the Applicant.

13. I left the Charge Room. Shortly thereafter, Stanley John arrived accompanied by Wayne Smart. I had a short conversation with Stanley John and he then went into the Charge Room of the Police Station.

14. Some minutes later, the said Stanley John came out of the Charge Room and joined myself and my wife and Wayne Smart in the compound outside.

50 15. The said Stanley John, Wayne Smart, my wife and myself remained in the compound and/or gallery of the Police Station between approximately 5.30 p.m. and

No.12
Affidavit
of Samuel
Thornhill
dated 8th
April 1974

7.30 p.m.

16. During the time that we were waiting, Stanley John went up to a police officer whom I now know to be Assistant Superintendent Whitehead and had a conversation with him.

17. I left the Police Station accompanied by my wife at about 7.30 p.m. Stanley John and Wayne Smart left in another car at the same time.

18. As the two cars left the Police Station a motor car was approaching in the other direction and I stopped my car as did Stanley John. Stanley John got out of his car and had a conversation with the driver of the motor car. Stanley John then reported to me the results of the conversation and we then continued on our way.

10

SWORN to at No.28 St. Vincent)
Street, Port-of-Spain, afore-) SAMUEL THORNHILL
said this 8th day of April,)
1974.)

20

Before me,

M.A. MOHAMMED
Commissioner of Affidavits

Filed on behalf of the Applicant.

No.13
Affidavit
of Anthony
Smart dated
24th April
1974

No. 13

Affidavit of Anthony Smart dated 24th April
1974

TRINIDAD AND TOBAGO

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IN THE HIGH COURT OF JUSTICE No.2765 of 1973

IN THE MATTER of TERRENCE THORNHILL and in the matter of an application for a Writ of habeas corpus and subjiciendum.

I, ANTHONY SMART of 78, Queen Street, Port-of-Spain make oath and say as follows:-

1. I am a Solicitor of the Supreme Court of Trinidad and Tobago and a partner in the firm of Solicitors Gittens, Smart & Company.

2. That the applicant herein Terrence Thornhill is at present detained at Her Majesty's prisons at Golden Grove, Arouca, having been committed under an order made on the 22nd day of October, 1973 by

40

His Worship Lionel Holder, Esq. Magistrate sitting at the Third Magistrates Court, Port-of-Spain.

No.13
Affidavit of
Anthony Smart
dated 24th
April 1974

3. On the 10th day of December, 1973 the aforementioned firm of Solicitors acting for and on behalf of the said applicant Terrence Thornhill filed a notice of motion in the High Court of Justice alleging that certain provisions of sections 1, 2, 3, 4, 5 and 7 of the Constitution of Trinidad and
10 Tobago have been, are being or likely to be contravened in relation to the said applicant and redress in being sought in accordance with section 6 of the said Constitution.

4. That on the 10th day of December, 1973 the said applicant Terrence Thornhill swore an affidavit in support of the said notice of motion.

5. That on the 9th day of April, 1974, the Crown Solicitor, Solicitor for the Respondents to the said Notice of Motion delivered a notice to the
20 applicant's solicitors of the Respondents intention to cross-examine the applicant and requiring the applicant's Solicitors to produce the applicant for such cross-examination.

6. That on the 10th day of April, 1974 the notice of motion came up for mention before Mr. Justice Georges who fixed the said notice of motion for hearing on the 29th and 30th April, 1974 and the 1st May, 1974.

7. That it is therefore necessary to have the said applicant Terrence Thornhill attend the Sitting Judge
30 in Chambers on the said days of the hearing of the motion and continuing until the matter be determined.

8. I accordingly apply to this Honourable Court for leave to issue a Writ of habeas corpus directing the said Commissioner of Her Majesty's Prison to have the body of the said applicant Terrence Thornhill before the Sitting Judge in Chambers on the said days of hearing and continuing in order that the said
40 applicant Terrence Thornhill may be cross-examined on his affidavits.

SWORN to at No. 28, St. Vincent)
Street, Port-of-Spain this 24th) (s) ANTHONY ISIDORE
day of April, 1974.) SMART

Before me,
(s) DANLEY C. JORDON
Commissioner of Affidavits

This affidavit filed on behalf of the Applicant.

No.14
Proceedings
dated 29th
April 1974

No. 14
Proceedings dated 29th April 1974

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE No.2765A of 1973

IN THE MATTER of the Constitution of Trinidad and Tobago, being the Second Schedule to the Trinidad and Tobago (Constitution) Order in Council, 1962

AND

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IN THE MATTER of the Application of TERRENCE THORNHILL (a person alleging that certain provisions of sections 1, 2, 3, 4, 5 and 7 of the said Constitution have been, are being or likely to be contravened in relation to him) for redress in accordance with section 6 of the said Constitution.

Before the Honourable MR. JUSTICE P.T. GEORGES

SELBY WOODING, Q.C. and ALLAN ALEXANDER for the Applicant.

ALCALDE WARNER, Solicitor General and Clebert Brooks for the 1st Respondent.

20

CLINTON BERNARD, Deputy Solicitor General for the Attorney General.

Wooding, Q.C. Motion brought in pursuance of section 6 of the Constitution. Reads section 6 -

- (1) It is a special right given to a citizen irrespective of whether he has any other right.
- (2) Applicant may apply for "redress" - award of wide import.
- (3) Court can give "directions" not limited to putting applicant back in the position he would have been had his fundamental rights not been infringed. In this case, for example, there could merely be a declaration as prayed in (1).

30

In Jamaica rules have been made to regulate procedure under section 6 - not here.

Such a declaration could be used in another forum when issue of voluntariness is being looked into.

Cap. 1 Act 1 of Constitution -

(a) and (b)

Section 2(c)(ii)

Section 2(d)

No.14
Proceedings
dated 29th
April 1974

If Applicant has been denied legal representation immaterial that procedures of caution have been followed.

- 10 (4) There must be no pre-existing law (1962) which negatived or was in conflict with 2(c)(ii).

Stephens Commentaries in Laws of England.
Volume 3, p.534.

All these rights stemmed from the Common Law and nothing there conflicted with it or negatived it.

Volume 4 Stephens of cit. 223.

Christie v. Leachinsky [1947] A.C.573

20 2(c)(i) (ii) and (iv) an echo of Common Law position. Police Questioning and the Judges Rules. Gerald Abraham p.4-5-6-7

p.10-no trap for unwary criminals.

Substance of section 2.

- (a) Supports larger right of liberty;
- (b) also larger right of protection of law;
- (c) and should not be deprived of legal advice from the moment of arrest;
- (d) supports right to Self-crimination.

Accused may not have made the statement had he been advised - hence unfairness.

30 Stages between arrest and being charged are very critical

Christie v. Leachinsky

One is not asked to interpret 1(a) and (b) whether retaining counsel falls within those rights. The matter is set out in 2(c)(i).

King v. The Queen [1968] 2 All E.R.610

R. v. Howard [1970] 16 W.I.R.67

No.14
Proceedings
dated 29th
April 1974

In Howard's case Fox J.A. did not find oppression. Court was impressed with other evidence available. Mention was made of availability of procedure under the section of the Jamaica Constitution comparable to our section 6.

In Howard and King, Court said there was no oppression. Violation in Howard was procedural. Howard could have been taken before a Justice of the Peace and searched. The fact is that the Ganja was there.

10

(4) On due examination of the affidavits in this case, there was oppression.

People v. Donovan 243 N.Y.(Supp)2nd Series
People v. Gunner 657 N.Y.(Supp)2nd Series
Escobedo 924

Accused does not have to cry out that he wants a lawyer. His family can retain a lawyer.

Escobedo case does not go that far. Supreme Court is dealing there with due process clause.

20

Resumption - 1.45 12.25

Appearances as before:

WOODING:

I tender affidavits filed in this matter.

Applicant's affidavit sworn December 10 Exhibit A

Affidavit of Stanley John sworn
December 10 Exhibit B

Affidavit of Lazre Smart sworn
December 8 Exhibit C

Affidavit of Samuel Thornhill sworn
April 8 Exhibit D 30

BROOKS:

I do not intend to cross-examine the Defendants.
I tender affidavits:

SAMUEL GEORGE March 28 Exhibit E

WILFRED ALLMAN ... March 28 Exhibit F
 RANDOLPH BURROUGHS ... March 28 Exhibit G
 ALEC HELLER ... March 28 Exhibit H
 CLINTON WHITEHEAD ... March 28 Exhibit I
 DAVID JACK ... March 29 Exhibit J

No.14
 Proceedings
 dated 29th
 April 1974

WOODING:

10 I would like to cross-examine some of the
 Defendants.

No. 15

Samuel George

Respondents'
 Evidence
No.15
 Samuel George
 Cross-
 Examination

SAMUEL GEORGE sworn states:

20 I am still a Superintendent of Police. On
 October 17, 1973. I was a Superintendent of Police
 in charge Northern Division; St. Joseph Police
 Station fall within that Division and the officers
 and men stationed there are under my general command
 and authority. When I am not there, A.S.P. Dechi
 would be in charge.

I was not at St. Joseph Police Station on the
 night of October 17, 1973. I left St. Joseph Police
 Station about 3 to 3.30 p.m. that afternoon.

30 I visited on the morning of October 18 about
 10.20 or 10.30 I learnt that on the night of the 17th
 there had been a power failure which affected St.
 Joseph Police Station. Lanterns and torches would
 have had to be used. There were many policemen there.
 I saw Thornhill. He was not surrounded by policemen.
 Thornhill was handcuffed. I cannot remember whether
 he was handcuffed to one Baker or whether to a rail.
 As far as I remember each was handcuffed - both hands
 together.

40 On October 18 I had a conversation with a Mr.
 Thornhill and a Mr. John Stanley John. I had a
 conversation with Mr. and Mrs. Thornhill together
 and one with John, Mr. and Mrs. Thornhill and myself.
 The conversation with Mr. and Mrs. Thornhill took
 place first - in the yard. The second took place in
 the Charge Room where the Thornhills and John had then
 gone. In the Charge Room I spoke to Mr. Thornhill and
 Mr. John together. I remember Mr. John saying that they

No.15 heard that Terrence Thornhill had been shot and
Samuel George wounded and they wanted to ascertain whether this
Cross- was so. Terrence Thornhill had not been shot.
examination All I saw was a scratch on his hand - not the result
it seemed of gun shot. They said they had heard this
on the radio. If that report had come through it
was not true.

I did not then know that Mr. John had been at
the St. Joseph Police Station the night before. I
heard that subsequently - not today for the first
time. If John had been there on October 17 he might
have known whether Applicant had been shot and
wounded. If he had discovered on the 17th it would
be odd that he should ask again on the 18th depending
on how silly he was. 10

John specifically told me that he had not come
to see Applicant in his professional capacity. I do
not remember now whether in reply to a question of
mine or not. He volunteered that he had not come
there in his professional capacity. I knew John was
a Lawyer. Without my asking him in what capacity he
was there, he said he had not come there as a lawyer. 20

I was served with affidavits sworn to by Mr.
John and the Applicant. I was asked to reply on the
facts stated therein. My affidavit was, I expect,
intended to be an answer to these affidavits. I
was not asked to answer the case.

It might have been reasonable to say in reply
to John's affidavit that he had asked to see
Applicant only as a cousin and not as a friend. I
added for emphasis that even if he had said that he
had come as a lawyer I would have denied him permission
to see the Applicant. I did not go out of my way to
say that. I said that for emphasis to clarify the
point that John had not said so. Anyone reading it
would see that I understood what had been said in the
affidavit. I would like to correct "clarify" and
substitute "emphasize". 30

When I spoke to Mr. Thornhill and Mr. John,
Applicant was sitting on a bench in the Charge Room
handcuffed. Applicant was present throughout the
second conversation. I spent 5 minutes before I got
into the Charge Room then went in and saw Applicant
there. I would not agree that that suggests that
Applicant must have been there when I came into the
station yard. 40

I left the station about 11.00 a.m. While I
was there Applicant remained handcuffed to that bench.

There is a room adjoining the Charge Room. I cannot say whether it was empty. I did not go to see. At the time of the second conversation and up to the time I left the station, Applicant was not being interviewed by any policeman.

No.15
Samuel George
Cross-
examination

10 It would have hindered or impeded police investigations to talk to Applicant because Applicant was suspected of being involved in many robberies where large sums of money were involved. I knew he would be needed for interrogation on these matters and for the holding of identification parades in many areas and for those reasons I came to that conclusion. That is my best answer.

20 Mr. John may have told him certain things. He may have told him not to give a statement. That may have impeded police investigations. That consideration among others affected my thinking. If John told Applicant not to give a statement that may have been the act of a barrister or of a friend but I would not have allowed him to speak.

30 I did have a conversation about the Judge's Rules. That did not arise because he told me that my denial was not in accordance with the procedure. I did not tell him that he was going into the ramifications of the Judge's Rules. I did tell Applicant's father about the Judge's Rules in the presence of Mr. John. I remember Applicant's father telling me that he wanted to see his son. He did not discuss the Judge's Rules with him. I refused him. Applicant's father did not ask me whether I would allow John to see Applicant. I did not say, "He curse". As far as I know they had not brought anything for Thornhill to eat on that occasion.

I accept this was a Thursday - a working day even for barristers.

40 I do not recall going back to the station after leaving at 11.00 p.m. I knew he had to be taken away as soon as possible perhaps the same day. I do not know whether he was not taken away until the early hours of the 19th

I knew the investigation had reached the point where it was focusing on the Applicant. The circumstances suggested that the Applicant was one of the men involved in a number of armed robberies. I am not saying that it was wrong for me to allow a legal adviser to see the Applicant. I did this in accordance with section 8 of the Judge's Rules.

Each policeman has his own authority vested in him in accordance with the law and with regulations.

No.15 If a senior person is present a policeman would
Samuel George have to get instructions before making an arrest
Cross- - not merely to evade responsibility. If a
examination policeman is on his own then he acts on his own
authority. On the morning of October 18 I was
the senior person present.

No re-examination:

No.16
Randolph
Burroughs
Cross-
examination

No.16
Randolph Burroughs Cross-examination

10

RANDOLPH BURROUGHS sworn states:

On October 17, 1973, I was at Riverside Road,
Curepe where I apprehended the Applicant. I sent
him to the St. Joseph Police Station. I
subsequently went to the station that afternoon.
I reached there about 5.30-6.00 p.m. I saw Applicant
seated on a bench and handcuffed. Another man, Baker,
was later brought in. He was sitting on the same
bench. I do not remember whether Baker was hand- 20
cuffed. There was a power failure that night. I
cannot remember when the failure started. I saw
Mr. John on October 17. There was no electricity
then. Inspector St. Louis had brought Mr. John to
me. He said he wanted to see the Applicant. There
were police officers all over the place. The light
was reasonably bright but not as good as electricity
would have provided. If they had wanted to, the
circumstances did not prevent effective communication
between the Applicant and Mr. John or Mr. Thornhill. 30
I did not tell Mr. John that Applicant had had
nothing to eat and he may be interested in getting
him something to eat.

John told me he wanted to see him because he
heard that he was wounded and he wanted to see him
as a relative, not officially. I was busy that
night. Mr. John spoke to Applicant in my presence
and I told him then that if he wanted to bring him
something to eat he could do so. John ascertained
in my presence that night that Applicant had neither 40
been shot nor wounded. He went to his car and came
back with something for the Applicant to eat. He
did not leave with his car to get the Applicant
something to eat. He returned, went up to Thornhill
and gave him what he had brought. I do not know
whether John was asked to leave the station. John
did not leave the station within 5 minutes of having
brought the food I would say 10 minutes. I did
see Mr. John's affidavit. I was there when John
took the container and went back to the car. I was 50
there during the period that Applicant ate. I heard

John tell Applicant that he would see him next day and Applicant agreed. I would not say they were making arrangements to meet next day. It was casual. I thought Mr. John was returning as a relative because he was expressing concern over Applicant's welfare, his meals, etc. Nothing was said that indicated that his proposed visit next day was necessarily private. However casual, I would agree they made arrangements to meet the next day.

No.16
Randolph
Burroughs
Cross-
examination

10 On the next day I was at the station at 10.00 a.m. backward and forward. I could remember seeing the Applicant sitting on the bench handcuffed. On one occasion I remember seeing him in a room with one of the investigators.

I did not see John there on the morning of the 18th. I had an interview with Applicant on the afternoon of the 18th about 5.00 p.m. He did not tell me that Mr. John had come there that morning and had not been allowed to see him. I did not tell
20 him he should have been allowed to see Mr. John. We never had such a conversation. I received a call from Mr. John on the 18th when I was at the St. Joseph Police Station. I was then and there interviewing the Applicant. I was called away from the interview to take the call. Mr. John did not tell me that he had tried to see the Applicant that morning and had been refused. I returned to my interview. I told Applicant that Mr. John and
30 his family would be coming up to see him. I think in speaking to Applicant he asked me whether his mother would be coming. I was agreeing that Mr. John should see Applicant that afternoon.

I saw affidavits of John and Applicant before I swore my affidavit. The idea was that I would say what was true and what was not true in the affidavit. Reads paragraph 9 - Applicant's affidavit -

"I informed him - Legal Adviser"

That is not true.

40 Q. Why did you not specifically deny this?

A. This does not mean that it is true.

Reads to "hold communication with me that afternoon."

Reads paragraph 9 "Superintendent Burroughs informed mehave him advise me."

That is not true. I did not tell him this. I have not denied this in my affidavit. It is important

No.16
Randolph
Burroughs
Cross-
examination

to the Applicant.

I did not tell John as stated in paragraph 13 of his affidavit that he would be allowed to see Applicant as his legal adviser. I did not assure John that if I was not there I would leave instructions that he should see Applicant nor did he ask for such an assurance.

Reads Thornhill's affidavit.

It is true that he told me that he had not been permitted to see Applicant earlier that day. 10

In a way he asked for permission to see Applicant later that day.

He told me he would come about 5.00 p.m. because of traffic conditions.

I did tell him that it would be alright to see the Applicant. I did not, in my affidavit, deny that Mr. John had asked for an assurance that I would leave instructions if I was not there. I first knew that John had been there on the morning of the 18th when I read his affidavit. The conversation was very brief. Mr. John's request was consistent with what I had heard then (Applicant and John) had talked the night before. 20

There were many people in the Station when I left at 5.05. I did not tell anyone that Mr. John was coming and that he should be permitted to see Applicant because it is customary for relatives to be allowed to see accused persons to bring meals to them. 30

It would have made no difference to me if John had requested to see Applicant in his professional capacity. I would have allowed him to see Applicant.

I agree that it would not be contrary to police procedure to allow a person detained by the police to see a relative so long as that person is not actually being questioned or taking part in some activity connected with the investigation which makes it inconvenient. The same would apply to a legal adviser.

I do not know whether, at the date of the Applicant's arrest, there were warrants out in respect of some of the charges which the Applicant now faces. 40

I saw A.S.P. Whitehead on October 18.

I don't think I went back to the St. Joseph Police Station after I left about 5.00 p.m. on October 18.

TO BROOKS:

Re-examination

When I had the telephone conversation with John police investigations were going on.

10 I left the station at 5.00 p.m. to go to Fyzabad to investigate a shooting incident. Superintendent George was in charge of St. Joseph then.

Altogether John and Applicant spoke for about 17 minutes - 7 minutes at first then 10 minutes afterwards while Applicant was eating. There was no reason for my not telling anyone at the station that Mr. John was coming. I do not know what transpired at the station after I left.

20 TO WOODING with leave:

Cross-
examination

I read John's affidavit.

30 I did meet Inspector St. Louis and Mr. John in the compound of the Police Station. He introduced himself to me and said he would like to see Applicant. The bench on which Applicant was sitting was on the policemen's side of the Charge Room counter - on the Western Side - not at the back. The policeman at the desk would be facing North. The only policemen there were the diary keepers and perhaps others, but there was no large crowd of policemen. Applicant was not surrounded by policemen. When I said the station was full of policemen I did not mean the Charge Room. It would not be true to say that as soon as John and I entered the Charge Room I told him that Applicant had not had food for some time and needed food. It would not be true to say that John spent only 5 minutes with Applicant and that after he had got the food.

40 TO BROOKS:

Re-examination

I did not place much importance on leaving instructions that Mr. John should be allowed to see Applicant.

No.17
Clinton
Whitehead
Cross-
examination

No.17
Clinton Whitehead dated 30th
April 1974

Appearances as before:

CLINTON WHITEHEAD sworn states on the Bible:

I am an Acting Superintendent of Police. I swore to an affidavit in these proceedings after I had had an opportunity of reading the affidavits of the Applicant, of John and Thornhill. On 18th October, 1973 Burroughs would have been my superior in the C.I.D. I was a member of the Flying Squad - under his authority.

10

On the afternoon of October 18, 1973, I went to the St. Joseph Police Station. I was in the station and in the yard backward and forward. I can't be quite certain whether Burroughs was at that station between 4-5.00 p.m. He could have been there. It could have been that he was interviewing Thornhill, the Applicant, during that time. I did see Burroughs leave that day - by car. I was in the yard outside near to my car. I cannot say whether he could have seen me. I had no difficulty seeing him. Whether he saw me or not would depend on where he was looking. I cannot answer the question whether I was in view of persons leaving the station. I would think that if Burroughs had to leave instructions with anyone he would have left them with me. I would have thought that he would have seen me around the station at some time. If I was leaving before he did, I was under a duty to tell him as my senior officer. When he was leaving. Burroughs should have expected me to be around. He did not seek me out to give me instructions.

20

30

I had a conversation with John shortly after 5.00 p.m. He was accompanied by a short, dark chap whose name I did not know - a young man - not Mr. Thornhill. I don't remember John coming into the Charge Room of the station that day. It could have been. He definitely did not have a conversation with me in the Charge Room.

40

I think I had 3 conversations with John that day. The first took place in the compound of the police station. All the conversations took place there. At the first conversation he told me that Burroughs had told him that he could see Applicant. I told him that I had had no instructions from Burroughs and could not grant the request. I meant that because I had no instructions from Burroughs. I could not grant

the request. I think I was the Senior Police Officer at the St. Joseph Police Station at the time I was speaking to John. In reply to John's request, I exercised no independent discretion of my own. The position was that whether Burroughs had left instructions or not. John wished to communicate with the Applicant. He never told me he was the Applicant's legal adviser. If he had told me he was the Applicant's legal adviser, I would not have allowed him to see the Applicant. At that time the Applicant was sitting on a bench in the Charge Room. I cannot remember whether he was handcuffed to a railing at the back of the bench. He was handcuffed. Mr. and Mrs. Thornhill were about the station yard - possibly from about 5.00 p.m. to 7.30 p.m. I did not check. John and his short, dark friend might have remained around till 7.30. During the whole of that time Applicant was sitting on the bench handcuffed.

No.17
Clinton
Whitehead
Cross-
examined

10

Reads paragraph 12 of the affidavit.

20 I remember reading this. It is not true. I did not think it was necessary to say in my affidavit that this was not true.

I did read paragraph 15 of John's affidavit. It is not true. I did not think it necessary to say in my affidavit that this was not true.

30

I had a second conversation with John about 6.00 p.m. He asked to be allowed to give Applicant sandwiches and milk which his parents had left for him. I did not refuse the request. I did not say that left to me Applicant would have no visitors, see no one and have no food until he was charged. The request to pass the food to the Applicant was made in the yard. Wayne Smart is also lying when he says in his affidavit that he heard me say that - a blatant lie. I never said "Don't be afraid. We won't starve him. He will probably be charged by Friday afternoon." I know now that Smart is a solicitor. I maintain that he has told a complete lie.

TO COURT:

40

Those are sentiments I never harboured in my mind.

TO WOODING:

There is a room off the Charge Room where interviews can take place. I interviewed the Applicant in that room some time between the hours of 10.00 p.m. to 12.15 a.m. I did not take his replies verbatim. I took notes of what he had said

No.17
Clinton
Whitehead
Cross-
examined

in reply to questions I asked him. The interview related to a certain organization - not to his family or school days or to the charges he was to face. I know Applicant said in his affidavit that the interview took place between 9.30 p.m. and 1.30 a.m. If that was the period, it would have been a fairly sustained period for an interview. I did not think it necessary to deny this. I am not in a position to dispute that after the interview he was put back to sit on the bench. It may be that Applicant was taken to Port-of-Spain in the early hours of the morning about 4.00 a.m. I am not disputing that. It would not be true to say that throughout the day of October 19 Heller and I took statements from Applicant. I don't remember getting instructions as to what I should do with regard to the affidavits which had been shown me. 10

It is not true that from 9.30 p.m. on October 18 to 6.30 p.m. on October 19 Applicant was subject to interview continuously.

I saw John and his companion leave. I cannot remember asking John shortly before he left whether he was waiting for Burroughs. It could have happened. I cannot remember his reply (read from paragraph 17 of John's affidavit). I think I did tell John that Burroughs had gone to Fyzabad where there had been a shooting and that I did not know when he would be back. I did not know that when John first spoke to me. I cannot say when I got wind of that. 20

The statements I took are now in possession of the police. My statements were handed over to the Assistant Commissioner Peters. I do not know who has them today. They could be produced if the Court so directs. I wrote out the statements the Applicant made to me. 30

Re-
examination

Re-examination:

Applicant had lunch. He had milk. He had a luncheon break of an hour or more. He was at his leisure.

I would not have allowed John to see the Applicant because enquiries were going on in this matter and I thought anyone seeing the Applicant would have impeded the progress of these enquiries. 40

TO COURT:

If by chance a lawyer saw a suspect into whom enquiries were being made and told him to answer no questions put to him by the police then I would consider that that lawyer had impeded enquiries if I had no other evidence against the suspect. I agree that it

follows that a suspect who refuses to answer questions is impeding inquiries in a case where there is no other admissible evidence against him.

No.17
Clinton
Whitehead
Re-
examination

TO BROOKS:

I was not, on October 18, 1973, stationed at St. Joseph Police Station.

WOODING, Q.C.

10 I don't wish to cross-examine any of the other witnesses.

BROOKS:

Attorney General has a right under section 13 of the Ordinance to the right.

Court Rises 12.20:

Appearances as before:

Resumption 1.38:

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Proceedings

No.18
Proceedings
dated 30th
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20 BROOKS:

I propose to deal with the facts.

Bernard will deal with the law.

Reads paragraph 1, 2, 3, 4 and 5 of the affidavit of Samuel George - states that Applicant was informed of the grounds of his arrest - there has been compliance with section 2(c) of the Constitution.

30 All the policemen say that they were unaware of any lawyer - client relationship between Applicant and Stanley John.

Refers to Rule 1 of the Judge's Rules 1964. See Archbold's 38th Edition, p.1389-1390 c.

Reads affidavits of Burroughs.

In fact, on October 17, 1973 at St. Joseph Police Station, a meeting between John and Thornhill - lasted 17 minutes.

Burroughs was at all times prepared to allow Stanley John to see the Applicant.

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No evidence of oppressive questioning.

R. v. Prager [1972] 1 All E.R. 1114 56 Cr. App. R.151.

BERNARD - Deputy Solicitor General:

Facts are inconsequential.

The only factual issue - Did John establish that he was Applicant's Legal Adviser?

Was there a denial by any police officer of his request to see the Applicant in circumstances which amounted to a breach of the Applicant's constitutional right?

10

- (1) There was no right at Common Law given to a person to have legal assistance.
- (2) Constitution in 2(i)(c) give no such specific right.
- (3) That the provisions in 2(i)(c) are intended to put a brake on the legislators so that they would not pass laws restricting such rights as then existed by statute.
- (4) Right to professional assistance does not fall under 1(a) Blackstone Volume 1, 1876 - personal freedom meant detention without trial.

20

(Save of the rights in 1(a) are not rights at all; e.g. right to privacy. There is no such common law right).

Admissibility of statements is a matter for another tribunal.

Chapter 1 of Constitution of Trinidad and Tobago is unique - based on Canadian Bill of Rights but different in content and concept.

30

We are not here dealing with a legislative enactment passed since independence depriving the subject of a common law remedy which he has enjoyed. Applicant's remedy is at the trial stage.

If there is a right to pre-trial professional help, why should these Judges' Rules be merely administrative in their force.

See Holdsworth History of English Law Volume 9, 222-236, 1837. Prisoner's Counsel Act gave the prisoner the right to counsel at his trial.

40

In that case there was one offence and not a matter of continuing enquiry.

There were strong dissenting opinions based on the English position by which we are bound.

see p.495-6 p.497, p.498

Harlem J. at p.492

Stewart J.

Interpretation Act 2 of 1962 section 2.

10 Definition of Act.

Bill of Rights does set out certain rights.

Indictable Offences Act Chapter 4, No.1, section 10.

Law states representation must be at the adversary stage.

Howard v. The Queen 16 W.I.R. 67

Even when evidence is obtained illegally in breach of the constitution the question of its admissability is one for the trial Judge.

20 See p.70 I.

In America, the Supreme Court has become a legislature of sorts. There is a set procedure here for dealing with matters like this - the Criminal Court - and it is there that this issue ought to go.

La Salle v. Attorney General Civil Appeal 2 of 71.

Phillips J. As to criminal trial due process related to:-

- 30
- (1) certainty of the criminal charge
 - (2) right to be heard at the trial
 - (3) right to have case determined by judge and jury.

Collimore v. Attorney General 12 W.I.R. 5 pp.20, 21, 22, 35.

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La Salle v. Attorney General Civil Appeal 2 of 71

Phillips J. p. 19

Fraser J. p. 28

No one can claim breach of section 2 until he can show a law passed since independence abrogating or interfering with an existing right.

Malik v. Queen

C.A. section refers to future laws passed since independence.

Question of oppression.

10

Voluntariness of a statement is purely a matter of trial judge and jury at the trial of its maker -

Ibrahim v. Queen [1941] A.C. 609

Thompson v. Queen [1893] 2 Q.B. 12

Cornelius v. Queen [1936] 55 Com. L.R. 235

Prager v. Queen (supra)

[1964] Criminal Law Rev. p. 166-167 dealing with Judges' Rules. Case or constitutionality - missed out.

Canadian Bill of Rights contemplated Acts whether done under a law or not.

20

Queen v. Steeves [1964] 1 Can. Cr. Cases 266.

Queen v. O'Conner [1965] 52 D.L.R. (2nd) 106.

Adjourned: Wednesday, May 1.

1st May 1974

Appearances as before:

BERNARD continues:

Queen v. Governor of Ashford Raymond Centre Exp.
[1973]

1 W.I.R.

1426 see p.1429-1430.

30

See Holdsworth of cit. p.35.

See Act of 1695. 7 Will 3 C3.

Criminal Procedure Ordinance Chapter 4, No.3
section 39.

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Pre-trial professional assistance. Governed
by the Judges' Rules.

2(c)(ii) concerned with challenge to constitution
- ability of post-independence legislation.

Blackstone Volume 1 (4th Edition) 105, 109.

"Arrested" and "detained" do not mean the same
thing.

10 I accept that Thornhill was formally under arrest.

Nasrullah v. D.P.P. 19T & TL.R. Pt.3, 398 [1967]
2A.C. 238.

Francis v. Chief of Police 15 W.I.R.5

Re Declaratory - claim

Where proceedings relate to criminal proceedings
which are malum in se Court will not interfere by
declaratory judgment.

They may interfere where malum prohibilum.

20 Judicature Act and Criminal Procedure Ordinance
provide adequate machinery for dealing with criminal
offences which are malum in se.

Zamir - on Declaratory judgment p.214-225.

Dyson v. Attorney General

Smeeton v. Attorney General [1920] 1 Ch. 85, p.92.

Kerr v. Preston Corp. [1877] 6 Ch. 463, 467.

Court of Equity will not interfere in Criminal
proceedings.

30 A party may have a right under section 6 to ask
this Court to determine a question of constitutionality.
Even if there has been a breach of constitutional
rights the proper procedure is to take the point at the
criminal trial.

Grand Canal Waterworks v. Hampton U.D.C. [1895-97]
A.E.R. R.480.

Laurie v. Ruir 1950 S.C. 19 p.26.

Resumption 1.48

Appearances as before:

Later Brooks arrives - states Bernard will be making no
further submissions.

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WOODING:

- (1) Was the Applicant, during the period of 17th October to 20th October, 1973, denied by any of the Respondents the opportunity to retain and instruct a legal adviser of his choice and to hold communication with him?
- (2) Did that denial constitute a violation of his constitutional right?
- (3) Is Applicant entitled to invoke the jurisdiction of the Court under section 6 and ask for redress? 10

What is the nature of the redress the Court can grant him? Is he entitled to the declaration and orders prayed or to any other relief?

Re facts - reasonably clear.

On night of October 17 primary function of John was Applicant's human welfare and physical wants. His period with the Applicant could not be said to have afforded an opportunity for Applicant to hold communication with John. Circumstances were not suitable - 20

- power failure
- Applicant surrounded by policemen.

Applicant was flagrantly denied opportunity to hold communication with his legal adviser on at least two occasions-by George and Whitehead - obliquely by Burroughs.

2(d) The matters set in in section 2 Chapter I are descriptions of the rights contained in section 1 of Chapter I and that is so subject only to section 3 of the constitution. 30

Reads section 2 - stresses the words "in particular" which must refer to the rights set out in (1).

Section 1 must necessarily create rights if they do not exist before.

Anything which falls under section 2 must fall under section 1. 40

If any right is mentioned in section 2 as a right not to be infringed it must inevitably fall under section 1 though not particularly stated there.

Section 3 contemplates a situation where there was some qualification, restriction, or modification of a right set out in (1).

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Save rights under (1) were in their nature capable of being restricted or modified.

Police questioning and the Judges' Rules p.40.

10 Royal Commission on Police Powers 1929, says there was a right as described in 2(c)(ii) Volume 3 Stephens Commentaries p.551.

2(c)(ii) supports - 1(a) (b).

Also supports right against self-crimination.

Rex. v. La Salle (supra) p.4 p.12 (p.18) - reference to 2(e) & (f).

If slate was clean before the passing of the Act section 2(c)(ii) being a particularisation of fundamental rights which would be deemed to have existed in Trinidad would be a right which Applicant would be entitled to enforce.

20 Archbold - see p.1390. These rules do not affect the principles ... (a) (b) (d) (e) clearly common law - why not (c)

The Police officers who the Applicant alleges have interfered with his constitutional rights are public officers. Each acts on his own authority.

Fisher v. Oldham Corp. [1930] 2 K.B. 364 see p.369 et seq. 3rd Edition Halsbury's Laws Volume 30 p.443-6.

Question 3 reads section 6

30 Refers to Fox J. - in the case of

The law has created a special forum for these matters - why not go there.

Example: if someone is legally detained in breach of constitutional right an originating motion can be filed here asking the Court to issue a Writ of habeas corpus.

Act 32 Indian Constitution.

Shukla: Commentaries on the Constitution of India p.166.

40 Article 226 powers vested in the High Court also given to the High Courts of the state.

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Re High Courts - powers conferred are discretionary.

Under our constitution the fact that another remedy was available is not to be considered.

Shukla p.376.

Ramachandran - Fundamental Rights and Constitutional Remedies p.672 (2nd Edition).

Though case cited dealt with an Act the contention is that in this case the principle applies and a declaration can be made.

10

Zamir on Declaratory Judgment 269, 276 (1962 ed).

Additionally, should it not be known that the action taken by the police officers in this case was improper might it not be in the public interest that this declaration should be given.

Barker v. Manchester Regional Med. Bd. [1958]
1 All E.R. 322 Barry J. p.239.

2nd May 1974 Adjourned 11.30 a.m.

Appearances as before:

20

WOODING:

If a statute states that no law can abridge a right that does not exist and a law is passed abrogating that right then on complaint by a Plaintiff that statute would be struck down - only to revert to the position which existed before.

There is a difference between (a) and (b) on the one hand and (c) (e) (f) (g) and (h) on the other.

Judgment of Chief Justice p.13.

Obiter - seems to go too far.

30

Collymore v. Attorney General Volume 12 W.I.R.p.5

Wooding C.J. spoke of section 2 being an act of prohibition rather than construction.

Act 22

Shukla p.107 p.110

This is not an attempt by Applicant to withdraw criminal proceedings into civil sphere. This is an

invocation of the Courts' jurisdiction under section 6. The breach of his constitutional rights is in a sense quite unconnected with the fact that the Applicant may face a criminal trial. Even if he had been released without charge he could have come here and invoked the Courts jurisdiction. King v. Howard [1970] 16 W.I.R.

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Case read.

Methods of detection must not be in breach of a suspect's constitutional rights.

10 Unconstitutionally in Howard - did not carry the element of oppression that the breach here does.

Had Applicant been advised he may have made no statements.

Adjourned 3rd May:

3rd May

Appearances as before:

Applicant absent:

WOODING:

Violation in Howard was procedural rather than substantive.

20 Violation did not, per se, create climate of oppression as it has here.

Case acknowledges substantive right to come here and ask for relief.

There would be no other form of redress.

- Objecting at the criminal trial not redress. He would be entitled to redress even if the statements were admitted.

30 People v. Donovan 243 N.Y. Supp. 2nd Series p.841 (N.Y. Court of Appeal) would denial of counsel give from that moment a taint of illegality to a detention up till then legal?

Danny Escobedo v. State of Illinois 378 U.S. 478 6th and 14th Amendment were being discussed. Note American Constitution has no clause like 2(c)(ii).

6th Amendment deals with trial of an accused person and his right to representation there.

Oppression in Thornhill case was that by the violation

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dated 30th
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of the constitutional right a train of events did
ensue which may not have ensued but for it.

Decision reserved May 31, 1974

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Judgment
dated 31st
May 1974

No.19

Judgment dated 31st May 1974

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE No.2765A of 1973. 10

IN THE MATTER of the Constitution of Trinidad and
Tobago, being the Second Schedule to the Trinidad
and Tobago (Constitution) Order in Council, 1962

AND

IN THE MATTER of the Application of TERRENCE THORNHILL
(a person alleging that certain provisions of
sections 1, 2, 3, 4, 5 and 7 of the said Constitution
have been, are being or likely to be contravened in
relation to him) for redress in accordance with
Section 6 of the said Constitution. 20

Before the Honourable MR. JUSTICE P.T. GEORGES

SELBY WOODING, Q.C. and ALLAN ALEXANDER for the
Applicant.

ALCALDE WARNER, Solicitor General and CLEBERT
BROOKS for the first Respondent.

CLINTON BERNARD, Deputy Solicitor General for the
Attorney General.

JUDGMENT

On October 14, 1973, the applicant was arrested
in the course of what has been described as a "shoot- 30
out" with the police at Riverside Road, Curepe,
According to Senior Superintendent Burroughs the
applicant on his arrest was found to have a .38 revolver
containing five live rounds in its chambers and an
additional six rounds on his person. He was charged
with shooting with intent to murder, possession of an
unlicensed firearm and possession of ammunition and
taken to the St. Joseph Police Station. Apart from
these charges the applicant had for some time been
wanted by the police in connection with a number of 40
other offences - mainly robberies and shootings - and
the police officers to whom had been assigned the
investigation of these offences were anxious to question
him.

At 5.30 p.m. on the very afternoon of the arrest before any questioning had begun, Stanley John, a Barrister-at-law and a cousin of the applicant, went to the St. Joseph Police Station to inquire whether the applicant was safe and uninjured. He was assured that this was so. He deposes that he paid this visit because he had been retained by the applicant's father to act professionally in the matter. After receiving this assurance Mr. John left and returned again at 9.00 p.m. when he spoke to Senior Superintendent Burroughs and asked for permission to see and speak to the applicant. Mr. Burroughs agreed and took him into the charge room where he saw the applicant sitting on a bench. There were policemen about him and the situation was somewhat unusual in that there had been a power failure and the chargeroom was lit by only two lanterns.

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Judgment dated
31st May 1974

Mr. Burroughs suggested that Mr. John might get the applicant something to eat as he might be hungry. Mr. John left and returned with some refreshments which he was allowed to give to the applicant. He states that within five minutes of his having begun to talk to the applicant, who was then handcuffed on one side to another prisoner and on the other to the bench, he was asked to leave as the police had much to do. By then he had done no more than answer the applicant's enquiries about members of his family and their reaction to the events surrounding his arrest.

In the course of his cross-examination Mr. Burroughs testified that Mr. John had spoken to the applicant for perhaps 15 minutes that night. I have no hesitation in accepting the version of the incident to which Mr. John has deposed. It was not challenged by cross-examination. Mr. John's attention would no doubt have been concerned with this incident alone whereas Mr. Burroughs would have had a great deal else claiming his attention.

On October 18, after earlier telephone conversations, Mr. John went to the St. Joseph Police Station at about 10.00 a.m. The applicant's parents arrived there shortly after him. On this occasion he met Superintendent George. According to Mr. John he told Mr. George that he was the applicant's legal adviser and wished to see him. There was some delay and thereafter Mr. George informed him that the applicant had been brought to the station on very serious charges and that at that stage an interview with a lawyer was likely to impede the investigations. Mr. George denies this and asserts that Mr. John presented himself as a relative who wished to see the applicant in that capacity. I have no hesitation in accepting Mr. John's version. Apart from the fact that he was not cross-examined, it is the more plausible.

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dated 31st
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The applicant's parents were in the station at that time; Mr. George was aware of this and it does seem odd that in their presence Mr. John as a cousin should be asking for an interview as a relative. In any event Mr. George made it quite plain that he would have refused the request even if Mr. John had asked for an interview in his professional capacity. His view was that advising prisoners as to their legal rights could result in investigations being hindered. There was no evidence that at the time when this request was denied the applicant was actually being interviewed or was, for any other reason, unavailable for a conference with his adviser.

10

Again on the afternoon of October 18, Mr. John telephoned the St. Joseph Police Station. He spoke to Mr. Burroughs who, as it happened, actually interrupted an interview with the applicant to receive the call. He complained to Mr. Burroughs that he had not been allowed to see the applicant earlier that day. Mr. Burroughs he swears, told him that the applicant had also mentioned this. Mr. John then asked to be allowed to see the applicant that afternoon about 5.00 p.m. Mr. Burroughs agreed and said he would leave instructions that the interview should be allowed. Mr. Burroughs deposed in his affidavit and testified on oath that Mr. John made this request as the applicant's relative. I do not accept this. Indeed when Mr. John arrived at the St. Joseph Police Station at about 5.15 p.m. that day, he was accompanied by a solicitor Mr. Wayne Smart. This seems to me to confirm the professional character of his visit.

20

30

When they arrived Mr. Burroughs had already left - having been summoned to Fyzabad. Admittedly he had left no instructions that the interview should be permitted. Assistant Superintendent Whitehead, who was then in charge, refused to allow Mr. John and Mr. Smart to confer with the applicant. Like Mr. George, Mr. Whitehead held the view that conferences between legal advisers and suspects held at police stations were likely to impede investigations. He too asserted that Mr. John made his request as a relative of the applicant. I do not believe this. The surrounding circumstances made it implausible. Mr. Smart and Mr. John depose that they waited till 7.30 p.m. hoping that Mr. Burroughs would return to honour his promise. When it became clear that there was little likelihood that Mr. Burroughs would return to the station, they left. Again there is no evidence that the applicant was being interviewed on the afternoon of October 18, while Mr. John and Mr. Smart were waiting or that he was in any other way actively engaged in any procedures connected with an investigation which would have made it inconvenient for him to hold discussions then with his legal adviser.

40

50

On the morning of October 19, 1973, Mr. John again made enquiries on the telephone and learnt that the applicant had been transferred to the Criminal Investigation Department, Port-of-Spain. At 3.00 p.m. he went there accompanied by Mr. Smart. They saw Superintendent Allman who informed them that investigations had reached a stage where any interview between the applicant and his legal adviser would impede them. He promised to arrange an interview the following day.

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According to the applicant who was not cross-examined on his affidavit, he was questioned by Superintendent Whitehead from 9.00 p.m. on October 18, to 1.30 a.m. on October 19. At 4.00 a.m. he was taken to Police Headquarters, Port-of-Spain and from early that morning until 6.30 p.m. statements were taken from him by Mr. Whitehead, Mr. Heller and Inspector Kerr. An annexure to the affidavit sworn to by Mr. Allman shows that the applicant was charged with 18 offences and that statements were taken in connection with 13 of these - 5 by Mr. Whitehead and 8 by Mr. Heller.

The applicant appears to have spent the night of the 17th-18th handcuffed to the bench at St. Joseph Police Station. His account of events shows that there was little time for sleep on the night of the 18th-19th. All the statements he made had already been recorded by October 20, when identification parades were held. He saw his legal adviser for 2 minutes on the morning of October 20, immediately before the parades were held. After the parades had been concluded Mr. John was allowed to confer with the applicant for about 30 minutes shortly after mid-day on October 20.

In these circumstances the applicant moves the Court to declare -

- (1) that there was a contravention of his guaranteed legal right under the Constitution when he was denied access to his legal adviser between 1.30 p.m. on Wednesday, October 17 and 12.45 p.m. on Saturday, October 20; and
- (2) that all statements oral or written which may have been given by or taken from him during that period are illegal, unconstitutional, ultra vires, null, void and of no effect.

He also moves the Court for orders restraining the respondent police officers from using such statements in any prosecutions or proceedings whatsoever in relation to him or otherwise and directing that all the written statements be handed up and delivered over to the Court for destruction.

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The first issue for determination is whether or not the applicant has the constitutional right which he asserts he has.

To the layman reading the Constitution of Trinidad and Tobago which is set out as the Second Schedule to the Trinidad and Tobago (Constitution) Order in Council 1962 (referred to hereinafter as "the Constitution"), the answer would clearly be that he does.

10

Section 2 reads in part -

"Subject to the provisions of sections 3, 4 and 5 of this Constitution, no law shall abrogate, abridge or infringe or authorise the abrogation, abridgement or infringement of any of the rights and freedoms hereinbefore recognised and declared and in particular no Act of Parliament shall -

(c) deprive a person who has been arrested or detained

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(i) of the right to be informed promptly and with sufficient particularity of the reason for his arrest or detention;

(ii) of the right to retain and instruct without delay a legal adviser of his own choice and to hold communication with him;

(iii) of the right to be brought promptly before an appropriate judicial authority;

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(iv) of the remedy by way of habeas corpus to the determination of the validity of his detention and for his release if the detention is not lawful;"

The Constitution therefore appears to assert the existence of a right which counsel appearing for the Attorney General contends with much tenacity that the citizen does not enjoy.

The argument as I understand it, is that s.2 creates no rights. It merely demarcates areas with respect to which Parliament cannot interfere by legislation - all of this being subject to sections 3, 4 and 5. I agree that s.2 is addressed to the Parliament and imposes certain fetters on its powers. But the fact that it does this does not make the section incapable of accomplishing anything else. If

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there was no right to retain and instruct without
delay a legal adviser of one's choice and to hold
communication with him, it would be pointless to
provide that Parliament should pass no law abrogating,
infringing or authorising that right. One is driven
to the conclusion that the Constitution makers at least
mistakenly thought that there was such a right, though
counsel was prepared to accept that they must have
known that there was no such right but nonetheless
10 framed the section as they did. I cannot conceive
such calculated cynicism on the part of the framers
of the Constitution. If no other explanation seemed
possible then one might well be driven to it, but
there is another explanation.

Acknowledgedly s.2 is not primarily directed
towards the proclamation of rights. This is done
in s.1 which reads in part -

20 "It is hereby recognised and declared that
in Trinidad and Tobago there have existed and
shall continue to exist without discrimination
by reason of race, origin, colour, religion or
sex the following human rights and fundamental
freedoms, namely -"

and this is followed by an enumeration of 11
fundamental rights and freedoms. s.3 then provides
that s.1 and s.2 of the Constitution shall not apply
in relation to any law that is in force in Trinidad
and Tobago at the commencement of the Constitution.

30 Although Counsel for the Attorney General did
not explicitly adopt the position I understood a
consequence of his line of reasoning to be that no
new right could come into existence as a consequence
of s.1 since s.3 preserved the entire body of law
which existed at the date of the Constitution. I do
not accept that proposition. There may well have
been areas in which there was no law in force at the
date of the Constitution. The proclamation that rights
and freedoms existed in that area would then create
such rights and freedoms and it would devolve upon
40 the courts to interpret what these rights and freedoms
were and to decide whether subsequent legislation
abrogated, abridged or infringed them. An example
of such an area may well be the right of the
individual to respect for his private and family life.
This appears to be an attempt at proclaiming a right
to privacy - an area in which legal development can
at best be described as embryonic.

50 The existence of the various rights having been
proclaimed in s.1, s.2 protect them from legislative
interference - subject to certain exceptions - and to
make abundantly clear what it seeks to protect, spells

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out and particularises aspects of these rights which are not mentioned in the large generalisations under s1. The phrasing is quite clear. No law shall abrogate, abridge or infringe any of the rights proclaimed in s.1 "and in particular no Act of Parliament shall" - followed by the specific prohibitions. I am satisfied therefore that the rights mentioned in s.2(c)(i)-(iv) have been regarded by the Constitution makers as specific examples of the rights proclaimed in s.1. There is no need to find the particular heading under which they may be subsumed. It is enough that the Constitution has categorically set them out as particular aspects of the general heads. Assuming therefore that there was no such right at common law as is set out in s.2(c)(ii) I hold that the right now exists because the Constitution has proclaimed that it has always existed here and that it should continue to exist. The burden is on the State to show that there was some law existing at the date of the Constitution which qualified that right and to which therefore it remains subject by virtue of s.3 As I understand it, no such argument was advanced. The argument was that there was no common law right as defined in s.2(c)(ii) and that that section created no rights. 10 20

It could of course be argued that the subsection did create a right but one which began in point of time at the stage at which adversary proceedings commenced - the stage at which it could be said that there was a hearing. In *Escobedo v. State of Illinois* 378 U.S. 473, the leading minority judgment read by White J. states in criticism of the majority view point at p.1768 - 30

"It attempts to find a home for this new and nebulous rule of due process by attaching it to the right to counsel guaranteed in the federal system by the Sixth Amendment and binding upon the States by virtue of the due process guarantee of the Fourteenth Amendment *Gideon v. Wainwright* (supra). The right to counsel now not only entitles the accused to counsel's advice and aid in preparing for trial but stands as an impenetrable barrier to any interrogation once the accused has become a suspect. From that very moment apparently his right to counsel attaches a rule wholly unworkable and impossible to administer unless police cars are equipped with public defenders and undercover agents and police informants have defence counsel at their side. I would not abandon the Court's prior cases defining with some care and analysis the circumstances requiring the presence or aid of counsel and substitute the amorphous and wholly 40 50

unworkable principle that counsel is constitutionally required whenever he would or could be helpful Hamilton v. Alabama 368 U.S. 52, White v. Maryland 373 U.S. 193, Gideon v. Wainwright, (supra). These cases dealt with requirement of counsel at proceedings in which definable rights could be won or lost, not with stays where probative evidence might be obtained."

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10 One must keep clearly in mind that the provisions of the American Constitution are not those of the Constitution of Trinidad and Tobago - a truism worth repetition. The Sixth Amendment reads -

20 "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour, and to have the Assistance of Counsel for his defence."

30 Clearly this can be interpreted to mean that the right to counsel is guaranteed only at the trial. The entire amendment deals with rights at trial. Because of this the majority of the Court in Escobedo v. State of Illinois sought to interpret the due process clause to include the right to retain and instruct counsel promptly after arrest. There is no need to do this in Trinidad and Tobago because, as I have sought to show s.2 particularises it as an example of the rights stated in broad outline in s.1 of the Constitution. It should also be noted that s.2(c) of the Constitution is completely different from the Sixth Amendment. 2(c)(i) deals with the right to be informed promptly of the charge on which one has been arrested; 2(c)(ii) deals with right to counsel; and 2(c)(iii) deals with the right to be brought before the appropriate judicial authority. The order in which the three rights are set out is not without significance. They correspond with the chronological order in which the draftsman must have envisaged that they would be needed. It would appear to me that so soon as a person is arrested he must promptly be told of the reason for his arrest and thereafter to be allowed without delay to instruct a legal adviser of his choice and hold communication with him. The phrase "without delay" must be given some meaning. It certainly cannot mean at the convenience of the investigator or some time before trial or at

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the stage at which definable rights could be won or lost. I am satisfied, therefore, that the right referred to in the Constitution is a right which arises immediately after arrest and that the opportunity to exercise the right should be afforded without delay.

As has already been indicated, it is my view that even if the right to instruct counsel without delay did not exist at Common Law it has been proclaimed as an existing right in the Constitution. 10
It does appear to me, however, that there was such a right in Common Law. Counsel for the Attorney General quoted from Holdsworth A History of English Law, Volume 9 at pages 222-236 to support the contention that there was no such right. Perhaps the most dramatic passage is that at page 232 describing the position in the latter part of the reign of Charles II and in that of James II.

"Firstly the prisoner was kept in close confinement till the day of his trial. He 20
was not allowed as a matter of right, but only as an exceptional favour to have either counsel or solicitor to advise him as to his defence, or to see his witnesses and put their evidence in order. When he came into court he was set to fight for his life with absolutely no knowledge of the evidence produced against him."

While this is doubtless an accurate description of the common law at that time, I would hesitate 30
to think that it would be the state of affairs at the date of the Constitution. The strength of the Common Law as I understand is its capacity for growth. Its concepts may seem to develop only too slowly but when the challenge of changing social conditions has to be met and an appropriate factual situation is presented to the court a sensible answer can often be produced which can be shown to have been foreshadowed in the dicta of the judges of the past. 40

In the Judges' Rules, Home Office Circular 31/1964 which have been reproduced almost verbatim by the Judges in Trinidad and Tobago for the guidance of police officers, there is an introduction which sets out certain principles which are not affected by the Rules.

They read as follows -

- (a) That citizens have a duty to help a police officer to discover and apprehend offenders; 50

(b) That police officers, otherwise than by arrest, cannot compel any person against his will to come to or remain in any police station;

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10 (c) That every person at any stage of an investigation should be able to communicate and to consult privately with a solicitor. This is so even if he is in custody provided that in such a case no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice by his doing so;

(d) That when a police officer who is making enquiries of any person about an offence has enough evidence to prefer a charge against that person for the offence, he should without delay cause that person to be charged or informed that he may be prosecuted for the offence;

20 (e) That it is a fundamental condition of the admissibility in evidence against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, that it shall have been voluntary, in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression.

30 Principles (a), (b), (d) and (e) are very clearly common law principles. It would be odd to say the least if (c) was not also a common law principle - the only one among the five not to fit within that category. Similarly when one examines s.2(c) of the Constitution subsections (i) and (iii) have their roots in the common law though there is now statutory authority for 2(c)(iii). It would again be strange if of this bundle of related rights 2(c)(ii) alone had no root in the common law. Neither side in this matter has quoted
40 case law in point on this issue. It is instructive to note that Gerald Abrahams in his booklet Police Questioning and Judges' Rules (1964) at p.40 states that the principle that one should be able to communicate and consult privately with a solicitor at any stage of an investigation even if one is in custody, was a right which existed at common law. The existence of that right was affirmed by the Royal Commission on Police Powers (1929). The Report of that Commission is not
50 available here and although counsel indicated that efforts had been made to produce it, it was not yet available at the time this judgment was being prepared. The statement in Abrahams is quite categorical and when

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due consideration is given to the context in which the right appears I am of the view that it is a right which in course of time has developed within the common law.

The position in Canada (from which we borrowed very largely Chapter I of the Constitution) seems well reflected in the remarks of Mr. Justice Roach in his report in the "Matter of an Investigation into the arrest and Detention of Robert Wright and Michael Griffin." This is quoted by Haines, J. in Regina v. O'Connor 48 D.L.R. (2d) 110 at p.115. Speaking of police processing Roach, J. said - 10

"They should understand, too, that there can never be any justification for holding a prisoner incommunicado. We are told that such a practice exists behind the Iron Curtain. There is certainly no room for it under our system of freedom under the law. If that were permitted then a citizen could simply disappear for a day or several days and no one would know his whereabouts except the police who had him in custody. The prisoner, if he has to remain in custody, is certainly equally entitled through his relatives or friends to gather up evidence that will prove him innocent, as the police are entitled to gather up evidence that will prove him guilty. 20

The suggestion that any detective or other police officer is justified in preventing or attempting to prevent a prisoner from conferring with his client is a most shocking one. The suggestion that counsel, if he is permitted to confer with his client who is in custody, might thereby obstruct the police in the discharge of their duties is even more shocking. The prisoner is not obliged to say anything and the lawyer is entitled to advise him of that right. 30

The lawyer is an officer of the court and it is the function of the courts to administer justice according to law. To prevent an officer of the court from conferring with the prisoner who in due course may appear before it, violates a right of the prisoner which is fundamental to our system of administration of justice." 40

It does not seem to me necessary to consider the cases referred to by counsel for the Attorney General. I accept as authoritative all that Phillips, J.A. has said in La Salle v. The Attorney 50

General, Civil Appeal No.2 of 1971, on the issue of due process. But this is not what is under analysis now. What is being discussed is the right to counsel set out by the Constitution itself as a particular aspect of the general rights in s.1 with which Parliament must not interfere. I accept also that s.2 is aimed at laws to be passed after the commencement of the Constitution but hold that the framers of the Constitution cannot be held to have prohibited interference with a right which did not exist. I am satisfied that the right to counsel was a common law right which existed before August 31, 1962, and that the Constitution merely recognized its existence and ensured its continued existence. Even if it did not exist before the Constitution proclaimed it as existing and guaranteed its continuance.

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The second issue for determination is whether that constitutional right was infringed. I am satisfied that this right was clearly infringed on at least two occasions - when Mr. George refused Mr. John permission to see and talk to the applicants on the morning of October 18, and again on the afternoon of October 18, when Mr. Whitehead similarly refused permission to Mr. John who was then accompanied by Mr. Smart

The position taken by counsel for the Attorney General in this case was such that there was no discussion of the ambit of the right accorded under the Constitution. Since his view was that there was no such right he did not discuss its delimitation.

As I have indicated already the according of the right cannot be made totally dependent upon the convenience of the police in the conduct of their investigations. It must be accorded without delay. On the other hand, the question of delay must be determined on the facts. I am inclined to the view that on the account given by Mr. John there was also an infringement of the right on the night of October 17, when after less than five minutes conversation Mr. John was asked to leave as the police had much to do. In any event communication cannot reasonably be expected to take place when the person under arrest is handcuffed to another prisoner so that there can be no confidentiality. It is of the essence of communication between a legal adviser and his client that it is privileged. There can be no privilege where there is no confidentiality.

I hold therefore that the applicant was a person who had been arrested by the police and who was wrongly denied access to counsel on October 17 and 18. Even if access had been allowed on October 19, it would have been immaterial. The applicant's constitutional rights would already have been infringed.

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The third issue is the remedy which the applicant can claim by reason of this infringement.

Section 6 of the Constitution states:-

- (1) For the removal of doubts it is hereby declared that if any person alleges that any of the provisions of the foregoing sections or section 7 of this Constitution has been, is being or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress. 10
- (2) The High Court shall have original jurisdiction
 - (a) to hear and determine any application made by any person in pursuance of subsection (1) of this section; and
 - (b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) thereof 20

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of securing the enforcement of any of the provisions of the said foregoing sections or section 7 to the protection of which the person concerned is entitled. 30

The section is broad and judicial interpretation should not seek to narrow it. In the language of an Indian case the Court has been appointed the sentinel of the rights of the subject under the Constitution and should be ever vigilant to offer protection whenever there has been an infringement. Among the remedies which the Court can give are declarations. It has been urged that in a case such as this, a declaration should not be made because the whole issue of the admissibility of the statements made can be raised and decided at the trial of the applicant on each of the indictments on which he may be arraigned. I have been referred to Zamir on Declaratory Judgments and the learning there on the reluctance of courts of equity to make declarations on matters which can properly be agitated in the criminal courts. The principles there enunciated cannot apply here. The Constitution vests a certain jurisdiction in the Court for the protection of constitutional rights. If there has 40 50

been an infringement of a right the Court ought not to refuse a possible remedy because another perhaps more comprehensive remedy may be available in another jurisdiction of the Court. Section 6 itself states that the right it confers is "without prejudice to any other action with respect to the same matter which is lawfully available".

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10 The case of Nasralla v. Director of Public Prosecutions [1967] 2 All E.R. 161, is instructive. There the issue was whether an accused person could plead autre fois acquit to an indictment for manslaughter. He did not wait until he had been arraigned to raise the plea. Under section 25 of the Jamaican Constitution which is in its terms quite similar to s.6 of the Constitution he moved the Jamaican High Court to declare that his intended trial under the indictment for manslaughter was a breach of his constitutional rights under s.20 of the Jamaican Constitution not to be tried twice
20 for the same offence. It was never suggested that he was not entitled to do this because it was also open to him to plead autre fois acquit on his arraignment.

Where issues of constitutional interpretation arise the remedy of a declaration seems to me particularly appropriate as suggested by counsel for the applicant in that there is an element of public interest involved. In this case for example, the assertion of the Attorney General
30 that no right to instruct and consult with counsel without delay after arrest is a matter on which a declaration of the applicant's rights is of great public interest.

Accordingly it is declared that the denial to the applicant while under arrest and detention between 1.30 p.m. on Wednesday, October 17, 1973 and 12.45 p.m. on Saturday, October 20, 1973, of an opportunity to instruct and consult with counsel of his choice constituted a contravention in relation
40 to the applicant of his right thereto guaranteed by the Constitution.

Different considerations apply to the relief claimed in paragraphs 2 and 3 of the notice of motion. I am satisfied that the weight of authority precludes me from holding that the denial of the right to instruct counsel or to consult with him inevitably makes statements taken during that period inadmissible or otherwise renders null, void,
50 illegal and unconstitutional, all statements taken from the applicant while he was in custody.

In King v. Regina [1968] 2 All E.R. 610, the

No.19 Privy Council had to consider the admissibility
Judgment of evidence obtained as the result of an
dated 31st acknowledgedly illegal search of the accused.
May 1974 In a single paragraph at page 617 the Board thus
disposed of the provisions of the Jamaican
Constitution:-

"The provisions of the Jamaican Constitution scheduled to the Jamaica (Constitution) Order in Council (para. 19) gives protection to persons against search of persons or property without consent. This constitutional right may or may not be enshrined in a written constitution but it seems to their lordships that it matters not whether it depends on such enshrinement or simply on the common law as it would in this country. In either event the discretion of the court must be exercised and has not been taken away by the declaration of the right in written form."

Counsel for the applicant has argued that this case can be distinguished on the basis that the evidence produced by the illegal search was real evidence so that in a sense its existence and its probative value were indisputable while in this case the evidence obtained by denying the applicant access to his counsel were statements.

It is of interest to note that Haines J. in Regina v. O'Connor 48 D.L.R. (2d) 110 at p.118 attempted to distinguish Regina v. Steeves 42 D.L.R. (2d) 335 in almost identical language.

He stated -

"On this basis alone is the instant case distinguishable from the Steeves case namely that the situation here goes far beyond merely the illegal obtaining of evidence. The evidence itself in this kind of case would seem to depend upon the reliability of the entire framework of the procedures employed to obtain it. By comparison the Steeves case is not dissimilar in principle to the fact type of situation contemplated by McRuer C.J.H.C. in Regina v. St. Lawrence [1949] O.R. 215. The unearthing of an independent material witness is hardly a less objective piece of evidence than a revolver hidden under a fence. In these situations the "sleaziness" of police procedures does not change the "fact" of the gun or the "fact" of the independent witness observations."

The Ontario Court of Appeal did not approve this distinction and it seems to me correctly so in the light of authority.

The general proposition on which the Board based its opinion King v. The Queen is quite clear. Constitutions may be the basic law of the land; they may erect barriers around fundamental rights which legislatures cannot set aside except by following prescribed procedures and securing the passage of measures by special majorities but courts are always free to exercise their discretion and admit evidence obtained in breach of such constitutional rights if it seems to them fair so to do.

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Without the guidance of authority it would seem to me that the approach to a written constitution with enshrined rights should be different from the approach to an unwritten constitution where the so called rights of the citizen are no more than the permissible area of activity when all relevant laws have been complied with.

Speaking of the Canadian Bill of Rights in Regina v. O'Connor (supra) Haines, J. said at pp.118-119.

"If I am right in my conclusion it follows that it was reasonably to be supposed that Parliament intended the direct and immediate remedy of nullifying the proceedings which evidenced abuse of our system of criminal justice. Any other interpretation can only result in removing the teeth of civil liberties' legislation and succeed in making such legislation the object of derision and not of respect amongst the entire citizenry of which our police constables and law enforcement officials are members."

This view appears to me quite sound and it applies with even greater force to a Constitution than to civil liberties' legislation. There would appear to be an inherent danger in developing our law in such a way that police officers will know that they have a licence to flout the rights accorded the citizen under the Constitution so long as they do not do this to such an extent that the courts feel that they have gone too far. It can be argued that the ignorance or perverseness of a policeman should not be a reason for allowing a wrongdoer to go free. But police officers ought not to be ignorant of the rights of the citizen under the Constitution from which they too derive much of their authority. Nor should the perverseness of police officers be taken as a fact of life.

It appears to me, however, that the line of authority is such that this approach is no longer open and it could also be argued that the preservation of the entire existing body of law under s.3 has preserved - the discretion of the Court referred to by the Board in King v. Regina.

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It may well be that even if the discretion is retained where there is a written constitution the breach by a police officer of a right guaranteed to a citizen under that Constitution should lead to an exclusion of evidence obtained thereby.

In the course of his argument counsel for the applicant sought to develop the concept of oppressiveness and to pray in aid matters other than the denial of counsel. A dispassionate reading of the affidavits in support of the motion will show that the real issue which was raised was denial of counsel. This is made explicit by ground 4 of the Grounds of the application.

10

This reads -

"That on the night of the said 17th October, 1973 at the St. Joseph Police Station the Police authorities concerned refused to allow counsel for the applicant to consult with him as legal adviser and client. Thereafter and at all material times the said Police authorities continued to deny the applicant access to said Counsel to instruct and/or hold communications with and/or receive advice from him in breach of the said applicant's legal rights in the premises guaranteed and protected under the Constitution".

20

In cross-examination of some of the police officers issues were raised as to whether or not the applicant had been allowed to have refreshments regularly - whether or not he had been permitted to sleep properly and whether or not he had had adequate periods of rest between periods of questioning. These are all obviously very important matters when considering the issue of admissibility of statements made by an accused person in custody. They are not, however, raised explicitly in the affidavits, nor do they appear to me to raise issues of infringements of human rights and fundamental freedoms guaranteed under the Constitution.

30

If the remedies prayed for of an injunction restraining the use of the statements and an order that they be delivered up for destruction are to be granted then that can only be on the basis that such remedies automatically apply whenever there is an infringement of the right of access to Counsel.

40

The authorities uniformly indicate that this is not so. In *Kuruma, Son of Kamir v. The Queen* [1955] A.C. 197 at p.204 Lord Goddard stated -

"When it is a question of the admission of evidence strictly it is not whether the method by which it was obtained is tortious but excusable but whether what has been obtained is relevant to the issue being tried".

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10 In the case of statements the issue is whether it was voluntary or not. There may be a breach of the constitutional rights of the accused person in the obtaining of the statement but it will be held admissible if it is found to have been voluntary.

In Regina v. O'Connor (supra) Haines, J. at p. 112 stated -

20 "During the argument I expressed the view to which I adhere that the mere denial of counsel at any stage of the inquiry or processing leading up to the charge, or thereafter up to the commencement of his trial, did not of itself warrant a dismissal of the charge against the accused. A simple illustration will suffice, a bank robber against whom there is overwhelming proof of guilt should not be acquitted because a policeman refused his request to retain counsel. On the other hand it seems to me that where the denial of counsel reflects on the character of the evidence secured from the accused himself, there may well be cases where the Court should in its discretion exclude that evidence".

30 It seems clear from this passage that even Haines, J. accepted that the matter was one of discretion though there are passages in his judgment which would suggest a more rigid approach.

On the authorities the issue of the admissibility of statement must be decided solely on the question of their voluntariness. The affidavits before me do not deal adequately with this question.

I must therefore refuse the remedies prayed in paragraphs 2 and 3 of the Notice of Motion.

I grant the declaration prayed in paragraph 1.

40 The applicant has succeeded in some measure and had helped in agitating an important constitutional issue. He is entitled to his taxed costs fit for his counsel.

Dated this 31st day of May, 1974.

P.T. GEORGES
Judge

No.20
Declaration
and Order
dated 31st
May 1974

No.20
Declaration and Order dated 31st May 1974

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE No.2765A of 1973

IN THE MATTER of the Constitution of Trinidad and Tobago, being the Second Schedule to the Trinidad and Tobago (Constitution) Order in Council, 1962

AND

10

IN THE MATTER of the Application of TERRENCE THORNHILL (a person alleging that certain provisions of sections 1, 2, 3, 4, 5 and 7 of the said Constitution have been, are being or likely to be contravened in relation to him) for redress in accordance with section 6 of the said Constitution.

Before The Honourable MR. JUSTICE P.T. GEORGES

On the 31st day of May, 1974.

Upon Motion for:

1. A Declaration that the prevention of, and hindrance and denial to, the Applicant while being arrested and detained between 1.30 p.m. on Wednesday, 17th October, 1973 and 12.45 p.m. on Saturday, 20th October, 1973 from retaining and/or instructing a legal adviser of his own choice and/or from holding consultation with him constitutes a contravention in relation to the applicant of his right thereto guaranteed and protected by the Constitution. 20
2. A Declaration that all matters and things which may have transpired in relation to the applicant and in particular all statements oral or written which may have been given by, or taken from, the applicant while he was so under arrest and in detention are illegal, unconstitutional, ultra vires, null and void and of no effect. 30
3. And Order:
 - (a) restraining the respondents and each of them from in any way making use of any one or more of such statements in any prosecutions and/or proceedings whatsoever in relation to the applicant or otherwise; 40
 - (b) directing that all such written statements be handed up and delivered over to the court for destruction;

(c) directing that no use whatsoever be made of any such statements oral or written in any such statements oral or written in any prosecutions and/or proceedings in relation to the applicant or in which the applicant might be concerned

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made this day unto this Court by Counsel for the Applicant Terrence Thornhill.

10 And Upon Reading the affidavits of Wayne Smart, Stanley John and Terrence Thornhill all filed herein on 10th December, 1973, the affidavits of Samuel George, Wilfred Allman with the exhibit attached thereto, Randolph Burroughs, Alic Heller, Clinton Whitehead and David Jack all filed herein on 29th March, 1974, the affidavit of Samuel Thornhill filed on 9th April, 1974, and the affidavit of Anthony Smart filed herein on 24th April, 1974.

And Upon Hearing Counsel for the Applicant and for the Respondents

20 This Court Doth Declare that the prevention of, and hindrance and denial to, the applicant while being arrested and detained between 1.30 p.m. on Wednesday, 17th October, 1973 and 12.45 p.m. on Saturday, 20th October, 1973 from retaining and/or instructing a legal adviser of his own choice and/or from holding consultation with him constitutes a contravention in relation to the applicant of his right thereto guaranteed and protected by the Constitution.

30 And It Is Ordered that the Respondents do pay the Applicant's costs to be taxed. Fit for Counsel.

Registrar

No.21

Respondents' Notice and Grounds of Appeal
dated 12th June 1974

No.21
Respondents'
Notice and
Grounds of
Appeal dated
12th June 1974

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

NOTICE OF APPEAL Civil Appeal No.39 of 1974

40 IN THE MATTER of the Constitution of Trinidad and Tobago, being the Second Schedule to the Trinidad and Tobago (Constitution) Order in Council, 1962

AND

No.21
Respondents,
Notice and
Grounds of
Appeal
dated 12th
June 1974

IN THE MATTER of the application of TERRENCE THORNHILL (a person alleging that certain provisions of sections 1, 2, 3, 4, 5 and 7 of the said Constitution have been, are being or likely to be contravened in relation to him) for redress in accordance with section 6 of the said Constitution.

BETWEEN

WILFRED ALLMAN	SAMUEL GEORGE	
RANDOLPH BURROUGHS	CLINTON WHITEHEAD	10
ALIC HELLER	HERMAN GITTENS	
OSMOND KERR	CALVIN TROTMAN	
CARLISLE BROOME	GLADSTONE JONES	
RUDOLPH REGIS	ALLAN JOSEPH	
ALDWYN AGUILLERA	ROBERT CELESTINE	
RUDOLPH LEACHE		

First Respondents-
Appellants

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO		
Second Respondent- Appellant		20

AND

TERRENCE THORNHILL

Applicant-Respondent

TAKE NOTICE that the Respondent-Appellants being dissatisfied with the decision more particularly stated in paragraph 2 hereof of the High Court of Justice contained in the Judgment of Mr. Justice Phillip Telford Georges dated the 31st day of May, 1974, doth hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4. 30

And the Respondents - Appellants further state that the names and addresses including their own of the persons directly affected by the appeal are those set out in paragraph 5.

2. The whole of the Judgment of Justice Georges dated the 31st day of May, 1974.

3. GROUNDS OF APPEAL 40

(1) The Learned Judge erred in law in granting or purporting to grant relief to the applicant by way

of a declaration under section 6 of the Constitution since no provision of sections 1-5 was contravened in relation to the applicant and in particular there was no contravention of the provisions of section 2 of the Constitution which may in terms only be contravened by an Act of Parliament or other law.

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Respondents'
Notice and
Grounds of
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12th June 1974

10 (2) The Learned Judge erred in law in holding that the right of an arrested person to counsel at the pre-trial stage was a common law right and that the Constitution recognised its existence and guaranteed its continuance or alternatively that the Constitution had granted such a right.

(3) The Learned Judge erred by not holding that the conduct of the Police was proper in relation to the applicant and his legal advisers under the law in force immediately before commencement of the Constitution and that sections 1 and 2 of the Constitution did not apply to such law.

20 (4) The Learned Judge erred in holding or appearing to hold that the legal advisers of the Applicant had the right to hold communication with the Applicant at their or the Applicant's will in pursuance of section 2(c)(ii) of the Constitution and further erred in holding that such right was denied in contravention thereof.

30 (5) The Learned Judge erred in holding that section 2(c)(ii) of the Constitution was contravened in relation to the applicant since the Applicant had without delay retained and instructed or had had the opportunity to instruct a legal adviser of his choice on the first day of his arrest or detention.

6. (1) The Learned Judge erred in granting or purporting to grant relief to the applicant by way of a declaration under Article 6 of the Constitution for the following among other -

REASONS

40 (a) THE declaration made by the Learned Judge could not in terms of section 6 and in relation to the Applicant enforce or secure the enforcement of any of the provisions of section 2 of the Constitution and it was therefore unauthorised by the provisions of the said section 6.

(b) The Learned Judge erred in defining the nature, scope and object of remedies available in pursuance of the provisions of section 6 of the Constitution and in particular erred in asking a

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bare declaration that the constitutional right of the Applicant was contravened by a denial of an opportunity to instruct and consult with counsel.

(c) The Learned Judge did not properly exercise the discretion given by section 6 of the Constitution in making a declaratory order in the circumstances that con-current criminal proceedings were pending in which the question of the denial of counsel was relevant to the issues to be determined therein. 10

4. That the decision of the Judge dated the 31st day of May, 1974, be reversed.

5. The persons directly affected by the appeal are:-

Names	Addresses	
The Attorney General	Red House, Port-of-Spain	20
Wilfred Allman	Police Headquarters, Port-of-Spain	
Samuel George	do.	
Randolph Burroughs	do.	
Clinton Whitehead	do.	
Alic Heller	do.	
Herman Gittens	do.	
Osmond Kerr	do.	
Calvin Trotman	do.	
Carlisle Broome	do.	30
Gladstone Jones	do.	
Rudolph Regis	do.	
Allan Joseph	do.	
Aldwyn Aguilera	do.	
Robert Celestine	do.	
Rudolph Leache	do.	
Terrence Thornhill	4 Gallus Street, Woodbrook	

Dated this 12th day of June, 1974.

SHADEO TOLLSIE 40
for Crown Solicitor
Solicitor for the Respondents-
Appellants

To Registrar,
High Court of Justice.

And to: Messrs Gittens and Smart,

78, Queen Street,
Port-of-Spain.
Solicitors for the Applicant - Respondent.

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Respondents'
Notice and
Grounds of
Appeal dated
12th June 1974

10

No.22

Applicant's Notice
and Grounds of Appeal

No.22

Applicant's
Notice and
Grounds of
Appeal 3rd
April 1975

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No.39 of 1974

20

IN THE MATTER of the Constitution of Trinidad and
Tobago, being the second Schedule to the Trinidad
and Tobago (Constitution) Order in Council, 1962

AND

30

IN THE MATTER of the application of Terrence
Thornhill (a person alleging that certain
provisions of sections 1, 2, 3, 4, 5 and 7 of
the said Constitution have been, are being or are
likely to be contravened in relation to him)
for redress in accordance with section 6 of the
said Constitution.

BETWEEN

WILFRED ALLMAN AND ORS.

FIRST RESPONDENTS/APPELLANTS

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

SECOND RESPONDENT/APPELLANTS

AND

TERENCE THORNHILL

APPLICANT/RESPONDENT

Applicant's
Notice and
Grounds of
Appeal 3rd
April 1975

TAKE NOTICE that upon the hearing of the above Appeal the Respondent herein intends to contend that the decision of Mr. Justice Telesford Georges given on the 31st May, 1974 should be varied to include:-

1. A declaration that all matters and things which may have transpired in relation to the Respondent and in particular all statements oral or written which may have been given by, or taken from, the Respondent while he was under arrest and in detention between 1.30 p.m. on Wednesday, 17th October, 1973 and 12.45 p.m. on Saturday, 20th October, 1973 and wrongly denied access to Counsel are illegal, unconstitutional, ultra vires, null and void and of no effect. 10

2. AN ORDER:

(a) Restraining the Appellants and each of them from in any way making use of any one or more of such statements in any prosecutions and/or proceedings whatsoever in relation to the Respondent or otherwise. 20

(b) Directing that all such written statements be handed up and delivered over to the Court for destruction.

(c) Directing that no use whatsoever be made of any such statements oral or written in any prosecutions and/or proceedings in relation to the Respondent or in which the Respondent might be concerned. 30

AND TAKE NOTICE that the grounds on which the Respondent intends to rely for such variation are as follows :-

1. The Learned Trial Judge was wrong in law in holding that the denial of the Respondent's right to instruct Counsel or to consult with him while in custody does not inevitably make statements taken from him during that period null, void, illegal, unconstitutional and inadmissible. 40

2. The Learned Trial Judge was wrong in law in refusing to make the declaration and orders referred to above.

3. The Learned Trial Judge was wrong in law in not taking into consideration sufficiently or at all the evidence with respect to whether during the period of the Respondent's custody and before the statements were taken, the Respondents had been permitted to sleep properly and whether or not he had adequate periods of rest between periods of questioning.

10

Dated this 3rd day of April, 1975.

GITTENS, SMART & CO.
Solicitors for the Respondent

TO: THE CROWN SOLICITOR,
7, St. Vincent Street,
Port-of-Spain.
Solicitor for the Appellants

and

TO: THE REGISTRAR,
Court of Appeal
Trinidad House,
St. Vincent Street,
Port-of-Spain.

20



No.23

Judgment of Rees, J.A.

No.23

Judgment of
Rees, J.A.

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal
No.39 of 1974.

30

BETWEEN

WILLFRED ALLMAN & ORS.

1st Respondent/
Appellants

THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO

2nd Respondent/
Appellant

AND

Coram: Sir Isaac E. Hyatali, C.J.
M.A. Corbin, J.A.
E.V. Rees, J.A.

December 22, 1976.

C. Bernard, Ag. Solicitor General and C. Brooks,
State Attorney - for Respondent/Appellant.
H.A.S. Wooding, S.C., A. Alexander and J. Alfred - 10
for Applicant/Respondent.

J U D G E M E N T

Delivered by Rees, J.A.:

At about 1.00 p.m. on Wednesday October 17,
1973 Asst. Commissioner Burroughs of the Trinidad
Police Force headed a combined party of policemen
and soldiers of the Trinidad and Tobago Regiment
on an exercise which led to a house situate at
Riverside Road, Curepe. On arrival, an incident
described as a shoot-out occurred between 20
members of the police party and the occupants of
the house resulting in the death of Guy Harewood
and the arrest of Terrence Thornhill
(hereinafter referred to as "the applicant") who
was charged for shooting with intent to murder
possession of an unlicensed firearm and
possession of ammunition. At the time of his
arrest the applicant was wanted by the police for
questioning in connection with a number of 30
other serious crimes, mainly shootings and
robberies, alleged to have been committed in
various parts of the country. He was taken to
St. Joseph Police Station and there detained.

On hearing of his arrest the applicant's
father immediately retained on his behalf the
services of Mr. Stanley John, a barrister-at-law.
At 5.30 p.m. on the same day Mr. John went to
the station and was allowed to speak for five
minutes with the applicant who at the time was
handcuffed on one side to another prisoner and
on the other to a bench. In that situation he was 40
unable to speak privately with his legal adviser.
On the following morning, Mr. John returned to
the station and sought permission of Supt.
George, a senior officer of the North Eastern

10 Division, to see his client. In refusing the
request Supt. George said that the applicant
had been brought to the station on very
serious charges and at that stage an interview
with a lawyer was likely to impede the
progress of the police investigations. Thereupon,
Mr. John spoke by telephone to Asst. Commissioner
Burroughs who promised to give instructions that
he be allowed to see the applicant at 5.00 p.m. At
about 5.15 p.m. Mr. John accompanied by Mr.
Wayne Smart, a solicitor, returned to St. Joseph
Police Station but Supt. Whitehead, the officer
in charge, refused to allow him to speak with the
applicant. On October 19, 1973 the applicant
was taken to the Criminal Investigation Department
at Police Headquarters in Port-of-Spain. Mr.
John made another attempt to see his client but
on this occasion Supt. Allman told him that
20 investigations had reached a stage where any
interview between the applicant and his legal
adviser would impede the police investigations.
The next day Mr. John returned to Police
Headquarters and was permitted to see the
applicant for about two minutes but not to
speak with him as the police were about to
conduct identification parades. Later that day
at about 12.30 p.m. he was allowed to speak with
the applicant who by then had been charged with
30 eighteen offences and given several written
statements to the police.

By an amended notice of motion brought
before the High Court under the provisions of
s.6 of the Second Schedule to the Trinidad
and Tobago (Constitution) Order in Council,
1962, (hereinafter referred to as "the former
Constitution") the applicant sought:

- 40 1. A Declaration that the prevention of,
and hindrance and denial to, the
applicant while being arrested and
detained between 1.30 p.m. on Wednesday,
17th October, 1973 and 12.45 p.m. on
Saturday, 20th October, 1973 from
retaining and/or instructing a legal
adviser of his own choice and/or
from holding consultation with him
constitutes a contravention in relation
to the applicant of his right thereto
50 guaranteed and protected by the
constitution.
- "2. A declaration that all matters and
things which may have transpired in
relation to the applicant and in

particular all statements oral or written which may have been given by, or taken from, the applicant while he was so under arrest and in detention are illegal, unconstitutional, ultra vires, null and void and of no effect.

3. An Order:

- (a) restraining the respondents and each of them from in any way making use of any one or more of such statements in any prosecutions and/or proceedings whatsoever in relation to the applicant or otherwise; 10
- (b) directing that all such written statements be handed up and delivered over to the Court for destruction;
- (c) directing that no use whatsoever be made of any such statements oral or written in any prosecutions and/or proceedings in relation to the applicant or in which the applicant might be concerned." 20

He named the Registrar of the Supreme Court and certain police officers including Senior Supt. Allman, Supt. George and Asst. Supt. Whitehead as respondents. In accordance with s.13 of the Supreme Court of Judicature Act, No.12 of 1962, notice of the questions arising in these proceedings were given to the Attorney General who exercised his right by appearing by counsel. On May 31, 1974, Georges, J. made the following declaration:- 30

"It is declared that the denial to the applicant while under arrest and detention between 1.30 p.m. on Wednesday, October 17, 1973 and 12.45 p.m. on Saturday October 20, 1973, of an opportunity to instruct and consult with counsel of his choice constituted a contravention in relation to the applicant of his right thereto guaranteed and protected by the Constitution." 40

The Judge declined, however, to make the other orders prayed for in paras. 2 and 3 of the amended notice of motion. From this decision the Attorney General and the police officers named as respondents (hereinafter referred to as "the appellants") appealed and by a respondent's

notice dated April 3, 1975, the applicant (hereinafter referred to as "the Respondent") gave notice that he would contend on the appeal that the order of May 31, 1974, should be varied to include the order sought in paras.2 and 3 of the amended notice of motion. During the hearing of the appeal however, he abandoned his contention.

10 There was a great deal of discussion as to whether under the common law of England which has been preserved in this country, a person in custody had the right to instruct without delay his legal adviser and hold communication with him. The learned trial judge held that such a right did exist at Common Law because the other rights mentioned in S.2 of the former constitution had their roots in common law, and it would be strange if of this bundle of related rights in that section the rights of a person in custody to
20 instruct and communicate with his legal adviser had no root in the common law. The learned trial judge further pointed out that the Royal Commission on Police Powers in England (1929) affirmed the existence of such a right and that Gerald Abrahams in his booklet "Police Questioning and Judges Rules", 1964 at page 40, states that the principle that one should be able to communicate and consult privately with a solicitor at any stage of an
30 investigation even if one is in custody, was a right which existed at common law. Even if such a right did not so exist, concluded the learned judge, the former Constitution had proclaimed that the right has always existed in Trinidad and Tobago and that it should continue to exist.

Mr. Wooding, senior counsel for the respondent, in supporting the judge's views submitted that the right of a person in custody to instruct his legal adviser and hold
40 communication with him existed at common law but even if it did not exist, it was a right which was given by the former constitution and the non-existence of a law in that behalf at common law could not be enough to oust the positive provisions of the former Constitution. Consequently, whether there was such a right at common law or not, the respondent is entitled to avail himself of the rights as prescribed in section 2(c)(ii) of the former Constitution.

50 The Solicitor-General, for the appellants, on the other hand, submitted that no such right has ever existed either at common law or statute law or by the former Constitution. He stated that in the light of s.12 of the Judicature Act, 1962 and s.3 of the former Constitution s.2(c)(ii) does not grant or affect to grant such a right. But that if the right is caught by the due

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process provision of s.1(a) of the former
Constitution, then that right should be
construed as arising only at such time after a
detained person has been formally charged by
the court because it is only at that stage that
adversary proceedings begin.

Let me say at the outset that I have not
been able to find any judicial pronouncement or
enunciation to the effect, that a person in
custody at the pre-trial or interrogation stage, 10
had at common law a right to instruct and
communicate with his legal adviser. Nor has
any conclusive authority been produced to
this court from which I am able to derive
assistance on the matter.

It is enough to say that on the view I
take of this case, the point does not arise
for decision.

I trust that I am doing no injustice to the
lengthy submissions of counsel on both sides 20
but as I see it, the crucial question for
decision in this matter is whether the actions
of the police officers in the circumstances I
have outlined above entitled the respondent
to the declaration which he obtained as a result
of the application he made under s.6 of the former
Constitution, which so far as relevant reads:

"6.(1) For the removal of doubts it is
hereby declared that if any person alleges 30
that any of the provisions of the foregoing
sections or section 7 of this Constitution
has been, is being, or is likely to be
contravened in relation to him, then without
prejudice to any other action with respect
to the same matter which is lawfully
available, that person may apply to the
High Court for redress.

(2) The High Court shall have original
jurisdiction -

(a) to hear and determine any application
made by any person in pursuance 40
of subsection (1) of this section;

.

and may make such orders issue such writs and
give directions as it may consider
appropriate for the purpose of enforcing,
or securing the enforcement of, any of the

provisions of the said foregoing sections or section 7 to the protection of which the person concerned is entitled."

10 Trinidad and Tobago is one of the newly independent countries of the Commonwealth which adopted a constitutional system of government based on what has been aptly described as the Westminister model. These written Constitutions usually contain a chapter providing for the limitation of parliamentary sovereignty, guarantees of fundamental rights and judicial review of the constitutionality of legislation. It was such a chapter that Lord Diplock described in the Privy Council case of Hinds v The Queen (1976) 1 ALL E.R. 353, from Jamaica, where at p. 360, he said:

20 "The more recent Constitution on the Westminister model, unlike their earlier proto-types, include a chapter dealing with fundamental rights and freedoms. The provisions of this chapter form part of the substantive law of the state and until amended by whatever special procedure is laid down in the constitution for this purpose, impose a fetter on the exercise by the legislature, the executive and the judiciary of the plenitude of their respective powers."

30 The chapter of the former Constitution dealing with fundamentals rights and freedoms is Chapter 1. It contains eight sections. Section 1 enumerates a list of fundamental rights and freedoms in general terms. Among them are the right to respect for private and family life, the right to equality of treatment from public authorities, the right to join political parties and express political views and the parental right of choice of education, followed by the
40 fundamental freedoms of movement, of conscience, and of association, all basic and natural rights inherent in the individual. In particular, sections 1(a) and 1(b) provide as follows:

50 "1. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist without discrimination by reason of race, origin, colour, religion or sex, the following human rights and fundamental freedoms, namely:-

- (a) the right of the individual to life, liberty, security, of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;
- (b) the right of the individual to equality before the law and the protection of the law.

Section 2 provides 'inter alia' as follows:

10

"2. Subject to the provisions of sections 3, 4 and 5 of the Constitution, no law shall abrogate, abridge or infringe or authorise the abrogation, abridgement or infringement of any of the rights and freedoms herein-before recognised and declared and in particular no Act of Parliament shall -

- (a)
- (b)

(c) deprive a person who has been arrested or detained

20

(i)

(ii) of the right to retain and instruct without delay a legal adviser of his own choice and to hold communication with him."

It will be observed that s.2 after prescribing that no law shall abrogate, abridge, or infringe or authorise the abrogation, abridgment or infringement of any of the rights and freedoms recognised and declared in s.1, clearly sets out specific prohibitions upon what may be done by future Acts of Parliament one of which is to the effect that no future Act of Parliament shall deprive a person in custody of the right to retain and instruct without delay a legal adviser of his own choice and to hold communication with him. Section 36 of the former Constitution gave power to the Parliament of Trinidad and Tobago to make laws for the peace, order and good government of the country but those powers "as in the case of all countries with written constitutions, must be exercised in accordance with the terms of the constitution from which the power derives. (See Lord Pearce

30

40

10 delivering the judgment of the Judicial
Committee of the Privy Council in Liyanage v
R. (1966) 1 All E.R. 650 at p. 657). Accordingly,
if s.2 of the former Constitution confers
certain rights on individuals and lays down certain
prohibition on the legislature, it is the duty of
this court in any given case to decide whether any
of those rights had been violated by the legislature
in relation to an individual seeking redress under
s.6 of the former Constitution.

20 The nature of the rights in s.2 has been
described in the case of Michael de Freitas also
called Michael Abdul Malik and George R. Benny
& Ors. (1975) 3 W.I.R. 388, which went to the
Privy Council from this country by Lord Diplock
who gave the decision of the Board when he made
it abundantly clear that those specific pro-
hibitions in s.2 did not themselves create new
rights or freedoms but were directed at throwing
light upon the meaning of the terms "due process
of law" in section 1(a) and "protection of the
law" in s.1(b). He said at p.391:

30 "The specific prohibitions upon what may
be done by future Acts of Parliament
set out in paragraphs (a) to (h) of s.2
and introduced by the words 'in particular'
are directed to elaborating what is meant by
due process of law in section 1 (a) and the
protection of the law in section 1(b). They
do not themselves create new rights or
freedoms additional to those recognised
and declared in section 1. They merely
state in greater detail what the rights
declared in paragraphs (a) and (b) of
section 1 involve."

40 It would appear from this that if in the present
case police officers acted contrary to any of
the prohibitions set out at (a) to (h) of s.2
in relation to the respondent, it may well amount
to a contravention of one or other of his
fundamental rights contained in s.1(a) or s.1(b)
although I am not prepared to go as far as making
a positive finding on this point. However, on the
assumption that their actions amounted to an
infringement, what is his remedy? He sought
redress under section 6 of the former Constitution
and it is strenuously argued that he is entitled
to the relief that was ordered by the judge.

50 In my view, if the infringement is as a result
of the action of persons who are entitled collectively

or individually to exercise the penitide of legislative, executive or judicial power, the remedy is by way of an application to the High Court for redress in accordance with s.6 of the former Constitution. If, on the other hand, it is an infringement by persons who are not entitled to exercise such legislative, executive or judicial power then protection must be sought from the ordinary law of the land. It follows from this that in the present case this court must decide the category into which a police officer falls.

10

No question arises that any Act of Parliament is invalid as contravening the prohibitions of section 2(c)(ii) of the former Constitution nor is there any allegation made as to the unconstitutional exercise of judicial power. Therefore, if the applicant having sought redress under s.6 of the former Constitution is to succeed in this matter, it is necessary for him to satisfy this court that the police officers who are appellants could be classified as persons who collectively or individually are entitled to exercise the plenitude of executive power.

20

The modern police force originated with the creation in 1829 by Sir Robert Peel of the Metropolitan Police Force in England. The position of a police officer in his relation with members of the public in this country is similar to that of the police officer in England. His duty is to enforce the law of the land and take such steps as may be necessary to see that honest citizens go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted and, if need be, to bring the prosecutions. Although his constitutional status has never been defined either by statute or by the courts, there is good authority for saying that a police officer is independent of the Executive. See Reg. v Metropolitan Police Commissioner (1968) 1 All E.R.763. A police officer is the servant of, and answerable to, no one but the law. What is clear and beyond question is that he is not a member of anyone of the classes of persons who are entitled collectively or individually to exercise the plenitude of legislative, executive or judicial power. He is not a legislator, he is not a member of the judiciary and he is not an agent or member of the executive. It is therefore my opinion that s.6 of the former Constitution which

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allowed a person to apply to the High Court for redress, if he considered that any of the provisions of ss.1 and 2 had been or was likely to be contravened in relation to him, is not applicable to this case and the declaration made by the trial judge was wrongly made.

10 However, the respondent is not without remedy because he is protected against any irregular conduct of a police officer by the ordinary law of the land. If he should go to trial for the offences alleged against him, and the statements obtained from him while he was in custody are found to be as a result of threats, violence or other oppressive conduct, fear or prejudice, or hope of advantage, it is the duty of the trial judge to exercise his discretion judicially and fairly and determine whether those statements should be admitted in evidence or not. Even if they are admissible the judge is still under a duty to consider whether he should admit them depending on whether their prejudicial effect outweighs their probative value. As far back as 1783 in England it was established that confessions obtained in consequence of promises or threats cannot be given in evidence. (See R. v Warwickshall (1783) 1 Leach 262). Today the test of admissibility of a statement of an accused person is whether it is a voluntary statement. The Judges Rules contained in Home Office Circular No.31 of 1964 in England have been reproduced in this country almost verbatim by the Judges Rules and Administrative Directions to the Police which were made by Her Majesty's Judges of Trinidad and Tobago in 1965. Although these rules are not rules of law they are rules directed to police officers for their guidance when conducting investigations. It is there stated that they do not affect the principles stated in the Rules made by the Judges of the Queen's Bench in England, two of which are:-

- "(a)
- (b)

50 (c) That every person at the stage of an investigation should be able to communicate and to consult privately with a barrister or a solicitor. This is so even if he is in custody provided that in such a case no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice by his doing so.

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- (e)
- (d) That it is a fundamental condition of the admissibility in evidence against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, that it shall have been voluntary, in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression."

10

The questions as to the admissibility of the statements will be decided by the judge of the trial if there is a trial but, in the circumstances of this case, the respondent cannot seek redress under s.6 of the former Constitution and obtain any of the remedies which he sought.

For all these reasons I would allow this appeal.

20

Evan A. Rees
Justice of Appeal

No.24
Judgment of
Sir Isaac
Hyatalli,
C.J. 22nd
December 1976.

No.24
Judgment of Sir Isaac
Hyatalli, C.J.

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

30

Civil Appeal
No.29 of 1974

B E T W E E N

WILFRED ALLMAN & ORS 1st Respondent/
Appellants

THE ATTORNEY GENERAL
OF TRINIDAD AND TOBAGO

2nd Respondent/
Appellant

AND

40

TERENCE THORNHILL

Applicant/
Respondent

Judgment of
Sir Isaac
Hyatali,
C.J. 22nd
December 1976.

Coram: Sir Isaac E. Hyatali, C.J.
M.A. Corbin, J.A.
E.A. Rees, J.A.

10 December 22, 1976.

C. Bernard, Ag. Solicitor General and C. Brooks, State
Attorney-for Respondents/
Appellants.

H.A.S. Wooding, S.C., A. Alexander and J. Alfred -
for Applicant/Respondent

J U D G M E N T

Delivered by Sir Isaac Hyatali, C.J.:

20 I agree with the conclusion of Rees, J.A. and
the reasons he has given in support of it. Out
of deference however to the illuminating
submissions of counsel on both sides and, in
particular, to the instructive and well argued
judgment of Georges, J. I add a few words of my
own on one of the main aspects of the case. The
application herein was made under s.6 of the
Constitution granted to this country on 31st
August 1962 (the 1962 Constitution) and I would
state merely for the record that this was
30 superseded by the Constitution of the Republic
of Trinidad and Tobago on 1 August 1962 and that
the fundamental rights and freedoms enshrined
in both constitutions are the same in every respect.

40 In his judgment the learned judge anticipated
to some extent the decision of the Privy Council in
de Freitas v Benny (1975) 3 W.L.R. 388. per
Diplock, L.J. by holding that "the rights mentioned
in s.2(c)(i) - (iv) have been regarded by the
Constitution makers as specific examples of the
rights proclaimed in s.1 of the 1962 Constitution.
Actually Lord Diplock's dictum embraced a wider
area since its effect may be stated to be that all
the rights enumerated in paragraphs (a) to (h)
of s.2 are no more than further and better
particulars of the rights specified in paragraphs
(a) and (b) s.1.

The right under consideration here is really

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the right to retain and instruct a legal adviser at the pre-trial stage of proceedings against an accused. The learned judge held that that right existed at common law and that even if it did not that right now exists because of its recital by Parliament in s.2.

If by its recital the 1962 Constitution created this right then it must be taken as a new right. So to hold, however, would conflict with Lord Diplock's dictum in de Freitas v Benny (supra) that s.2 does not create any new rights additional to those specified in s.1.

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On the other hand, if it is embraced in one of the rights specified in s.1 then it must be read subject to s.3 which prescribes that ss.1 and 2 "shall not apply in relation to any law that is in force in Trinidad and Tobago at the commencement of the 1962 Constitution.

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I have been unable to find in the dicta of judges of the past to which the learned judge referred or in any of the authorities to which I have or have been referred that the right under reference existed at common law. On the contrary, they all point the other way. See for example 9 Holdsworth History of the Common Law 222 et seq; Galos Hired v R. (1944) A.C. 149; s.1 of the Treason Act 1965 and s.3 of the Prisoners Counsel Act 1836. In my judgment neither the common law nor any statute law conferred any such right at the pre-trial stage on an accused person. It follows that the law in force on 31 August 1962 was that no one had such a right and that as such the right referred to in the Constitution must be read subject to s.3 of the Constitution. In other words, the common law that there was no such right prevailed over the right claimed by Thornhill.

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The learned judge would appear to have been conscious of this point but he dismissed it by saying that the onus was on the State to show that there was a law existing at the date of the Constitution which qualified that right, but that the State advanced no such argument being content to argue that there was no right at common law as defined in s.2(c)(iii). The absence of any argument on the point, however,

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No.24

Judgment of
Sir Isaac
Hyatalli,
C.J. 22nd
December, 1976.

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did not conclude the question under reference. If, as I hold, there was no such right and that was the law at the commencement of the Constitution, then the right claimed by Thornhill must be read subject to s.3 and accordingly be rejected. With respect to the Judges Rules on this question it is only necessary to say that they are not rules of law but rules for the guidance of the Police in the investigation of criminal conduct. This, however, is another question altogether and does not fall for consideration in these proceedings.

Isaac E. Hyatali
Chief Justice

No.25

Judgment of Corbin,
J.A.

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Corbin. J.A.:

No.25

Judgment of
Corbin, J.A.
22nd December
1976.

I have had the opportunity of reading the two judgments which have been delivered. I agree entirely and there is nothing I can usefully add.

M.A. Corbin
Justice of Appeal

No.26
Order
23rd December
1976

No.26
Order

TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL

Civil Appeal No. 39 of 1974

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND
TOBAGO BEING THE SECOND SCHEDULE TO THE TRINIDAD
AND TOBAGO (CONSTITUTION) ORDER IN COUNCIL, 1962 10

AND

IN THE MATTER OF THE APPLICATION OF TERENCE THORNHILL
(A PERSON ALLEGING THAT CERTAIN PROVISIONS OF
SECTIONS 1, 2, 3, 4, 5 and 7 OF THE SAID CONSTITUTION
HAVE BEEN, ARE GOING OR LIKELY TO BE CONTRAVENED
IN RELATION TO HIM) FOR REDRESS IN ACCORDANCE
WITH SECTION 6 OF THE SAID CONSTITUTION.

BETWEEN

WILFRED ALIMAN	SAMUEL GEORGE	RANDOLPH BURROUGHS	
CLINTON WHITEHEAD	ALEC HELLER	HERMAN GITTENS	20
OSMOND KERR	CALVIN TROTMAN	CARLISLE BROOME	
GLADSTONE JONES	RUDOLPH REGIS	ALLAN JOSEPH	
ALDWYN AGUILLERA	ROBERT CELESTINE	RUDOLPH LEACHE	

FIRST RESPONDENTS/APPELLANTS

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

SECOND RESPONDENT/APPELLANT

AND

TERRENCE THORNHILL

APPLICANT/RESPONDENT

Dated and Entered the 23rd day of December 1976 30
Before the Honourables the Chief Justice
Mr. Justice M. Corbin
Mr. Justice E. Rees

UPON READING the Notice of Appeal filed on
behalf of the above-named Respondents/Appellants

dated the 12th day of June 1974, the Notice on behalf of the above-named Applicant/Respondent filed on the 4th day of April 1975 of his intention to contend that the Judgment should be varied and the Judgment hereinafter mentioned.

AND UPON READING the Judge's Notes herein

10 AND UPON HEARING Counsel for the Respondents/
Appellants and Counsel for the Applicant/
Respondent

AND MATURE DELIBERATION THEREUPON HAD
IT IS ORDERED

20 that this appeal be allowed and the Judgment of The Honourable Mr. Justice P.T. Georges dated the 31st day of May 1974 whereby it was declared that the prevention of and hindrance and denial to, the Applicant/Respondent while being arrested and detained between 1.30 p.m. on Wednesday the 17th day of October 1973 and 12.45 p.m. on Saturday the 20th day of October 1973 from retaining and/or instructing a legal adviser of his own choice and/or from holding consultation with him constituted a contravention in relation to the Applicant/Respondent of his right thereto guaranteed and protected by the constitution be set aside

AND IT IS FURTHER ORDERED

30 that the said Notice dated the 4th day of April 1975 which was withdrawn during the course of the hearing of this appeal be and the same is hereby dismissed and that there be no order as to costs.

S. Cross
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Registrar.

No.27

Order granting
special leave
to Appeal
22nd February
1978

No.27

Order granting
special leave to
appeal

AT THE COUNCIL CHAMBER WHITEHALL

The 2nd day of February 1978

BY THE RIGHT HONOURABLE THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL

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WHEREAS by virtue of the Trinidad and Tobago Appeals to Judicial Committee Order 1976 there was referred unto this Committee a humble Petition of Terrence Thornhill in the matter of an Appeal from the Court of Appeal of Trinidad and Tobago between the Petitioner and the Attorney General of Trinidad and Tobago Respondent setting forth that the Petitioner prays for special leave to appeal from a Judgment of the Court of Appeal of Trinidad and Tobago dated the 22nd December 1976 which allowed an Appeal of the Respondent against a Judgment of a Judge of the High Court granting a declaration that the prevention of the Petitioner while being arrested and detained from retaining and/or instructing and/or consulting with a legal adviser of his own choice constituted a contravention of a right guaranteed and protected by the Constitution: And humbly praying the Judicial Committee of the Privy Council to grant the Petitioner special leave to appeal against the Judgment of the Court of Appeal of Trinidad and Tobago dated the 22nd December 1976 and for further or other relief:

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THE LORDS OF THE COMMITTEE in obedience to the said Order have taken the humble Petition into consideration and having heard Counsel in the matter thereof Their Lordships do grant special leave to the Petitioner to enter and prosecute his Appeal against the Judgment of the Court of Appeal of Trinidad and Tobago dated the 22nd December 1976.

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AND THEIR LORDSHIPS do further order that the proper officer of the said Court of Appeal be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy of the Record proper to be laid before the Judicial Committee on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same.

E.R. MILLS,

Registrar of the Privy Council 50

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND
TOBAGO

B E T W E E N:

TERRENCE THORNHILL

Appellant

- and -

THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO

Respondent

RECORD OF PROCEEDINGS

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