WRONGFUL CONVICTIONS IN SINGAPORE: A GENERAL SURVEY OF RISK FACTORS

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This article seeks to raise awareness about the potential for wrongful convictions in Singapore by analysing the factors commonly identified as contributing towards wrongful convictions in other jurisdictions, including institutional failures and suspect evidence. It also considers whether the social conditions in Singapore are favourable to discovering and publicising wrongful convictions. The authors come to the conclusion that Singapore does well on a number of fronts and no sweeping reforms are necessary. However, there are areas of risk, viz the excessive focus on crime control rather than due process, which require some tweaking of the system.

I. INTRODUCTION

Wrongful convictions, defined as “the conviction of the factually innocent”,¹ are a recognised problem in many countries. Every single wrongful conviction evokes outrage and shakes public confidence. Huff estimates that even if the system is accurate 99.5% of the time,² 7500 persons arrested for index crimes in the USA would have been wrongfully convicted in 2000. Other studies have approximated a much higher rate of wrongful convictions in the USA.³ The irreversible nature of capital punishment draws even greater attention to wrongful convictions in countries that retain the death penalty.

Singapore is one such country. While this city-state has been criticised for retaining

¹ This is a modified version of the definition offered in Ronald Huff, “Wrongful Conviction and Public Policy” (2002) 40 Criminal. 1.
² Ibid. This figure is based on halving the response of the majority to a survey about how often the sample thought wrongful convictions occurred in felony cases.
the death penalty\textsuperscript{4} as well as perceived as having a coldly efficient judiciary\textsuperscript{5} and a government that seemingly prioritises community safety over individual rights,\textsuperscript{6} the allegations of wrongful convictions are few and far between. The preliminary assumption then is that Singapore has succeeded in minimising wrongful convictions.

This paper examines the level of risk of wrongful convictions in Singapore by analysing the factors commonly identified as contributing towards wrongful convictions in other jurisdictions, including institutional failures and suspect evidence. It also considers whether the social conditions in Singapore are favourable to discovering and publicising wrongful convictions.

II. POSSIBLE RISK FACTORS TO WRONGFUL CONVICTIONS IN SINGAPORE

A. Philosophy of the Criminal Justice System

Generally, the underlying philosophy of a legal system affects how its players deal with the possibility of wrongful convictions. A system that emphasises law and order instead of protecting the innocent may tend to overlook certain contributory risks.

Singapore’s criminal process has been described by a former Attorney-General (AG) as embodying a balance of the “crime control model” and “due process model”\textsuperscript{7} as well as being “approximate to the value system of the crime control model”.\textsuperscript{8} In the crime control model, the repression of criminal conduct is by far the most important function to be performed by the criminal process.\textsuperscript{9} The successful conclusion of this model is not the court conviction, but the plea of “guilty”.\textsuperscript{10} Cases must be processed quickly and with finality; the application of the administrative expertise (of the police and prosecutor) should result in an early determination of “probable guilt” or “probable innocence” such that the probably innocent are screened out and the probably guilty

\begin{thebibliography}{10}
\bibitem{5} See e.g. Michael Hor, “The Death Penalty in Singapore and International Law” (2004) 8 S.Y.B.I.L. 105 at 115.
\bibitem{8} Chan Sek Keong, “Rethinking the Criminal Justice System of Singapore for the 21st Century” in Singapore Academy of Law, ed., The Singapore Conference: Leading the Law and Lawyers into the New Millennium @ 2020 (Singapore: Butterworths, 2000) 50 [Chan, “Rethinking the Criminal Justice System”].
\bibitem{9} Ibid.
\bibitem{10} Singapore’s high rate of guilty pleas is estimated as being above 90%; ibid. at 51.
\end{thebibliography}
passed through the remaining stages of the process. In contrast, the credo of the due process model is to prevent any innocent accused person from being subject to the process. This is done by presenting formidable impediments to carrying the accused from one stage of the criminal process to the next. A pure due process model would require guilt to be proven beyond all doubt; and convictions, even of factually guilty people, should be overturned if there is any material irregularity.

The balance in Singapore is struck by heavily weighting the crime control side of the scales with broadly defined criminal laws, which utilise presumptions against the accused and contain harsh punishments. These laws are supplemented by government campaigns and policy to prevent and deter crime. Due process, arguably, receives comparatively less attention.

I. Criminal Laws

Singapore’s criminal legislation is tough on crime and prioritises public order and security. It bears features of the crime control model. One example is section 17 of the Misuse of Drugs Act, where the onus is on the accused to show no intention to traffic drugs once he is found with an amount exceeding the statutory limit. This rule removes obstacles to conviction that would have been preferred by the due process model, and facilitates the way for the prosecution. Another example is section 123(1) of the Criminal Procedure Code, which permits the court to draw adverse inferences against the accused where he fails to mention any fact, which he reasonably could be expected to mention in the circumstances, when he is charged with an offence or officially informed that he might be prosecuted. This failure may also, on the basis of inference, be treated as corroboration of any evidence given against the accused in relation to which the failure is material.

Yet another example of preferring the crime control model is the Internal Security Act, which allows the Minister of Home Affairs to order detention without trial to prevent a person from acting in a manner “prejudicial to the security of Singapore”. In 1989, a legislative amendment to the Constitution made judicial review of the ISA on substantive grounds unavailable. This amendment followed Chng Suan Tze v. Minister of Home Affairs, where the court applied an objective standard of review.

12 Ibid. at 441.
13 Ibid.
14 Ibid. at 442. See also XP v. Public Prosecutor, [2008] 4 Sing. L.R.(R) 686 (H.C.) at paras. 90–94, where V.K. Rajah J.A. dispels the oft-invoked distinction between ‘factual guilt’ and ‘legal guilt’.
15 (Cap. 185, 2001 Rev. Ed. Sing.).
16 (Cap. 68, 1985 Rev. Ed. Sing.) [CPC].
17 (Cap. 143, 1985 Rev. Ed. Sing.) [ISA], s. 8.
19 [1989] 1 M.L.J. 69 (Sing. C.A.) [Chng Suan Tze].
over the Ministerial Order. Whatever its justification\textsuperscript{20}, the ISA clearly contradicts the due process model because the accused is deprived of a public trial. Should the accused be tried, he may be found innocent under the standard of proof beyond a reasonable doubt,\textsuperscript{21} leading to an acquittal.

However, systemic safeguards do exist. The detaining authority must inform the detainee of the grounds for his detention (subject to national interest considerations) and of the allegations of fact on which the order is based. It must also give the detainee the opportunity of making representations against detention.\textsuperscript{22} Where the detention period exceeds three months, a specially constituted advisory board will consider further representations by the detainee before making recommendations to the President, who may withhold concurrence to the Detention Order.\textsuperscript{23} Certainly, it is arguable that this safeguard is ineffective because the President’s ability to withhold concurrence is only triggered when an advisory board disagrees with the Cabinet’s decision.\textsuperscript{24} This is a unique situation where the risk of wrongful conviction is particularly high.

Ordinarily, judicial safeguards exist to protect the innocent from wrongful conviction. The \textit{Constitution of Singapore}, the \textit{Evidence Act},\textsuperscript{25} the \textit{CPC} and the common law provide for, \textit{inter alia}, (1) the deprivation of the right to life and liberty only in accordance with law;\textsuperscript{26} (2) equality before the law and the equal protection of the law;\textsuperscript{27} (3) the right of an accused to be informed of the grounds of his arrest and to be defended by an advocate of his choice;\textsuperscript{28} (4) the right of a detained suspect to be brought without unreasonable delay, and in any case, within 48 hours before a magistrate;\textsuperscript{29} (5) the presumption of innocence, where the burden of proof is placed on the prosecutor;\textsuperscript{30} and (6) proof beyond a reasonable doubt before an accused can be convicted of a crime.\textsuperscript{31}

However, in the application and interpretation of the law, matters are not always resolved in favour of the accused. In fact, it has been said that case law demonstrates

\begin{itemize}
  \item \textsuperscript{20} Most recently, the ISA has been used against members of the Jemaah Islamiyah, a terrorist group linked to Al-Qaeda. ‘Singapore detains another Jemaah Islamiya member’ \textit{Channel News Asia} (12 November 2005), online: <http://www.channelnewsasia.com/stories/singaporelocalnews/view/1781071.html>.
  \item \textsuperscript{21} One reason for detention without trial in security cases is that witnesses can be threatened, and thus, testimony in court is difficult or even impossible to obtain. See Sing., \textit{Parliamentary Debates}, vol. 19, col. 1431 at col. 1457 (29 July 1987).
  \item \textsuperscript{22} \textit{Constitution of Singapore}, supra note 18, art. 151(1)(a).
  \item \textsuperscript{23} Ibid., arts. 151(1)(b), 151(2), 151(4).
  \item \textsuperscript{24} Ibid., art. 151(4).
  \item \textsuperscript{25} \textit{(Cap. 97, 1997 Rev. Ed. Sing.).}
  \item \textsuperscript{26} \textit{Constitution of Singapore}, supra note 18, art. 9(1).
  \item \textsuperscript{27} Ibid., art. 12.
  \item \textsuperscript{28} Ibid., art. 9(3); and \textit{CPC}, supra note 16, s. 195. In capital cases, the accused is provided with two state-assisted counsel as a matter of policy if the accused is unable to afford legal representation: Chan, “The Singapore Model”, \textit{supra} note 7 at 478.
  \item \textsuperscript{29} \textit{Constitution of Singapore}, supra note 18, art. 9(4).
  \item \textsuperscript{30} \textit{Evidence Act}, supra note 25, s. 103, illustration (a).
  \item \textsuperscript{31} \textit{Took Leng How v. Public Prosecutor}, [2006] 2 Sing. L.R.(R) 70 (C.A.) at para. 27.
\end{itemize}
the judiciary’s general lack of support for a due process model which is encrusted with too many technical procedural or evidentiary rules that could result in too many factually guilty persons being acquitted.\textsuperscript{32}

2. \textit{Attitudes of the Players in the Judicial System}

To its credit, the judiciary has expressly pointed to the risk of wrongful convictions in its judgements and has interpreted broad legislation with caution, impliedly taking this risk seriously. Counsel and other members of the legal community are also educated via forums and seminars of the danger of wrongful convictions.

There has been recognition of the risks of wrongful convictions in the High Court\textsuperscript{33} and also in the lower courts as evinced by \textit{Public Prosecutor v. Yeow Beng Chye}.\textsuperscript{34} In that case, in the context of eyewitness identification and on the question of whether corroboration was required to justify the conviction, the judge stated: “\textit{[as] The Honourable the Chief Justice has said in many precedents, whenever the court has to either acquit or convict the accused based on a single allegation by a complainant, the heightened risk of miscarriage of justice must necessarily prompt the court to be extremely cautious.}”\textsuperscript{35}

With regard to the interpretation of legislation, the courts have tended to reject formalism in favour of a more balanced approach, taking into account the specific circumstances of each case.\textsuperscript{36} In \textit{Ng Yang Sek v. Public Prosecutor},\textsuperscript{37} the Court of Appeal overturned the lower court’s conviction of drug trafficking despite the presumption of trafficking working against him. Although Ng was found with a large quantity of opium and distributed them to other people in the form of medicated plasters, he did so for the \textit{bona fide} treatment of medical conditions. This judgement exemplifies the alleviation of the harshness of drug trafficking legislation.

Addressing members of the legal community, the former Chief Justice said that “\textit{[the] risks of the innocent being convicted… must be as low as human fallibility allows.}”\textsuperscript{38} This attitude is also reflected in the forums and seminars conducted by the Committee on Legal Education and Studies. In one forum entitled “\textit{Criminal Advocacy – Perspective from the Bench}”, Senior Counsel Amarjeet Singh said that “\textit{Criminal law advocacy’s ultimate function is to prevent a miscarriage of justice.}”\textsuperscript{39} He referred to the well-known cases of wrongful convictions in the UK and a number

\textsuperscript{32} Chan, “Rethinking the Criminal Justice System”, \textit{supra} note 8 at 51–52.
\textsuperscript{33} See e.g. Kwan Peng Hong v. Public Prosecutor, [2000] 2 Sing. L.R.(R) 824 (H.C.) at para. 29.
\textsuperscript{34} [2003] SGDC 44.
\textsuperscript{35} \textit{Ibid.} at para. 98.
\textsuperscript{36} Amarjeet Singh, “Criminal Advocacy – Perspective from the Bench” \textit{Singapore Law Gazette} (May 2003) [Amarjeet Singh, “Criminal Advocacy”].
\textsuperscript{37} [1997] 2 Sing. L.R.(R) 816 (C.A.).
\textsuperscript{39} Amarjeet Singh, “Criminal Advocacy”, \textit{supra} note 36.
of identifiable problem areas that led to these convictions. Thus, the players in the Singapore judicial system seem aware of the problem of wrongful convictions.

However, there are arguably some instances where the judiciary does not go far enough in preferring the due process model, as it ought to do as the guardian of the innocent.\(^{40}\) This can be seen in the constitutional interpretation of the right to life and liberty, which may not be deprived “save in accordance with law”. In *Teo Soh Lung v. Minister for Home Affairs*,\(^{41}\) the court took a positivistic approach to the question of whether an amendment to section 8 of the ISA was unconstitutional. This amendment removed judicial review of decisions made under the ISA save for grounds of procedural impropriety. The court deemed the amendment constitutional because Parliament was doing no more than enacting the rule of law relating to the law applicable to judicial review.\(^{42}\) This reasoning ignores the risk of punishing the innocent and implies that the courts will not question Parliamentary law-making as long as it is procedurally sound.\(^{43}\) Such constitutional interpretation favouring efficient government\(^{44}\) carries into the interpretation of statutory due process rules that will be discussed below.

3. Government Policy

Taking a step back, these attitudes are influenced by the social policy of the Government. Crime control has always been a high priority on the Singapore government’s agenda.\(^{45}\) Numerous agencies, including the National Crime Prevention Council, the police and Government at grassroots levels, work together to raise awareness of crime prevention measures, and to correct behaviour in youths, engaging them in

\(^{40}\) Viewing the criminal justice system as two pronged – bringing to justice the guilty and protecting the innocent – the courts ought to take extra care about using the tools of due process to prevent wrongful convictions This is because in the scheme of separation of powers, the judiciary is conceived as a check on the legislature and executive. See: Thio Li-ann, “The Constitutional Framework of Powers” in Kevin Tan, ed., *The Singapore Legal System*, 2nd ed. (Singapore: Coronet Books, 1999) 67 at 93.

\(^{41}\) [1989] 2 M.L.J. 449 (Sing. C.A.) [*Teo Soh Lung*].

\(^{42}\) See also *Jabar v. Public Prosecutor*, [1995] 1 Sing. L.R.(R) 326 (C.A.) at para. 53 (“Any law which provides for the deprivation of a person’s life or personal liberty, is valid and binding so long as it is validly passed by Parliament.”)

\(^{43}\) The end result of *Teo Soh Lung* was the legislative overruling of *Chng Suan Tze*.

\(^{44}\) Contra *Tan Chor Jin v. Public Prosecutor*, [2008] 4 Sing. L.R.(R) 306 (C.A.) [*Tan Chor Jin*] at paras. 49–73 where the Court of Appeal held that the constitutional right to counsel for an accused can be ‘validly denied’ under certain circumstances. Briefly, that case involved an accused who had been convicted of an arms offence. On appeal, he argued that the trial judge had unfairly denied him access to a lawyer just before closing submissions were due, notwithstanding the fact that the accused had dismissed his previous lawyer and confirmed at various stages in the proceedings that he did not need a lawyer. The Court of Appeal ruled that on a close perusal of the facts of the case, there was no prejudice suffered by the accused, and ultimately he was solely responsible for depriving himself of a lawyer.

\(^{45}\) Chan, “The Singapore Model”, supra note 7 at 438.
constructive activities. The result is that less than one crime a year is reported for every 100 people.

Thus, government policy shifts the focus from protecting the innocent from conviction to maintaining public order and safety through efficient and effective crime prevention and control. Coupled with the lack of empirical evidence of wrongful convictions, there is a danger of becoming complacent. Hence, it is especially important to bear in mind the risk of wrongful conviction when there appears to be none, because public confidence will be greatly shaken should the Government be seen to fail the citizen.

B. Role of the Police

In a crime control model, much trust is placed in the efficiency of the police in discovering the facts of the crime and in determining early on probable guilt or innocence. This gives rise to a factual “presumption of guilt”, i.e. once a determination is made that there is enough evidence of guilt (which may take place as early as the time of arrest), the suspect is treated as “probably guilty”. This is akin to what the wrongful conviction literature terms “tunnel vision”. Besides tunnel vision, improper investigation techniques and police misconduct can lead and have led to wrongful convictions. However, Singapore’s small size—such that any minor wrongdoing is magnified in the eyes of the public—combined with a government that upholds strict values and standards, helps keep police misconduct in check. Tight control can be maintained over each division and member in the police force because of its relative smallness.

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47 Ibid.
48 Wong Siew Ying, ‘Singapore has fewer policemen per 100,000 people but lower crime rate than some cities’ Channel News Asia (3 August 2008), online: <http://www.channelnewsasia.com/stories/singaporelocalnews/view/364655/1.html>.
49 As can be seen from the instance of alleged police abuse suffered by a Thai worker charged with murder as well as the false confession extracted from Samat Dupree; See text accompanying note 122.
50 Chan, “The Singapore Model”, supra note 7 at 441.
51 Ibid.
52 See Hon. Fred Kaufman, Report of the Commission on Proceedings Involving Guy Paul Morin (Toronto: Ontario Ministry of the Attorney General, 1998) at 1136 [Kaufman Report] (“[T]unnel vision means the single-minded and overly narrow focus on a particular investigative or prosecutorial theory, so as to unreasonably colour the evaluation of information received and one’s conduct in response to that information”).
1. Tunnel Vision

Tunnel vision is a product of the pressure to convict as well as the willingness to prosecute and convict someone without really scrutinising evidence. In Singapore, tunnel vision is not an apparent problem probably because of good investigative technique and the mindset of the police. The police in Singapore see themselves as servants of the community, helping to ensure Singapore’s security, survival and success. Admittedly, service to the community may involve sacrificing the innocent for the greater good, also known as “noble cause corruption”. Fortunately for the innocent, this form of corruption, like all other forms of corruption in Singapore, has been severely condemned in Parliament by the Internal Investigation Section (IIS) of the Police Headquarters, the press and the public. Indeed, the core values of the Singapore Police Force are “courage, fairness, integrity and loyalty”. Hence, the emphasis is not on securing a conviction but in conducting a thorough and truthful investigation, resulting in the view that the police do a disservice to the public if they wrongly charge the innocent with a crime.

2. Interrogation and Investigation

From a due process perspective, Singapore is lacking because it has no legislative Code of Practice putting in place guidelines for investigation procedure or the interrogation of suspects or accused persons in Singapore. The Kaufman Report, produced after a commission of inquiry in Toronto was held concerning the wrongful conviction

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54 Ibid. at 79.
56 Martin, “The Police Role”, supra note 53 at 79.
57 1 June 1998 Parliamentary Debates, supra note 38, at col. 94.
58 This body receives complaints against the police and disciplines officers who, for instance, exercise insufficient diligence in pursuing a lead, leading to the prosecution of a case that is later dropped: ibid. at col. 93.
59 “Beware, what looks suspicious may well be innocent” The Straits Times (9 April 1995).
60 By writing into the newspaper forum, e.g. “Some questions about Samat’s Case” The Straits Times (24 March 1993), or via questions and concerns raised to ministers who in turn give voice to public opinion in parliament.
62 This has led to an opinion being formed that the police only charge the guilty with crimes: 1 June 1998 Parliamentary Debates, supra note 38, at col. 87–88.
63 See Michael Hwang, (Address by the President of the Law Society at the Opening of the Legal Year 2008, 5 January 2008), online: LawNet <http://www.lawnet.com.sg/legal/ln2/sglaw/html/OpeningSpeeches2008_SgLawWatch.html> (calling for “legislation (or at least a protocol) … to prescribe how [witness] statements are recorded [by the police] and when counsel can have access to their clients”).
of a man for rape and murder of his nine-year-old neighbour, recommended, *inter alia*, the setting of minimum standards for the police with respect to the conduct of criminal investigations.\(^{64}\) Singapore also lacks a procedure of video-taping interviews and interrogations.\(^{65}\) Although the suspect theoretically has a constitutional right to be represented by counsel of his choice, in practice, a suspect is rarely represented at the police station.\(^{66}\) In *Jasbir Singh v. Public Prosecutor*, the Court of Appeal held that the accused’s right to counsel did not arise “immediately” following arrest, but “within a reasonable time”; in the court’s view, two weeks was a reasonable time in that case.\(^{67}\) These factors have perhaps contributed to the not infrequent allegations by accused persons that their statements to the police had not been given voluntarily or that they had been abusively treated in the course of investigation and interrogation.\(^{68}\)

However, there are provisions in the *CPC* that limit the exercise of police powers in respect of investigations. For example, sections 35 and 36(1) of the *CPC* state that regarding arrests made without a warrant, the police are obliged to take the suspect before a magistrate without unnecessary delay and within 48 hours of the arrest. This ensures that the accused has access to the courts during the investigation process. The Minister of Law has also clarified that “in most cases” the police in fact complete the investigations within 48 hours.\(^{69}\) Additionally, section 122(5) of the *CPC* governs the admissibility of statements to the police made by the accused – such statements are inadmissible if it appears to the court that they were caused by “any inducement, threat or promise”.\(^{70}\) This rule indirectly checks the manner in which police obtain statements from the accused, especially where it is for the prosecution to establish beyond reasonable doubt that the statement was voluntarily made.\(^{71}\)

In addition to the *CPC*, the police in Singapore are guided by the judgements of the courts, checked by internal practices, as well as disciplined by the IIS, the threat of civil and criminal suit, and public censure. Police practice is maintained

\(^{64}\) *Kaufman Report*, *supra* note 52 at 1194.

\(^{65}\) This measure was suggested in Parliament a number of times, but was each time rejected as being unnecessary and of limited effectiveness because the accused could argue that the videotapes did not record the abuse he was subjected to. See also *1 June 1998 Parliamentary Debates, supra* note 38, at col. 99; and Sing., *Parliamentary Debates*, vol. 63 col. 377 at 381 (25 August 1994).


\(^{67}\) [1994] 1 Sing. L.R.(R) 782 (C.A.) at paras. 47–49 [*Jasbir Singh*]. See also *Tan Chor Jin, supra* note 44.

\(^{68}\) See e.g. *Public Prosecutor v. Ismil bin Kadar*, 2009 SGHC 84 [*Ismil*] where both accused persons argued that they were threatened by police investigators and had been subjected to physical discomfort, whether because they had meals late or were cold; and *Lim Thian Lai v. Public Prosecutor*, [2006] 1 Sing. L.R.(R) 319 (C.A.) [*Lim Thian Lai*] where the accused alleged that, *inter alia*, he had felt threatened by police in the course of interrogation when he was told repeatedly that he was on the 18th floor of the police complex, making him fear that he could be thrown down or beaten up without anyone hearing his cries.

\(^{69}\) Sing., *Parliamentary Debates*, vol. 77, col. 1033 (10 March 2004).

\(^{70}\) See also *CPC, supra* note 16, s. 122(7).

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at a level that is acceptable to the judiciary by their interpretation of rules that deal with the admissibility of statements and the requirement of corroboration in certain circumstances. For instance, it has been held that conduct such as saying to the accused “you had better tell the truth” or any equivalent amounts to a threat rendering a statement inadmissible.\(^{72}\) However, in *Lim Thian Lai v. Public Prosecutor*, the Court of Appeal cautiously stated that the import of such words must be evaluated in the context of the individual case, according to a partly objective and partly subjective test, rather than determined based on precedent.\(^{73}\) The courts have also accepted that statements may be inadmissible not only because of the existence of threats, inducements or promises, but also if there has been oppression.\(^{74}\) This doctrine of oppression was developed in England to deal with subtler and less direct influences not amounting to threats, inducements or promises.\(^{75}\) In *Public Prosecutor v. Lim Kian Tat*,\(^ {76}\) the court held that a statement taken after an 18-hour interrogation, with only an hour’s break given to the accused, and on the fourth night in a row in which the accused did not have any adequate sleep, was obtained by oppression. Pertaining to corroboration, in *Khoo Kwoon Hain v. Public Prosecutor*,\(^ {77}\) the court approved Spenser-Wilkinson J’s statement in *Public Prosecutor v. Mardai* that:

> Whilst there is no rule of law in this country that in sexual offences the evidence of the complainant must be corroborated; nevertheless it appears to me, as a matter of common sense, to be unsafe to convict in cases of this kind unless either the evidence of the complainant is unusually convincing or there is some corroboration of the complainant’s story.\(^ {78}\)

In *XP v. Public Prosecutor*, the court clarified that this general requirement for corroboration is not restricted to closed categories of witnesses such as sexual complainants, but may extend to all cases where the witnesses are of potentially doubtful credibility.\(^ {79}\) These cases serve as unofficial ‘guidelines’ that the police abide by in their evidence-gathering.\(^ {80}\)

Certainly, the strength of judicial guidelines as a check will depend on how the judiciary balances the need to give the police some leeway in investigation to secure


\(^ {73}\) *Lim Thian Lai*, supra note 68 at para. 18.


\(^ {75}\) See R v. Priestly (1967), 51 Cr. App. R. 1, where Sachs J. described ‘oppression’ as ‘something which tends to say, and has sapped, that free will which must exist before a confession is voluntary… Whether or not there is oppression in an individual case depends upon many elements… They include such things as the length of time intervening between periods of questioning, whether the accused person had been given proper refreshment or not, and the characteristics of the person who made the statement’.

\(^ {76}\) [1990] 1 Sing. L.R.(R) 273 (H.C.) at para. 29.

\(^ {77}\) [1995] 2 Sing. L.R.(R) 591 (H.C.) at para. 44.


\(^ {79}\) *XP v. Public Prosecutor*, supra note 14 at paras. 32–33.

\(^ {80}\) 1 June 1998 Parliamentary Debates, supra note 38, at col. 107–08.
convictions, against the need to protect the rights of the accused such that the innocent may be protected.\textsuperscript{81} As can be seen from \textit{Jasbir Singh and Lim Thian Lai}, the judiciary tends to strike such a balance in favour of the former – preferring to take a pragmatic approach rather than focusing on due process. This tendency can also be seen in \textit{Public Prosecutor v. Leong Siew Chor},\textsuperscript{82} where, although the trial judge held that section 121(3) of the \textit{CPC} had been technically breached because the police officer did not read the accused’s statement back to him as required, there was no procedural impropriety that rendered the statement inadmissible. The legislative intent behind the provision had been fulfilled – the accused, who was literate and had no difficulty reading the statement, was left to read the statement through himself.

Poor management has also been identified as one of the reasons impeding progress in improving investigative performance of mid-rank officers.\textsuperscript{83} In Singapore, however, the obsession with good management strategy and practice serves the innocent well. The Singapore Police Force has received many accolades for its organisational excellence, including the Singapore Quality Award with Special Commendation in 2007.\textsuperscript{84} Its investigation process contains several layers of scrutiny and supervision. Each day, at every police division, a duty Senior Investigation Officer checks the cases reported to see how they are handled.\textsuperscript{85} The Chief Investigation Officer (CIO) will also check on all police reports lodged and the actions taken to deal with them.\textsuperscript{86} More difficult cases are reviewed in a Morning Panel chaired by the Head of Investigation (HI).\textsuperscript{87} Thereafter, the CIO and HI will continue to monitor the cases that require further investigation.\textsuperscript{88}

The Criminal Investigation Department (CID) handles the more complex cases, and the process of close supervision is further enhanced by case conferencing.\textsuperscript{89} CID has also strengthened its investigative capability by implementing team investigation. This team system removes investigation work from the province of the detectives and introduces objectivity together with varied expertise by involving experts on interviews, intelligence, forensics and technology. For the most serious cases, the AG is consulted.\textsuperscript{90}

\begin{footnotesize}
\begin{enumerate}
  \item Supra note 74.
  \item [2006] 3 Sing. L.R.(R) 290 (H.C.), affirmed in [2006] SGCA 38.
  \item The assessment criteria for the Singapore Quality Award includes examining an organisation’s leadership, planning processes, management of information, development of people, attainment of objectives, relationship with customers and performance. See “Award Criteria”, online: SPRING Singapore <http://www.spring.gov.sg/Content/WebPage.aspx?id=0e082fc7-f1cf-464f-9857-3e692df6e9be>.
  \item 1 June 1998 Parliamentary Debates, supra note 38, at col. 96.
  \item Ibid.
  \item Ibid.
  \item This is similar to the command triangle of the case management system that the Durham Regional Police Service now employs in response to the wrongful conviction of Guy Paul Morin in Canada; see Kaufman Report, supra note 52 at 1121–23.
  \item 1 June 1998 Parliamentary Debates, supra note 38, at col. 96.
  \item Ibid.
\end{enumerate}
\end{footnotesize}
Disciplinary action against police officers is also a very real threat. The fear of losing public confidence is very strong, translating into strong condemnation of investigative failures. Civil actions of malicious prosecution and wrongful imprisonment are available as well. Although it is unknown if any such actions have been successfully brought, they are not necessarily an ineffective check on police mismanagement. The lack of successful actions could equally be testament to the sound investigative techniques of the police force. Indeed, from the case law, it appears that the most serious criticisms of the police force relate to a lack of co-ordination amongst different police divisions or different enforcement agencies causing a delay in charging or prosecuting the accused\(^{91}\) or the bringing of an unsuitable charge,\(^{92}\) rather than subjecting a factually innocent person to prosecution.

3. **Police Misconduct**

Consistent with the crime control model, police misconduct is treated very seriously in Singapore. Senior Parliamentary Secretary for Home Affairs Ho Peng Kee once stated that: “Police abuse must never be condoned. If any officer is found to have abused his powers in any way, he faces disciplinary action and even prosecution where appropriate... the Ministry of Home Affairs will not allow any black sheep to tarnish the image and integrity of any of its departments, especially the police.”\(^{93}\)

This attitude towards police misconduct, together with the strong disciplinary arm of the IIS take Singapore away from the “cop culture” problem identified in the literature, where cops cover up for each other, and the poor discipline of the police is not made public and given emphasis.\(^{94}\) In 1994, there were 94 complaints of police abuse on suspects, out of which only 14 were reported as substantiated by the IIS.\(^{95}\) In these 14 cases, there were 16 errant officers: one was prosecuted and charged in court and the rest were departmentally dealt with (the scheme for disciplining errant police officers is set out in the *Singapore Police Force Act*\(^{96}\) and Regulations).\(^{97}\) In 1999, the most recent year in which statistics are available, 56 complaints were received, of which 7 were substantiated.\(^{98}\) This reflects a consistently low rate of police abuse.

92 See e.g. *Chong Pit Khai v. Public Prosecutor*, [2009] SGHC 69, although the court did not reverse the conviction on the charge because the accused had pleaded guilty to it voluntarily after having ample time to think about whether to defend the charge.
93 “No black sheep allowed to tarnish integrity of ministry” *The Straits Times* (26 August 1994).
96 (Cap. 235, 2006 Rev. Ed. Sing.), ss. 28–43 read with the Schedule.
4. Training

In 2000, the Ministry of Home Affairs launched the Police School of Criminal Investigation. This school takes investigation from being one subject among many and makes it a specialisation. It will give "investigators more in-depth knowledge and [train] them to [attain] world standards". This will surely contribute towards solving the problem of police investigators falling back on stereotypes because they do not have the skills to uncover initially unknown offenders. Further, in 2006, the Police Academy moved to larger and better facilities at the new Home Team Academy. The Home Team Academy has enhanced training content and methodology, and utilises tools such as After Action Review to better equip police officers to discharge their duties. It also contains a Knowledge Depository Branch to facilitate the transfer of skills and experience from older to younger officers.

C. Role of Counsel, Judge and Jury

One of the central tenets of the criminal process is allowing an accused charged with a criminal offence an open court trial. Although theoretically awarding due process protection, the value of a trial in safeguarding the innocent depends heavily on the interpretation and application of the laws by the judge. In the adversarial model, the effectiveness of counsel also affects the successful protection of the innocent.

1. Judge Versus Jury

The jury system was abolished in Singapore in 1970 for a number of reasons. Briefly, these are that the jury may be swayed by flamboyant counsel, that justice had been thwarted by technicalities related to the conduct or instruction of the jury, that expediency required it, and that the public did not register strong objection to the removal of the institution of the jury. These reasons contain a mix of justifications from both the crime control and due process model.

With respect to preventing wrongful convictions, removing the jury may be a positive contribution. First, it has been opined that jurors have a predisposition to view...
the accused as guilty.\textsuperscript{105} They also frequently misunderstand basic legal standards, such as “beyond reasonable doubt”.\textsuperscript{106} Indeed one oft-noted problem is that jurors tend to give more weight to suspect evidence than they should because it is counterintuitive to disbelieve a confession or a confident eyewitness, especially without the benefit of expert evidence.\textsuperscript{107}

Perhaps the stronger reason for the removal of the jury in Singapore was that they were letting the guilty go free rather than that they convicted the innocent. This was especially so in capital cases, where the mandatory death sentence resulted in the jury not convicting.\textsuperscript{108} While probably less easily swayed by the histrionics of counsel, judges are subject to the same misconceptions as the jury with respect to suspect evidence. Some may be too confident in their ability to distinguish the truth from the lies based on their training and experience\textsuperscript{109} – this could lead them to be less receptive towards psychological studies and to place too much emphasis on the demeanour of witnesses.\textsuperscript{110} Some form of judicial training would be beneficial to create awareness amongst the judiciary as to the common pitfalls leading to wrongful convictions and practical steps that may be taken to avoid such pitfalls.

2. The Public Prosecutor

The Public Prosecutor (PP) is involved in police investigation as a result of case conferencing. For more serious cases, the AG is consulted before a decision to prosecute is made.\textsuperscript{111} At the AG’s Chambers itself, a special Criminal Review Committee critically reviews and evaluates the evidence and law in every pending High Court trial and appeal to determine if the charges or appeal should be proceeded with in court.

Problems may arise, however, if the PP becomes overzealous. The PP is the representative of the State, whose interest in a criminal prosecution should not be that
“it shall win the case, but that justice shall be done”.\footnote{Berger v. US, 295 U.S. 78 (1935).} Like the judge, the PP ought to focus on due process in order to serve the community, and not crime control.\footnote{See Rajah, “Discovery and Fair Trials”, supra note 66.} Former AG Walter Woon has stated that public interest is the reigning consideration when it comes to criminal prosecution, and that cases are only brought to court where the PP is “convinced ‘beyond reasonable doubt’” of an offence.\footnote{Leong Wee Keat, ‘They were the longest two years of my life: Former AG Walter Woon’, Today (13 April 2010), online: <http://www.todayonline.com/Singapore/EDC100413-0000105/They-were-the-longest-two-years-of-my-life--Former-AG-Walter-Woon>.} However, like a double-edged sword, this may also lead to the PP becoming too anxious to secure the convictions of those it views as “guilty in fact”.\footnote{See KC Vijayan, ‘Govt defends A-G’s stand on acquittals; Law Minister reiterates that ‘not guilty in law’ does not mean ‘innocent’’, The Straits Times (26 August 2008).} Unfortunately, this role of the PP is not manifested in practice and this is especially noticeable in the area of disclosure. In \textit{Tay Kok Poh Ronnie v. Public Prosecutor},\footnote{[1995] 3 Sing. L.R.(R) 545 (H.C.) [Tay Kok Poh].} the prosecutor refused to let the defence see the statements made by the accused under section 121 of the CPC (a statement taken by police officers in the course of their investigations). This is not a unique situation and incidents of reluctance with regard to discovery before trial or disclosure in the course of trial are numerous.

Fortunately, this situation has been tempered somewhat as judges have intervened in some circumstances and held in favour of discovery and disclosure in order to ensure a fair trial. For example, in \textit{Tay Kok Poh}, Yong C.J. held that there was no reason to deny the defence sight of the section 121 statement because the defence witness had finished giving evidence and there was no danger of the defence tailoring evidence. Denying the defence the statement that may be used to corroborate his testimony was to deny relevant evidence that could be pivotal. This “[would not] be conducive to a fair trial”.\footnote{Ibid.} In \textit{Public Prosecutor v. Ng Beng Siang}, Kan J. went even further and said, “when a reasonable request [for discovery] is made, it should be considered with an open mind. Unless there are reasons to believe that granting of a request will lead to abuse, it would be unreasonable to deny it on the ground that it may lead to abuse.”\footnote{[2003] 4 Sing. L.R.(R) 609 (H.C.) at para. 53.} Thus, the current position seems to be that the PP ought to consider reasonable requests for discovery with an open mind.\footnote{Rajah, “Discovery and Fair Trials”, supra note 66.} In October 2006, the Ministry of Law introduced a framework for pre-trial exchanges of evidence in respect of criminal cases, where the prosecution would inform the defence of the prosecution’s case against the accused, including providing a list of witnesses and the statements the accused has made to the police.\footnote{Sing., Parliamentary Debates, vol. 82, col. 2338 (2 March 2007).} Nevertheless, this does not seem to have addressed the concerns of the criminal bar and in an address at the Opening of the Legal Year 2008, the President of the Law Society expressed that it would be “highly desirable” to have a “statutory framework (or at least a protocol)” concerning discovery rather than having it depend on a judge’s exercise of discretion in each
individual case when an application is made to court.\textsuperscript{121} Further, more could be done to ensure that the prosecution alerts the defence to exculpatory evidence unearthed by the police.\textsuperscript{122} 

Despite some reluctance to disclose and to allow discovery, the PP has been willing to exercise its power to discontinue proceedings in criminal cases when faced with new or insufficient evidence.\textsuperscript{123} This happened in Samat Dupree’s case when the prosecutor dropped a murder charge against Mr. Dupree following the surfacing of a probable alibi.\textsuperscript{124} Mr. Dupree had falsely confessed to the police that he struck his friend with an iron bar after his friend made advances to him.\textsuperscript{125} This also happened in Zainal bin Kuning’s case (discussed below) where new evidence surfaced to exonerate the accused, countering the evidence given by a jailhouse informant.

3. The Defence

In an adversarial system, the defence is crucial for the judge to make a well-informed decision on the truth. “Bad lawyering” is an important contributing factor to wrongful convictions; it is estimated that 23\% of wrongful convictions among 70 DNA exonerations in the USA have been a result of bad lawyering.\textsuperscript{126} One recent example in England is the case of Andrew Adams who was sentenced to life imprisonment on 18 May 1993 for murder. In 2007, upon a reference by the Criminal Cases Review Commission, the English Court of Appeal found Adams’ conviction unsafe because of mistakes made by his legal team. His original lawyers pulled out two weeks before the trial and their replacements failed to use “crucially important” evidence available at the time which could have cleared his name because of insufficient preparation time.\textsuperscript{127} Bad lawyering is common among indigent accused who are incapable of retaining counsel of their choice. It could also be that although paid and given sufficient resources, the defence fails in its professional duties.\textsuperscript{128}

\begin{itemize}
\item \textsuperscript{121} Hwang, supra note 63.
\item \textsuperscript{122} The disclosure of exculpatory evidence has been suggested by practitioners in the USA as one way in which to reduce wrongful convictions there. See Robert Ramsey and James Frank, “How to Reduce the Incidence of Wrongful Conviction: Current Perspectives of Criminal Justice Practitioners” (Paper presented at the annual meeting of the American Society Of Criminology, November 2007), online: All Academic <http://www.allacademic.com/meta/p201512_index.html>.
\item \textsuperscript{123} Constitution of Singapore, supra note 18, art. 35(8); CPC, supra note 16, s. 336(1).
\item \textsuperscript{124} Ben Davidson, “Court frees innocent man after 2 1/2 years’ jail” The Straits Times (18 March 1993).
\item \textsuperscript{125} Ibid.
\item \textsuperscript{126} The Innocence Project, “Causes and Remedies of Wrongful Convictions”, online: <http://www.innocenceproject.org/causes/index.php>.
\item \textsuperscript{127} R v. Adams, [2007] 1 Cr. App. R. 34.
\item \textsuperscript{128} See Donald Marshall’s case, where highly competent defence counsel who were paid substantial fees and had access to funds, failed to interview any witnesses of the Crown, and failed to follow up on evidence that an eyewitness for the prosecution was lying. Canada, Royal Commission on the Donald Marshall, Jr., Prosecution, Commissioner’s Report: Findings and
Indigent accused in Singapore may apply to the Criminal Legal Aid Scheme (CLAS) pioneered by the Law Society or, in capital cases, rely on assigned counsel. CLAS is funded by donations and supported by volunteer lawyers, which numbered 334 in July 2008. The statistics suggest that these lawyers have been effective. Between January and May of 2008, CLAS succeeded in securing an acquittal or the reduction or withdrawal of charges in 21 out of 110 cases handled. This is a rate of approximately 19%. Assuming that the police are right nearly all the time, these figures probably represent a majority of the innocent that have been wrongly charged. Although there have been complaints of ineffective assistance by defence counsel, this is not a prevalent problem in Singapore. From 1 September 2006 to 31 August 2007, the Law Society of Singapore received a total of 63 complaints against lawyers out of which 11 were regarding inadequate professional services. Of the 11 cases received, seven were not referred for an inquiry because the complaints did not disclose information of any breach of standards of adequate professional service. The remainder of four cases (assuming they were all meritorious complaints) is very low considering that there are more than 3000 law practitioners in Singapore. Professional misconduct in the sense of ineffective representation is therefore virtually unheard of.

There are several reasons to explain this phenomena. First, disciplinary action against lawyers serves a deterrent purpose. Lawyers who are fined more than S$1,000 or reprimanded for misconduct by the Law Society face having their names published in the Government Gazette and paying for the cost of the publication. And because of Singapore’s small legal community, disciplinary action by the Law Society or a sanction by the court leaves one’s reputation so badly battered that it might be impossible to continue in practice even if one has not been struck off the rolls. A second reason is that lawyers in Singapore, like the police, have a special public service function, and high standards are expected from members of the profession. Defence lawyers, especially, see themselves playing an important role. On his criteria for picking clients, Subhas Anandan, a leading criminal defence lawyer in Singapore said, “These are complex cases. Some would say ‘no hopers’, but even people who

129 Khushwant Singh, “Needy getting more legal aid; of 110 pro bono cases from January to May, 21 resulted in acquittal or lesser charges” The Straits Times (21 July 2008).
130 Ibid.
132 Of the four remaining cases, one was successfully mediated, one was pending mediation, one was pending a response from the client as to whether he desired mediation and one was adjourned till a separate complaint of misconduct against that person had been investigated: ibid.
133 Ibid. at 30.
134 “Errant Lawyers now named in Government Gazette” The Straits Times (20 August 1995).
commit the most heinous crimes must be given an even break.”

D. Suspect Evidence

Three areas of suspect evidence have been identified in the wrongful conviction literature: (1) eyewitness identification; (2) jailhouse informants; and (3) false confessions. In Singapore, the use of jailhouse informants constitutes less risk of wrongful conviction than eyewitness identification or false confessions. In the areas of eyewitness identification and false confessions, legislative guidelines are lacking and the safeguards are mainly judicial.

1. Eyewitness Identification

Inaccurate eyewitness identification is purportedly the greatest contributor to wrongful convictions in the USA. Similarly, eyewitness identification is potentially a danger area in Singapore because of the lack of legislative guidelines regulating the conduct of line-ups. However, an existing safeguard is the number of specific rules in recognition of the frailty of eyewitness testimony.

With regard to identification parades, the courts in Singapore will not tolerate parades where the composition of foils in the line-up is clearly unfair to the accused; for example, where a 58-year-old Chinese man was lined up alongside three Malay men, a Sikh male, a Chinese woman and two Chinese boys aged 10 and 16. While it has been opined that there is an identifiable trend of the courts being more tolerant of such procedural flaws, one ought to bear in mind that procedural breaches in identification parades will only affect the weight attached to the evidence, and does not render it automatically inadmissible. Thus, the judge is given a lot of discretion in this regard.

Another procedural safeguard is a three-step test formulated based on R v. Turnbull guidelines drafted to assist a trial judge in directing a jury. These steps require

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137 Ronald Huff, Arye Rattner and Edward Sagarin, Convicted But Innocent: Wrongful Conviction and Public Policy (California: Sage, 1996) at 64.


139 Ibid. at 229.


the judge to ask three questions in criminal cases with eyewitness identification: (1) whether the case against the accused depends wholly or substantially on the correctness of the identification evidence which is alleged by the defence to be mistaken; if the answer is yes, then (2) is the identification evidence of good quality, taking into account the circumstances in which the identification by the witness was made; and (3) where the quality of evidence is poor, whether there is any other evidence which goes to support the correctness of the identification.

This test factors in many of the elements identified by psychological studies on the frailties of eyewitness identification. The courts also appreciate the paramount importance of the quality, as opposed to the quantity, of eyewitness evidence. Nevertheless, the *Turnbull* test is still insufficient because it is structured such that if one limb is met, then there is no need to move on to the next limb. Thus, where evidence is found to be of good quality, supporting evidence is not required. This is a problem because the application of the second limb of the test is subject to significant misconceptions.

For example, in cases of outrage of modesty, Yong C.J. has held that “the victim being on the receiving end of such a crime would have had the face of the offender emblazoned in her memory”. This has led the court to hold the second question fulfilled. However, as can be seen from Jennifer Thompson’s case, such a statement does not hold true. Thompson was raped in her own apartment at knife-point and during her ordeal she studied the details of her rapist’s face, determined that if she survived she would identify him and send him to prison. Several days later she confidently identified Ronald Cotton as her assailant and picked him again in a line-up. She was absolutely certain he attacked her. Based mainly on her testimony, Cotton was sentenced to life imprisonment. Years later, DNA evidence exonerated Cotton and identified Thompson’s assailant as Bobby Poole. When the case was retried due to evidence that Poole had been bragging in prison that he was Thompson’s rapist, Thompson looked at Poole in court and testified that she had never seen him in her life. Similarly, in violent cases such as rioting, the High Court has applied the three-step test while commenting that, “this being a harrowing experience, it was likely to carve the appellant’s image indelibly into the victim’s mind.” Indeed, research has shown that stress impairs rather than facilitates memory recall.

Admittedly, all these instances probably did not lead to a wrongful conviction because there were other factors that indicated the identification was correctly made, such as a short length of time between the incident and the identification parade, a substantial length of observation during the incident, and the fact that the victim

had a good look at the accused’s face. Nevertheless, a holistic approach taking into account all the factors in the last two limbs of the test ought to be adopted because this minimises the danger of a wrongful conviction based on inaccurate eyewitness identification. The misconceptions held by the judiciary also ought to be clarified. The most immediate solution is to educate the judges based on the psychological evidence available and the experience in other jurisdictions.\(^\text{149}\)

2. Jailhouse Informants

According to Sherrin, the “testimony of jailhouse informants may be unreliable, informants may be abusive, and accused persons may be treated unfairly”.\(^\text{150}\) An instance of how this has led to wrongful conviction is the case of Guy Paul Morin, where the testimony of two jailhouse informants claiming that Morin had confessed to one of them in addition to other systemic errors produced a miscarriage of justice.\(^\text{151}\) There appears to be no regular practice of using jailhouse informants in Singapore. The evidence rules regarding informant testimony have usually been invoked with regard to the “agent provocateur”, a member of the police department or someone recruited by the police. In one case, an inmate informed one of four accused charged with murder that the inmate’s friend had told the inmate that he was the one who committed the crime.\(^\text{152}\) The accused told his lawyer who then wrote to the investigating officer about this information. Unfortunately, the investigating officer was remiss and failed to follow up on this lead.\(^\text{153}\) However, the charges against the accused and his three friends were subsequently dropped, and “the friend”, Sulaiman, was found guilty of murder.\(^\text{154}\) At Sulaiman’s trial, the in-custody informer did not testify and was not part of the prosecution’s case.\(^\text{155}\)

Thus, the use of jailhouse informants by the prosecution probably does not contribute to the risk of wrongful conviction in Singapore.

3. False Confessions

This is arguably the largest danger area in Singapore because there have been recorded instances of false confessions being given. Fortunately, these have been discovered in

\(^{151}\) \textit{Kaufman Report}, supra note 52 at 556–557.
\(^{153}\) The officer was sued for malicious prosecution and false arrest, but the claim did not succeed because the court held that the officer had reasonable and probable cause to prosecute and that the arrest was based on credible information and reasonable suspicion.
a timely manner, for example, Samat Dupree’s false confession to murder. However, more can be done to reduce the likelihood of a false confession being given and to clear up misconceptions that the judges have towards the making of false confessions. As with eyewitness identification, it is counter-intuitive to think that the innocent will confess without police misconduct or coercion. In *Public Prosecutor v. Liew Kim Choo*, Yong C.J. said, “a suspect is unlikely to make a false confession to the police unless he was under duress or threat.” Yet psychological evidence shows that false confessions may be voluntary, stress-compliant, coerced-compliant, coerced-persuaded and non coerced-persuaded. Asked why he confessed if he felt he was innocent, Dupree said, “I was scared. It’s easy for people to ask why but I am the one who suffered in the CID.” Dupree’s confession may fall within one of the categories identified above, depending on the precise factual circumstances leading to the confession and his disposition.

The impact of a false confession in Singapore is also serious because the confession of a co-accused implicating the accused may alone be sufficient to convict the accused. If contradictory to his own prior long statement taken by the police, an accused’s testimony in court may be disregarded in favour of the former under section 147 of the *Evidence Act*; the accused may then be convicted under the prior statement.

This is, however, not to say that the courts should unquestioningly accept the psychological opinion tendered by the defence, which may be problematic. In *Ismil*, the first accused unsuccessfully argued that he had made a coerced-compliant confession in order to alleviate and minimise his distress arising from his low IQ, the pressure of his arrest and the police interviews. The court came to this decision based on the first accused’s undisputed behaviour after arrest, observing the first accused’s performance on the witness stand as well as the numerous inconsistencies in his testimony.

### E. The Criminal Appellate System

So far, the analysis of Singapore’s criminal justice system has occurred chronologically. The avenue of appeal is the last line of defence of the system against wrongful convictions. In Singapore, any decision that hands down the death penalty will be reviewed by the Court of Appeal.

An appeal to a higher court has in many cases corrected errors that were made

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156 *Davidson*, *supra* note 124.
159 *Davidson*, *supra* note 124.
161 See also Amarjeet Singh, “Criminal Advocacy”, *supra* note 36.
162 *Lim Thian Lai*, *supra* note 68.at paras. 383, 434, and 441.
164 See also Sivasamy, “The Criminal Appellate System in Singapore”, *supra* note 95.
in the lower court, such as correcting the inadequate performance of counsel. In *Poon Soh Har v. Public Prosecutor*, a defence failure to object to the admission of inadmissible evidence resulted in both accused being convicted, but the conviction of the second appellant was overturned on appeal. An appeal can also correct errors of law or fact made by the trial judge. Usually, an appellate court will not interfere with a trial judge’s finding of facts based on the credibility of witnesses, but where the findings are clearly against the weight of the evidence and are unsupported, the Court of Appeal will intervene. In *XP v. Public Prosecutor*, where a teacher was charged with outraging the modesty of his male students, the trial judge found the testimony of two of the complainants unusually convincing. However, V.K. Rajah J. disagreed with the trial judge because of internal inconsistencies and evidential gaps – one of them had failed to reprise the essential particulars of one of the alleged incidents and the other had inexplicably recanted on the crucial matter of whether he and the teacher had shared a sleeping bag. The teacher was acquitted.

Appeals are also important when new evidence arises post-conviction. The standard for admissibility of fresh evidence on appeal was established in *Juma’at bin Samad v. Public Prosecutor*, viz., the evidence: (1) could not have been obtained with reasonable diligence for use at the trial; (2) was such that, if given at the trial, it would probably have an important influence on the result of the case; and (3) was apparently credible. In *Public Prosecutor v. Ong Teng Siew*, new evidence tendered by the defence (relating to the accused suffering from an inherited skin disorder which could lead to agitation) surfaced after conviction, and on the case being remitted to the High Court, the judge found that the defence of diminished responsibility to the charge of murder was established.

Although the court has previously found itself without jurisdiction to reopen an appeal once it has been exhausted in *Yong Vui Kong v Public Prosecutor* the Court of Appeal held that those cases did not involve a situation in which new exonerative evidence was discovered or where an error of law had been made. Whether or not the Court of Appeal had the inherent jurisdiction to correct mistakes made within the judicial process therefore remains an open question. In any event, there is also the possibility of seeking a presidential pardon under article 22P(1)(b) of the Constitution of Singapore.

**F. Criminal Revision**

The option of criminal revision serves as another opportunity to correct a wrongful
conviction even if the accused has earlier pleaded guilty to a charge, but he loses his right to appeal against his conviction pursuant to section 244 of the CPC.\(^{173}\) As stated by Professor Tan Yock Lin (and quoted approvingly in *Yunani bin Abdul Hamid v. Public Prosecutor*):\(^{174}\)

\[T\]he revisionary jurisdiction, which otherwise functions to all intents and purposes as an appeal, is a paternal jurisdiction. The High Court exercises the jurisdiction as the guardian of ... criminal justice, anxious to right all wrongs, regardless [of] whether [they are] felt to be so by an aggrieved party.\(^{175}\)

In recognition of the unique nature of its revisionary jurisdiction, the courts have held that it must be exercised sparingly, where there is some serious injustice or something palpably wrong in the decision which strikes at its basis as an exercise of judicial power by the court below.\(^{176}\) This power has been exercised in cases where the statement of facts did not disclose every element of the offence,\(^{177}\) where the person convicted was found to have falsely assumed the identity of the person who had actually committed the offence,\(^{178}\) and would certainly be exercised in instances where a wrongful conviction has been exposed.

### III. DISCOVERING AND PUBLICISING WRONGFUL CONVICTIONS

Aside from serendipitous discoveries and the proper functioning of the criminal process, a number of extra-legal institutions have a role to play in bringing wrongful convictions to light. These include student organisations in law schools,\(^{179}\) civil society groups\(^{180}\) and the media.\(^{181}\) In light of the dearth of reported cases of wrongful convictions in Singapore, it is perhaps understandable that Singapore lacks law school initiatives and civil society groups. Even so, would the local or foreign media be

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\(^{173}\) *In Public Prosecutor v. Shaifudin*, [2005] SGHC 66 at para. 17, Yong C.J. stated that, ‘[i]t is trite law that the fact that a petitioner pleaded guilty of his own accord is not a bar to the exercise of the court’s revisionary power. The fact that a plea of guilt has been entered means only that the accused loses his right to appeal against his conviction (see CPC, *supra* note 16, s. 244), and an application by way of criminal revision is the only means by which the accused can have a wrongful conviction set aside’.

\(^{174}\) [2008] 3 Sing. L.R.(R) 383 at para. 45 [*Yunani*].

\(^{175}\) *Criminal Procedure* (LexisNexis, 2007), vol. 2, para. XIX.3904.


\(^{178}\) *Yunani*, *supra* note 174.

\(^{179}\) E.g. the Innocence Projects from law schools in London’s Bristol University, Yeshiva University in the USA, and York University in Canada.

\(^{180}\) E.g. the Association in Defence of the Wrongfully Convicted in Canada, online: <www.aidwyc.org>, accessed 4 June 2009.

able to pick up on them? Good investigative journalism can reveal possible wrongful convictions,\(^{182}\) or suggest how to improve the criminal justice system in light of wrongful convictions.\(^{183}\)

In a 2005 Press Freedom Index drawn up by Reporters Sans Frontières, Singapore ranked 140\(^{184}\) out of 167 countries.\(^{184}\) This dim view of Singapore’s press is attributable to perceived self-censorship by the local press and the threat of fines or distribution bans with regard to the foreign press.\(^{185}\) Critics assert that the Singapore government effectively controls the media through the Newspaper and Printing Presses Act\(^{186}\) and the Media Development Authority.\(^{187}\) However, without questioning the veracity of these criticisms, this has not led the Singapore press to report untruths, or suppress facts. Reports have accompanied allegations of police abuse,\(^{188}\) the dropping of charges by the prosecution,\(^{189}\) and lawyers being reprimanded by the court for improper conduct.\(^{190}\) Additionally, the “Forum” and “Review” sections of the Straits Times have become very viable platforms for various members of the public to express their doubts and misgivings. These are usually followed by responses from the authorities.\(^{191}\) This form of reporting may be beneficial to preventing wrongful convictions because the public has access to information, are able to voice their opinions, and in doing so keep the authorities and other players in the criminal justice system on their toes.

The dialogue in the local press may serve to discover, publicise and discuss wrongful conviction. Further, the local press is supplemented by the foreign media (often available online), which have not been shy in criticising the government.

\(^{182}\) E.g. Professor Proesser’s classes at Northwestern University’s School of Journalism: ibid. at 845; the work of BBC reporter John Sweeney in ‘I’ll never give up fighting for these mothers’ Daily Mail (18 October 2005); and PBS producer Ofra Bikel in ‘Crusading for governance, (2010)

\(^{183}\) Beware, what looks suspicious may well be innocent’ The Straits Times (9 April 1995).\(^{188}\) “Errant lawyer’s just desserts’ The Straits Times (30 March 1993).

\(^{184}\) E.g. ‘Answers in the Truscott Case’ The Toronto Star (24 August 2005); ‘Blinding Justice’ The New York Times (17 November 2005); and ‘Justice System guilty of delay on reforms’ South China Morning Post (8 April 2005).


\(^{187}\) (Cap. 206, 2002 Rev. Ed. Sing.). The Newspaper and Printing Presses Act governs, inter alia, the control of shareholdings in newspaper companies, the permits required for sale and distribution of newspapers, and the licensing of printing presses.

\(^{188}\) One of the Media Development Authority’s functions is to regulate content across all mass media in Singapore. Its stance on censorship has attracted criticism; see Reporters Sans Frontieres, ‘Singapore - Annual Report 2005’, online: <http://www.rsf.org/article.php3?id_article=13440>, accessed 4 June 2009.

\(^{189}\) ‘Code of Practice Needed for Police Questioning- JC’ The Straits Times (5 November 1995).

\(^{190}\) ‘Errant lawyer’s just desserts’ The Straits Times (30 March 1993).

\(^{191}\) See e.g. the incident of Samat Dupree’s false confession—‘Some questions about Samat’s Case’ The Straits Times (24 March 1993) Forum; and in response, ‘Prosecutor notified of alibi 23 months after Samat’s arrest’ The Straits Times (30 March 1993) Forum.
and its policies. Every death penalty case attracts commentary from Amnesty International and sometimes even leads other international newspapers to allege a gross miscarriage of justice and an unfair trial. The Singapore public has thus far appeared unconvinced by these reports, perhaps because the foreign press is known for sensationalism and has been too predictable in disparaging the Singapore government, or simply because of apathy. Whichever the case, both the local and foreign press seem capable of unearthing cases of wrongful conviction should they arise.

IV. CONCLUSION

According to Dworkin, people have a profound right not to be convicted of crimes of which they are innocent, but in some cases it is uncertain whether someone is guilty or innocent of some crime. In this situation, it does not follow that each citizen has a right to the most accurate procedures possible to test his guilt or innocence, no matter how expensive these procedures might be to the community as a whole. Instead, each citizen has: (1) a right that criminal procedures attach the correct importance to the risk of moral harm; and (2) a right to a consistent weighting of the importance of moral harm.

In light of this and the ostensible lack of wrongful convictions in Singapore, no sweeping reform seems necessary. However, as can be shown from the analysis, there are areas of risk, viz the excessive focus on crime control rather than due process. Some tweaking of the system is required to ensure the correct importance being attached to the risk of moral harm. This could be done by enhancing legislative guidelines over the work of the police force, the treatment of eyewitness identification, educating judges on common misconceptions leading to wrongful convictions, and laying down rules for the disclosure of exculpatory evidence. Additionally, Singaporeans also have a right to the consistent weighting of the importance of moral harm. The judges should therefore interpret legislation and apply rules with protection of the innocent


193 See e.g. on the execution of Flor Contemplacion, a domestic helper charged with murder of her employer, ‘Maid executed despite doubts- maid hangs despite protest’ Courier-Mail (18 March 1995); and ‘Filipino maid hanged as appeals fail’ The Guardian (London) (17 March 1995).


197 Ibid. at 92.
in mind.

Ultimately, the risk of wrongful conviction in Singapore is probably not high because of the strong values and high standards that have been worked into the system. As former AG Chan puts it: “What is perhaps more important is the integrity of the people who operate the system, i.e., the investigative and the prosecutorial agencies, and the ultimate supervisor of the criminal process, the judiciary. In other words, it is people who make a system fair and just, and not the reverse.” 198

198 The Singapore Model, supra note 7 at 462.