COMPILING A CRIMINAL CASEFILE

A PAPER PRESENTED

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1. INTRODUCTION

The great English Legal Scholar, Blackstone defined Law as a rule of action prescribed or dictated by some superior which an inferior is bound to obey. The word "Law" implies obedience. When the laws of a country are referred to, they mean those rules which the citizens are bound to obey. In relation to criminal law, the word "Law" implies penalty or sanction – namely, that if a Law is broken, some punishment ought to be meted out on the law breaker, to prevent a repetition of the breach and to deter others from doing likewise.

It is almost impossible to give a complete and satisfactory definition of a crime. The definition varies from author to author. For instance, Russell on Crime[1] defines a crime as "an act or omission involving breach of a duty to which by the law of England, a sanction is attached by way of punishment in the public interest."

Cross and Jones[2], on the other hand say that "a crime is a legal wrong the remedy for which is the punishment of the offender at the instance of the State."

Whatever definition may be adopted, the fact remains that a crime:

(i) is an act or omission;

(ii) proscribed by the State; and

(iii) has a punishment for its occurrence.

Essentially in Nigeria, criminal law is statute law, which is Law in a written form, enacted by the legislative arm of government or promulgated by the government. We do not have any unwritten criminal

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1. 11th Edition, P. 1.
2. Introduction to Criminal Law, 6th Edition, P.9.

law. Section 36(12) of the constitution of the Federal Republic of Nigeria, 1999 clearly stipulates that:

> "No person shall be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law."[3]

This fundamental principle is only subject to the preservation of the unwritten law relating to contempt of court, and apart from that, common law and customary offences have ceased to exist in Nigeria.

In the old case of **AOKO V. FAGBEMI[4],** the conviction of a woman for the customary law offence of adultery was quashed on appeal, on the ground that there is no written statute which makes adultery a crime in Nigeria.

Most of our criminal statutes use the word "**offence"** rather than the word **"crime**". But since the adjective criminal is also used frequently in our statutes, the words "crime" and "offence" would appear to be interchangeable. The courts also use both terms indiscriminately.

What then is an offence? Under our criminal code, an offence is "an act or omission which render the person doing the act or making the omission, liable to punishment" [5].

We may safely adopt this as a working definition for the subject of our discussion.

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3. See also Section 4, Criminal Code Act, Cap. 77, Vol. V, Laws of the Federation of Nigeria 1990.
4. (1960 I AII N.L.R. 400)
5. Section 2, Criminal Code, Cap. 77 Vol. V, Laws of Federation of Nigeria 1990.

2.1 CRIMINAL CASEFILE

The word "criminal" is simply an adjective, to qualify the type of case file. What then is a case file?

The **Blacks Law Dictionary** defines a case file inter alia, as a record or an organised retention system or container for the preservation of facts relating to a case[6]. The point must be made that in this age of hi-tech information technology, the filing system has advanced beyond the traditional mode of documentation of facts in paper form. All kinds of documents can be conveniently stored in files in the computer. You can read the documents in the computer by viewing the monitor or by printing out copies. This is the modern trend. Unfortunately however, the progressive trend in the practice of information technology appears more pragmatic in the private sector. In most government departments, the practice of modern information technology is still a mirage. The system of documentation in the public sector is still the anachronistic system of using typewriters, paper documentation, and the storage of paper files in filing cabinets.

The retrieval of such filed documents would necessarily involve the waste of several man hours through the manual searching of the files.

We find that even where computers are provided in government departments, the system is grossly underutilized. Usually, they are used only for word processing, that is, to type letters, reports or memos.

Apart from word processing, a computer can be used for the storing of information and data, also for scientific research, for communication networking and for education. The underlining cause of this deficiency

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6. 7th Edition, P. 642.

however, is the lack of training of government personnel in this salient subject of information technology. Consequently, we discover that very few government officials are computer literate. In Europe and America, children even at the age of six years already know how to operate computers. This is the modern trend in education. We are approaching a stage when even a University Degree without computer knowledge may become worthless.

A criminal case file simply put, is a compendium or collection of all the facts assembled in the course of an investigation into a crime. The police and other public law officers are vested with the powers to prevent and to investigate crimes[7]. In the course of their investigation, the facts gathered should be assembled in an orderly manner in a criminal case file. The case file should contain a chronological account of all the steps taken by the investigators to unravel the crime.

The documentation should reveal at a glance, the activities of the investigators from the moment the crime is discovered or reported until the time the investigation is concluded.

2.2 COMPILING THE FILE

A good filing system is the basis of the proper comprehension of the facts of the entire case. To this end, the primary consideration is orderliness. The compilation of facts must follow a stipulated order, for ease of comprehension. It may follow the chronological order, the geographical order, the botanical order, the metaphysical order, or even the simple alphabetical order. But there must be a systematic order for the arrangement of the facts of the case.

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7. See Section 4, Police Act, Cap. 359, Vol. XX, Laws of the Federation of Nigeria, 1990; Section 2, National Securities Agencies Act, Cap. 278, Vol. XVII, Laws of the Federation of Nigeria, 1990.

The recorder must bear in mind that the essence of compiling the file is to have a documentary account of the facts discovered from the investigation. Traditionally, the case file should begin with a succinct introduction of the facts in issue with particular reference to the salient details of the crime under investigation.

Such introductory details should include:

(i) The name of the complainant (if any);
(ii) The nature of the complaint;
(iii) The time of making the report;
(iv) The place and the time where / when the crime was committed;
(v) The place where the report was made;
(vi) Name(s) of suspect (if any);
(vii) Name(s) of investigator(s); and
(viii) Inventory of exhibits recovered.

The case file should contain an index to show the contents of the file at a glance. The contents of the file should be divided into different sections with appropriate headings and sub-headings. The divisions and sub-divisions should follow an orderly sequence.

For example, the 'A' Part of the file may contain the statements of witnesses in support of the complaint, the 'B' Part may contain the statements of suspects, the 'C' Part may contain other documents relevant to the facts in issue, etc.

As part of the introduction into the case file, there should be a succinct investigation report which should summarise the entire contents of the file together with the findings and the recommendations of the investigator.

A comprehensive case file should contain the input of all law enforcement agents directly or indirectly connected with the conduct of the investigation. Thus, where the investigation of a case was conducted by more than one police station, all the case files compiled by each police station should be attached together to form a comprehensive case file.

There should be a record of the daily movement of the investigator(s) in the course of the investigation.

There should be a day to day record of the directives to and from the investigator(s) in the form of daily minutes in the file. All these details represent a comprehensive record of the sequence of events in the cause of the investigation. This type of record may assist further investigations where the need arises.

3. **STATEMENTS OF WITNESSES**

The Black Law Dictionary defines a witness as "one who sees, knows, or vouches for something, one who gives testimony, under oath or affirmation"[8]. The aim of criminal investigation is to identify the culprit. In the process of investigation the investigator would meet with a host of witnesses. A good investigator must separate the wheat from the chaff. There are some witnesses whose statements may shed some light on some salient facts in issue. Such statements should be recorded and filed. But where the witness is unable to shed any light on any material fact, such a witness is not a material witness, his statement is not relevant and should not be taken.

The materiality or otherwise of a statement can only be determined in the context of a particular case. Sometimes, there are direct eye witness

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8. Op. Cit. P. 156.

accounts. Other times, the witnesses may only describe some circumstances from which some salient inferences can be drawn.

The cardinal consideration is the issue of relevancy. In a criminal case, the facts in issue are those facts which must be proved or disproved in order to substantiate the charge or to establish any exception or exemption from or qualification to the operation of the Law creating the offence charged[9].

In our Law of Evidence, a piece of evidence can only be admissible at the trial if it is relevant to a fact in issue. So if the evidence is relevant, it is admissible, if not, it is not admissible [10].

Consequently, the investigator has a duty to identify all relevant witnesses and obtain their statements. Normally, the statements are obtained by way of interrogation, that is, by a question and answer session between the investigator and the witness. The questions should be formulated to elicit relevant facts from the witness. Where the witness is literate, it is advisable that the witness should write his statement himself. The name, address and occupation of the witness should be stated therein. At the end of the statement, the witness should sign or thumb print, while the investigator should counter-sign as the recorder.

Where the witness is not literate the statement of the witness should be obtained through an interpreter and there should be a jurat duly signed by the interpreter, to indicate the fact that the statement was read over to the witness in the language which he understands before signing or thumb-printing. Sometimes, a witness may be required to make additional or supplementary statements to clarify some relevant issues that may arise

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9. T. Akinola Aguda: Law and Practice Relating to Evidence in Nigeria, First Edition, P. 36.
10. See Section 6, Evidence Act, Cap. 112, Vol. VIII, Law of the Federation of Nigeria, 1990.

subsequently. All such supplementary statements should be kept in the case file to keep the sequence.

4.1 STATEMENTS OF SUSPECTS

The investigation of suspects and the interview of witnesses are some of the important aspects of criminal investigation. The interrogation of a suspect may elicit information of the author of the crime where this is not known. When a crime is committed, with no clues left behind, the police may arrest some suspects and their statements may be obtained if found to be relevant.

However, the point must be made that under our criminal procedure law, there is no duty on a suspect to answer questions put to him by the police or any law enforcement agent in the course of interrogation. Refusal to answer questions during interrogation is not an offence.

As a matter of fact, Section 35(2) of the Constitution of the Federal Republic of Nigeria, 1999 gives a suspect the right to remain silent during interrogation. This is a constitutional right. There has been open criticism of this same constitutional provision as enshrined in Section 32(2) of the 1999 Nigerian Constitution. A prolific and prominent police lawyer S. G. Ehindero maintains that "where the provision covers pre-trial interrogation by the police, it is ethically indefensible (sic). It is a clog in the wheel of police efficient and effective interrogation[11]. With profound respect to the learned police lawyer, I think his views are rather too subjective. The constitutional provision is to safeguard the rights of suspects in the course of investigation. Every suspect is presumed to be innocent until he is proved guilty[12].

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11. S. G. Ehindero: Police and the Law in Nigeria, P. 67.
12. See Section 36(5) of the 1999 Nigerian Constitution.

There have been incidents of human right abuses by law enforcement agents against suspects during interrogation. Some interrogation rooms can be likened to the obnoxious horror chambers in Hitler's Nazi Germany. Suspects who make statements with the sword of Damocles hanging over their heads sometimes have been known to make spurious and ridiculous confessions just to end their miseries.

There was the pathetic story of some prisoners of war, detained in a Japanese concentration camp during the Second World War. A shovel was alleged to be missing in the camp. The Japanese soldiers were highly incensed by the incident. They told the prisoners to identify the thief or all of them would be shot dead. They raised up their guns to begin the massacre. One of the prisoners owned up immediately, and the soldiers descended on him and mercilessly beat him to death. Thereafter, they counted the shovels again. Alas, none was actually missing. The dead prisoner simply owned up to prevent the massacre.

To prevent incidents of abuses, the **Judges Rules** were formulated in England in 1912, by the Judges of the Kings Bench of England, for the guidance of policemen while interrogating suspects. Originally, the rules were nine in number, but the old rules have been superseded by six new Judges Rules, promulgated by the British Home Office in 1964. It should be noted that the Rules are rules of administrative practice and not rules of law[13].

Consequently, failure to observe any of them in the taking of a statement will not necessarily render the statement inadmissible in evidence[14].

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13. See Aguda, Law and Practice Relating to Evidence in Nigeria, P. 87.
14. See R. V. Wattam (1952) 36 C.A.R. 72; R. V. Day (1952) 36 C.A.R 91.

Essentially, the Judges Rules enumerated ***inter alia***, the right of a police officer to question a suspect in custody, the duty of a police officer to caution the suspect, the form of the caution, how the statement of the suspect is to be recorded after the caution, how a police officer should put before an accused, the statement of a co-accused and that the rules shall be complied with not only by police officers but all other persons charged with the investigation of crimes.

CONFESSIONAL STATEMENTS

The subject of confessional statements made by suspects before trial deserves special consideration. Section 27(1) of the Evidence Act[15] defines a confession as an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime. The Act further provides that a confession is only admissible against the maker if it was made voluntarily[16].

Section 28 of the Act provides that a confession is irrelevant in a criminal trial if it appears to the court that the making of it was induced by a threat or promise relating to the charge against the accused and proceeding from a person in authority and sufficient in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that by making it, he would gain any advantage or avoid any evil of a temporary nature.

As it relates to confessional statements, a practice has developed in Nigeria which is not provided for in the Judges' Rules, nor in any local legislation but which is highly admirable. It is the practice of taking an accused person who has made a confessional statement as soon as possible to a superior police officer or an administrative officer in order to give the accused the opportunity to deny or admit making the statement.

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15. Cap. 112, Vol. VIII, Laws of the Federation of Nigeria, 1990.
16. See Section 27(2) of Cap. 112 Supra.

The essence of the practice is to ascertain the voluntariness of the confessional statement. When the accused is brought before the superior officer, the officer will put some questions across to the accused and when he is certain that the accused abides by the confession, he will make an attestation or confirmation of the fact. Normally, such attestation is endorsed on the confessional statement by the superior officer. The accused is made to sign again and the superior officer counter- signs.

The police authorities have gone further to have the **attestation form** in standard form, to be completed and signed during such attestation exercise. All such forms should be filed in the case file.

The courts have consistently commended this practice of attestation of confessional statements[17].

I wish to strongly advocate that the legislative machinery should be set in motion, to give legal backing to this laudable police practice to serve as a mandatory safeguard to prove the voluntariness of confessional statements. In many criminal trials the issue of the voluntariness of confessional statements is often raised and a lot of valuable time is spent acrimoniously in determining the voluntariness or otherwise of such confessional statements.

5. DOCUMENTARY EVIDENCE

In the course of a criminal investigation, there are a host of documents which may be relevant to the facts in issue. In the event of trial, the contents of a document may be proved either by primary or by secondary evidence [18].

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17. See Nwigboke V. R. (1959) 4 F.S.C. 26; Monday Edhigere V. State (1996) 8 NWLR 1; Egboghonome V. State (1993) 7 NWLR 383.

18. Section 93, Evidence Act Supra.

Primary evidence means the document itself produced, for the inspection of the court[19]. Secondary evidence includes, certified copies of the original, copies made from the original by mechanical processes, counterparts of documents as against the parties who did not execute them and oral accounts of the contents of a documents[20].

Generally, the contents of a document must be proved by primary evidence in a trial, except in cases enumerated in Section 97(1) of the Evidence Act. Such cases include ***inter alia***, where the original is lost or destroyed, when the original is not easily movable, or is a public documents or is in the possession or power of the person against whom the document is sought to be proved.

In view of the extant provisions of the Evidence Act in relation to the use of documents in evidence at trial, the investigator must be diligent and circumspect to obtain original copies of documents for use at the trial.

Where it is impossible to obtain original copies of such documents, secondary evidence of such documents must be obtained in line with the requirements of the Evidence Act. So that where for example, the original document is a **public document**, the investigator may photocopy the said document and get the photocopy duly certified by the appropriate public officer having official custody of the said document[21].

Photography can sometimes play a crucial role in the course of criminal investigation. Sometimes **photographs** are taken in the course of investigation for the purpose of proof in court. However, it must be noted that for the purpose of admissibility, the photograph cannot be rendered in evidence without the negative because the photograph itself is merely secondary evidence of the negative which is actually the original document[22].

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19. Section 94(1) Evidence Act Supra.
20. Section 95 Evidence Act Supra.
21. See Section 111 of the Evidence Act.
22. Phipson on Evidence, 13th Edition, P. 887 & 892.

Thus, it is incumbent on the investigator to always obtain the negative together with the photograph, to be kept in the case file for use during the trial.

In the compilation of a case file, several other documents and items relevant to the case may be too bulky to be kept in the case file.

Such bulky documents and items can be incorporated into the case file by reference. The simple procedure is to include a schedule in the case file containing a comprehensive list of all such documents and physical items which have been incorporated into the case file by reference. All such additional documents and items will be kept in safe custody as exhibits for the trial.

6. CONCLUSION

The proper compilation of the criminal case file is germane to the success of any criminal investigation or trial. The investigator should be careful to arrange all the documents material to the trial to be as simple, clear, and comprehensible as possible. Above all, the statements of witnesses must be recorded from witnesses with scrupulous accuracy. The witness should be made to say exactly what he has seen or heard and not merely something like it. And let him say it in his own words and phraseology[23].

Attention must be given to relevant details. The interview of witnesses should be directed at eliciting facts to unravel the crime.

The interrogation of suspects must be in line with the provisions of the Evidence Act. The constitutional rights of the suspects must be

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23. Richard Jackson: Criminal Investigation, 5th Edition, P. 28.

protected. The use of threats and violence is antithetical to our present democratic dispensation. Above all, the rule of Law should be upheld.

Finally, we advocate a system that must keep pace with the advent of modern information technology. Our filing system should be fully computerised.

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