

9-8-2013

Developing a People-Centered Justice in Singapore: In Support of Pro Bono and Innocence Work

Cheah Wui Ling

Follow this and additional works at: <http://scholarship.law.uc.edu/uclr>

Recommended Citation

Cheah Wui Ling, *Developing a People-Centered Justice in Singapore: In Support of Pro Bono and Innocence Work*, 80 U. Cin. L. Rev. (2012)
Available at: <http://scholarship.law.uc.edu/uclr/vol80/iss4/18>

This Article is brought to you for free and open access by University of Cincinnati College of Law Scholarship and Publications. It has been accepted for inclusion in University of Cincinnati Law Review by an authorized administrator of University of Cincinnati College of Law Scholarship and Publications. For more information, please contact ken.hirsh@uc.edu.

DEVELOPING A PEOPLE-CENTERED JUSTICE IN SINGAPORE: IN SUPPORT OF PRO BONO AND INNOCENCE WORK

*Cheah Wui Ling**†

I. INTRODUCTION

The past few years have witnessed a subtle but significant reconfiguration of Singapore's criminal justice landscape. At various official levels there has been the promotion and development of a more people-centered justice that recognizes and protects different individuals impacted by the criminal process, such as the accused person and victims, while subjecting the acts of criminal justice agencies to greater judicial scrutiny. In the past, foreign and local commentators have often criticized the Singapore state's predominantly utilitarian approach to criminal justice on the basis that it prioritized governmental objectives of crime control and efficiency over the accused person's rights.¹ Local criminal law don, Michael Hor, has previously observed how such utilitarian objectives have resulted in individual rights being passed over for the sake of "administrative efficiency," as evidenced by the enactment of broad "drift-net" criminal laws and the giving of broad discretionary power to investigative and prosecutorial agencies.² Another prominent local academic, Thio Li-ann, has formerly criticized the Singapore judiciary's deference to governmental decisions and its unwillingness to scrutinize such decisions rigorously, despite their

* LL.M., Harvard Law School, 2008; LL.B., National University of Singapore 2003. Assistant Professor, Faculty of Law, National University of Singapore. The author would like to thank Professor Michael Hor, Assistant Professor Chen Siyuan, Assistant Professor Goh Yihan, Adrian Loo, Prem Raj, and Audrey Wong for their comments and suggestions. Much thanks to the organizers and participants of the International Innocence Network Conference 2011 for the many continuing conversations. The author would like to dedicate this Essay to National University of Singapore's law students and graduates who were involved, and continue to be, involved in the Innocence Project, and who are constant sources of inspiration. A special thanks to the students and members of the Association of Criminal Lawyers of Singapore who took the time to speak about their experiences with the author. All errors remain the author's own.

† This article is being published as part of a symposium that took place in April 2011 in Cincinnati, Ohio, hosted by the Ohio Innocence Project, entitled The 2011 Innocence Network Conference: An International Exploration of Wrongful Conviction. Funding for the symposium was provided by The Murray and Agnes Seasongood Good Government Foundation. The articles appearing in this symposium range from formal law review style articles to transcripts of speeches that were given by the author at the symposium. Therefore, the articles published in this symposium may not comply with all standards set forth in Texas Law Review and the Bluebook.

1. For a good overview of two sides to the debate surrounding Singapore's approach to criminal justice, see Chan Sek Keong, *The Criminal Process—the Singapore Model*, 17 SING. L. REV. 433 (1996) [hereinafter *Singapore Model*]; Michael Hor, *The Presumption of Innocence—A Constitutional Discourse for Singapore*, 1995 SING. J. LEGAL STUD. 365.

2. Michael Hor, *Singapore's Innovations to Due Process*, 12 CRIM. L. F. 25, 28 (2000).

impact on fundamental individual liberties.³

Contemporary developments in Singapore reflect a distinct change in approach towards crime and criminal justice. First, there has been an attempt to identify and to recognize the rights and interests of different non-state actors impacted by the criminal justice system, such as the accused person and victims. These endeavors aim at ensuring the fair treatment of all those affected by the criminal justice process, by considering their specific concerns and circumstances. Second, there has been increased judicial scrutiny of prosecutorial and investigation practices, with an emphasis on ensuring accountability and integrity. While the government may use criminal justice to secure important objectives, democratic and constitutional ideals require its implementation—especially given its far-reaching implications on individual liberties—to be subject to scrutiny and exacting standards.

This Essay describes and critically evaluates these developments by historically situating them within Singapore's constitutional landscape. It highlights how legal representatives will play an ever more important role in securing justice for accused persons. As Singapore's courts exercise more scrutiny over cases, it becomes crucial for accused persons to have access to skilled and committed legal representatives who bring all relevant facts and legal arguments to the attention of the court concerned. Access to effective legal representation will ensure that the accused person's circumstances are fully considered by the court, and the possibility of mistakes—such as wrongful convictions—are avoided. There is, therefore, a need to ensure that all accused persons have access to competent legal representation and assistance regardless of the nature of the crimes charged and the accused's socio-economic background. This applies not only at the pre-trial, trial, or appeal stages of the criminal justice process, but also at the post-appeal stage. Previously undiscovered facts or mistakes made may emerge only with time, long after the case has exhausted all avenues of appeal.

Currently, in Singapore, the need for legal representation for accused persons in criminal cases is met by private lawyers on a paid or pro bono basis. Accused persons who cannot afford legal representation have access to a number of pro bono initiatives run by private lawyers with support from the government. The front-end demand for criminal legal aid is primarily met through pro bono programs run by the Law Society of Singapore (Law Society) and the Association for Criminal Lawyers of Singapore (ACLS). In a separate initiative that focuses on the back-end of the criminal process, law students from the National University

3. Thio Li-ann, *An "i" for an "I" Singapore's Communitarian Model of Constitutional Adjudication*, 27 H.K. L.J. 152, 160 (1997).

of Singapore (NUS) have established a student-run Innocence Project (NUS IP). This Essay examines and evaluates these on-the-ground justice initiatives. In brief, it argues that these initiatives—which foster a culture of service in the legal community and go towards building a professional identity based on such a commitment to service—must be encouraged.

II. TOWARDS A PEOPLE-CENTERED JUSTICE: RECENT DEVELOPMENTS IN SINGAPORE

The city state of Singapore has received much praise for her efficient legal system and low crime rate.⁴ In the past, emphasis was placed on resolving cases in a timely and capable manner. There has, however, been a distinct reorientation of objectives at all judicial levels. In 2009, the Chief District Judge of the Singapore Subordinate Courts publicly announced that the courts would move towards developing a “service-centric” culture which aims “to serve our court users better.” He explained that the courts had previously adopted a “court-centric culture” that facilitated “effective case management” and “cleared our backlog of cases.” A “service-centric culture” would focus on improving “service standards, physical infrastructure and processes” to meet the needs of court users.⁵ This Essay’s reference to a “people-centered justice” aims to capture this change, which emphasizes meeting the needs of those impacted by the criminal justice system. The Singapore Chief Justice, in a 2010 speech entitled “Access to Quality Justice for All,” highlighted the need to focus on meeting the needs of indigent persons.⁶ He affirmed that the judicial system should maintain its quick and effective processing of cases to maintain “the confidence of the public in the ability of the judiciary to deliver justice fairly and quickly.”⁷ In other words, the quick resolution of cases is to meet the public’s expectation to effective and timely justice, rather than administrative goals. Efficiency is not valued as an end goal in itself, and may need to give way to more important objectives. For example, the Singapore Chief Justice has acknowledged that though the

4. See, for example, *Subordinate Courts Singapore: Greater Heights New Horizons, Annual Report 2011* 48-54, available at app.subcourts.gov.sg/subcourts/page.aspx?pageid=4469; *Subordinate Courts Singapore: Serving Society, Annual Report 2009* 41-44, available at www.courtexcellence.com/pdf/SubCourts_AR09.pdf.

5. *Id.*

6. Chief Justice Chan Sek Keong, *Keynote Address by the Honourable Chief Justice Chan Sek Keong*, SUBORDINATE COURTS WORKPLAN (Feb. 26, 2010), <http://app.subcourts.gov.sg/Data/Files/File/Workplans/Workplan2010/CJ's%20Keynote%20Address%20Feb%202010.pdf> [hereinafter *2010 Chief Justice Keynote Address*].

7. *Id.* ¶ 37.

formalized discovery system introduced by the 2010 Criminal Procedure Code (CPC) will result in more work for governmental agencies, it is, nevertheless, desirable as it will ensure a “lower risk of injustice” and “higher sense of procedural fairness.”⁸

The recent developments examined in this section may be understood as reflecting the progressive development of a people-centered approach to justice that is characterized by two main features: (1) a thorough and precise evaluation of the case or context at hand which takes into account the interests of various stakeholders, including the accused person and victims; (2) a critical identification and assessment of the acts and practices of criminal justice agencies. This change in approach has been cultivated on a gradual and topic-specific basis, and is transformative rather than revolutionary in nature. There have been no radical changes made to Singapore’s constitutional or legal framework; instead, change has been gradually introduced through ordinary legislation and judicial interpretative. This Part first provides an overview of the main legal provisions governing the rights of accused persons in Singapore; it then goes on to explain recent legislative and judicial developments.

A. Laws Governing the Rights of the Accused

Singapore takes a firm approach, aimed at deterrence, towards crimes that are viewed as particularly harmful to its social order. A number of her criminal laws have been criticized as being overly harsh to the accused due to the severity of punishments imposed and the shifting of evidential burdens through the use of presumptions. For example, the Misuse of Drugs Act (MDA) provides that upon establishing that the accused person possesses a certain amount of drugs, it is then for the accused person to show, on a balance of probabilities, that he was not engaged in drug trafficking.⁹ Prior to 2012, such a drug trafficking conviction carried with it the mandatory death penalty (MDP). Defendants have repeatedly challenged the constitutionality of the MDA’s use of presumptions and its mandatory death penalty. As early as in 1981, the Privy Council held in *Ong Ah Chuan v. PP* that the MDA’s presumptions are not unconstitutional, observing that “[p]resumptions of this kind are a common feature of modern legislation concerning the possession and use of things that present danger to

8. Chief Justice Chan Sek Keong, *Opening of Legal Year 2011: Response by The Honourable Chief Justice*, SING. ACAD. L. ¶6 (Jan. 7, 2011), <http://www.sal.org.sg/Lists/Speeches/DispForm.aspx?ID=86> [hereinafter *2011 Chief Justice Response*].

9. Chapter 185, Section 17, Misuse of Drugs Act. Enacted 1973, Revised 2008.

society like addictive drugs, explosives, arms and ammunition.”¹⁰ The constitutionality of the MDP was most recently considered, and upheld, by the Singapore Court of Appeal in the 2010 case of *Yong Vui Kong v. Public Prosecutor*.¹¹ As explained further below, in 2012, the Singapore legislature amended the MDA to alleviate some of its harshness.

In its 2011 Universal Periodic Review report to the UN Human Rights Council, the Singapore government defended Singapore’s use of the death penalty, highlighting that it applies “only for the most serious crimes,” “sends a strong signal to would-be offenders,” and has a “detering” effect.¹² There has been increased public debate and discussion on this issue in Singapore due to certain high profile cases, and several home-grown civil society groups have criticized the state’s maintenance of the mandatory death penalty.¹³ In 2009, when consulted by the authorities on amendments to the Criminal Procedure Code (CPC), the Law Society included in its recommendations a proposal that sentencing courts be given the discretion to impose life imprisonment in lieu of the death penalty in appropriate and necessary circumstances.¹⁴ Such public discussions are likely to increase, particularly as the authorities have sought to adopt a more consultative style of governance and encourage citizens’ active participation in public life.¹⁵ The Singapore government has conducted a number of consultative exercises before introducing important legislative amendments, and local civil society groups have called for such exercises to be organized more frequently and on a more formal basis.¹⁶ It remains to be seen if public

10. *Ong Ah Chuan v. Public Prosecutor*, [1981] 1 A.C at 671(Sing.).

11. *Yong Vui Kong v. Public Prosecutor*, [2010] 3 SLR 489 (Sing.).

12. This has been the consistent position taken by the Singapore government in international forums. NATIONAL REPORT FOR SINGAPORE’S PERIODIC REVIEW ¶ 120 (2011) [hereinafter SINGAPORE UPB REPORT], available at www.mfa.gov.sg/upr/process.html.

13. The NGO MARUAH “recommends that the Government review the scope of capital offences, so as to ensure that the death penalty is imposed only in the most serious of crimes; the death penalty not be used in the context of group crimes, where the accused person has not personally intended to commit murder; all instances of the mandatory death penalty be immediately repealed and replaced with a discretion to impose the appropriate sentence up to death.” SUBMISSION OF MARUAH (WORKING GROUP FOR AN ASEAN HUMAN RIGHTS MECHANISM, SINGAPORE) in response to Singapore’s Universal Periodic Review, MARUAH ¶ 8; see also, JOINT SUBMISSION OF COSINGO (COALITION OF SINGAPORE NGOS) (AWARE, Challenged People’s Alliance and Network (CAN!), Deaf and Hard of Hearing Federation, Humanitarian Organization for Migration Economics; MARUAH, People Like Us, Singaporeans for Democracy, Transient Workers Count too) in response to Singapore’s Universal Periodic Review ¶ 17, available at <http://maruah.org/upr/>.

14. THE LAW SOCIETY OF SING., REPORT OF THE COUNCIL OF THE LAW SOCIETY ON THE DRAFT CRIMINAL PROCEDURE CODE BILL 2009 (2009) [hereinafter LAW SOCIETY CPC CONSULTATIONS], available at www.lawsociety.org.sg, at 58.

15. For an example of recent published public opinion on the death penalty, see Bryan Chow, *Let Courts Decide on Death Sentence for Minors*, STRAITS TIMES (Sing.), Aug. 29, 2011.

16. For example, consultations were undertaken with respect to the 2010 Criminal Procedure Code (CPC) and the 2011 amendments of the Employment Agencies Act. Consultations were also

opinion on criminal justice issues will influence or moderate the deterrent approach taken by the authorities in certain areas of the criminal law.

Given the severity of a significant number of Singapore's criminal laws, it becomes all the more important for an accused person to be guaranteed certain substantive and procedural rights throughout the criminal process. Article 9 (1) of the Singapore Constitution expressly states that no one is to be "deprived of his life or personal liberty save in accordance with law."¹⁷ The phrase "in accordance with law" has been judicially interpreted to include common law principles of natural justice. For example, in the case of *Haw Tua Tau v. Public Prosecutor*, the Singapore judiciary held that a "fundamental" natural justice rule in the area of criminal law is that one should not be punished for an offence "unless it has been established to the satisfaction of an independent and unbiased tribunal" that the individual committed the offence.¹⁸ Singapore courts have not attempted to define, comprehensively, what would amount to a principle of natural justice. In 2010, the Singapore Court of Appeal in *Yong Vui Kong v. Public Prosecutor* addressed apparent inconsistencies in previous cases to reaffirm that Article 9's guarantee of life and personal liberty by "law" includes fundamental principles of natural justice and, therefore, should not be read in a formalistic or positivist manner.¹⁹

Article 9 (2) of the Constitution states that where "a complaint is made to the High Court or any Judge thereof that a person is being unlawfully detained, the Court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the Court and release him."²⁰ The Supreme Court of Judicature Act further elaborates on this power of the High Court to issue an "order for review of detention."²¹ This order was formerly known in Singapore as the writ of habeas corpus. The Constitution also requires that where "a person is arrested and not released, he shall, without unreasonable delay, and in any case within 48 hours . . . be produced before a Magistrate." This enables the judge concerned to determine the reasons for the individual's detention and inquire into his

undertaken in preparing for Singapore's Universal Periodic Review. See SINGAPORE UPR REPORT, *supra* note 12, ¶ 2. Civil society actors have welcomed this and have indicated their desire for more "interaction" during these exercises. Imelda Saad, *Singapore's Human Rights Record under UN Scrutiny*, CHANNEL NEWSASIA (Feb. 25, 2011), <http://www.channelnewsasia.com/stories/singaporelocalnews/view/1113004/1/html>.

17. SINGAPORE CONSTITUTION, art. 9(1).

18. *Haw Tua Tau v. Public Prosecutor*, [1981] 2 MLJ 49 (Sing.).

19. *Yong Vui Kong*, *supra* note 11, ¶¶ 18–19.

20. SINGAPORE CONSTITUTION, art. 9(2).

21. SUPREME COURT OF JUDICATURE ACT, First Schedule. Ch. 32, O. 54, R. 1 (Sing.).

or her well-being. As will be further explained below, this constitutional provision was recently amended to allow a detainee to be produced before the court “by way of video-conferencing link (or other similar technology) in accordance with law.”²² In other words, a detainee no longer needs to be brought to court in person.

Upon being arrested, the individual is guaranteed certain rights pursuant to the Constitution. Article 9 (3) of the Constitution requires the individual to be “informed as soon as may be of the grounds of his arrest” and permitted “to consult and be defended by a legal practitioner of his choice.”²³ The individual’s right to counsel has, in particular, been subject to much debate, which will be considered in greater detail below. Singapore courts have consistently held that the right to counsel is not “immediate” in nature; rather, it is to be exercised in “reasonable time” and in view of investigative needs. A denial of counsel for up to two weeks has been deemed to be constitutional.²⁴ Singapore courts have further held that there is no positive obligation to inform an accused of his right to counsel.²⁵ The executive has defended and justified the right’s present scope, as striking “a balance between the rights of the accused and the public interest in ensuring thorough and objective investigations.”²⁶

Some rights that are commonly deemed important to the accused person are not explicitly recognized in Singapore’s Constitution; instead, they are set out in ordinary legislation. The primary piece of legislation governing criminal procedure in Singapore is the CPC. Section 22 (2) of the CPC recognizes the accused person’s right to

22. SINGAPORE CONSTITUTION, art. 9(2).

23. SINGAPORE CONSTITUTION, art. 9(3).

24. *Jasbir Singh v. PP*, [1994] 2 SLR 18 (Sing.). In the 2006 case of *Leong Siew Chor v. Public Prosecutor* the Singapore Court of Appeal held that the denial of counsel for 19 days after arrest was “justifiable in the circumstances” and was a “question of balancing an accused person’s rights against the public interest that crime be effectively investigated.” The court noted the statement concerned had been taken five days after the accused person’s arrest. *Leong Siew Chor v. Public Prosecutor*, [2006] SGCA 38 (Sing.).

25. *Rajeevan Edakalavan v. PP*, [1998] 1 SLR 815 (Sing.). In the 1998 case of *Rajeevan Edakalavan v. PP*, the Singapore High Court held that the Constitutional right to counsel is “a negative right” because the Constitution’s text states that an accused “shall be allowed” access to counsel but does not require the accused to be informed of his right to counsel. The court refused to find a positive obligation to inform the accused of this right, noting that to do so would “be tantamount to judicial legislation.”

26. K Shanmugam, vol. 87, Sing. Parl. Rep., May 19, 2010. The Minister of Law also cited a recent police study that showed that more than 90% of arrested persons are released within 48 hours to prevent unnecessary remand. Since 2006, the police have implemented an “access to counsel” scheme that grants the accused access to counsel before the remand period ends. The government has argued that affording immediate access to counsel may result in, at least in some cases, the individual being advised not to cooperate with the police. In deciding when counsel should be afforded, there needs to be consideration of law enforcement interests as well as the “public interest in making sure that the statements taken are taken in a process with integrity and the statements represent the truth.”

silence.²⁷ However, the CPC also provides that the court may draw “such inferences as may appear proper,” including an adverse inference if the accused elects not to give evidence in certain circumstances.²⁸ The ability to draw such an inference has been challenged as being in contravention of natural justice principles referred to in Article 9 of the Constitution.²⁹ However, its constitutionality was affirmed by the Privy Council on the basis that such an inference did not create a “compulsion” at law; rather it only provided the accused with a “strong inducement” to give evidence.³⁰

Apart from protective rights explicitly set out in the Constitution and ordinary legislation, Singapore’s courts have also exercised discretionary judicial powers to protect the accused when the individual circumstances of the case demand so. For example, in the 2008 case of *Yunani bin Abdul Hamid v. PP*, the Singapore High Court exercised its powers of revision to order a retrial as it was more than a decade before the accused was charged, pled guilty, and was convicted.³¹ This significant lapse of time was held to have compromised the accused person’s ability to conduct his defense and contributed to pressuring him to plead guilty. As a result, the case was sent by the Singapore High Court back to the lower courts for a retrial. Singapore courts have also dismissed overly delayed prosecutorial appeals. In *PP v. Saroop Singh*, the Singapore High Court dismissed an appeal by the prosecutor because 17 years had passed since the offence.³² In deciding whether to exercise its discretion, the High Court is to consider various factors such as which party was responsible for the delay and whether a fair trial is possible.

B. Judicial Developments: A More Inquiring and Critical Approach in Criminal Matters

Over the past few years, the Singapore judiciary has had the

27. CRIM. P. CODE § 22(2) (2010) (Sing.) (stating that a person questioned by the police “shall be bound to state truly what he knows of the facts and circumstances of the case, except that he need not say anything that might expose him to a criminal charge, penalty or forfeiture.”).

28. *Id.* § 291(3) (when the court calls on an accused to give evidence and the accused “refuses to be sworn or affirmed” or “having been sworn or affirmed, without good cause refuses to answer any question,” the court “may draw such inferences from the refusal as appear proper.” Section 291 (6) states that the power to draw an inference will not apply “if it appears to the court that his physical or mental condition makes it undesirable for him to be called on to give evidence.” It notes that this inference “does not compel the accused to give evidence on his own behalf” and that the accused “will not be guilty of contempt of court” if he chooses not to give evidence.).

29. *Haw Tua Tau v. Public Prosecutor*, [1981] 2 MLJ 49 (Sing.).

30. *Id.*

31. *Yunani bin Abdul Hamid v. PP*, [2008] 3 SLR (R) 383(Sing.).

32. *PP v. Saroop Singh*, [1999] 1 SLR (R) 241(Sing.).

opportunity to revisit and reconsider a number of the accused person's rights. In doing so, the courts have adopted a more critical approach in assessing and protecting the interests of those impacted by the criminal justice process. Courts have also closely interrogated the actions of the police and the prosecution, measuring these against legal standards and criticizing mistakes made. It is worth recalling for comparative purposes that Singapore's courts have not always taken such an interrogative approach, even when dealing with constitutional liberties. Writing in 1997, Thio criticized Singapore's courts for failing to actually engage in a "balancing" of individual liberties against national interests, and for giving a "presumptive right to statist or "community" interests."³³ By deferring to and accepting the executive's evaluation or characterization of a particular situation without independently examining it, Thio argued that Singapore's courts were adopting a "categorical" approach—as opposed to a "balancing" approach—when dealing with questions of constitutional rights.³⁴ In 2012, Thio noted that "in certain areas," Singapore courts are showing "a more holistic orientation in paying more attention to the fundamental right in question [...]"³⁵ One of these "certain areas," where change has been experienced, is the area of criminal justice.

To highlight the Singapore judiciary's change in approach, it may be useful to compare two cases—one earlier and one recent—which attend to the question of when an accused person should be afforded the right to counsel. As mentioned earlier, based on current official interpretations of the Singapore Constitution, an accused person does not have an immediate right to counsel. This right may be exercised in reasonable time, taking into consideration investigative needs. In the 1994 case of *Jasbir Singh and another v. Public Prosecutor*, the Singapore Court of Appeal summarily held that a two-week wait in the case of the accused was reasonable in nature without considering the actual facts of the case or the actual investigative needs.³⁶ Without closely examining why two weeks had been necessary for investigative purposes, the court simply concluded that "[t]here is a world of difference between "within a reasonable time" and "immediately;" and, in our view, two weeks in the present case was a reasonable period of

33. Thio, *supra* note 3, at 160. For an alternative to "balancing" in criminal justice issues, see Melanie Chng, *Modernising the Criminal Justice Framework: The Criminal Procedure Code 2010* 23 SINGAPORE ACADEMY OF LAW JOURNAL (2011) 23.

34. *Id.* at 163.

35. THIO LI-ANN, A TREATISE ON SINGAPORE CONSTITUTIONAL LAW at 631 (2011). See also, generally, Thio Li-ann and David Chong Gek Sian, *The Chan Court and Constitutional Adjudication – "A Sea Change into Something Rich and Strange?"* in THE LAW IN HIS HANDS – A TRIBUTE TO CHIEF JUSTICE CHAN SEK KEONG (Chao Hick Tin et al. eds., 2012).

36. *Jasbir Singh*, [1994] 2 SLR 18, ¶49 (Sing.).

time.”³⁷ In the 2008 case of *Tan Chor Jin v. Public Prosecutor*, the Singapore Court of Appeal affirmed that the constitutional right to counsel “cannot be said to be untrammelled or enduring and/or unwaivable right.” It went on, however, to note that in deciding whether an accused has “waived” his right to counsel, a “holistic approach” is to be adopted and “the competing interests (if any) of other concerned parties” considered as well as “whether any undue unfairness or prejudice” was caused to the accused.³⁸ Importantly, the court held that this presupposes “that the accused has already been given an opportunity to avail himself of his right to counsel.”³⁹ The court went on to consider the facts of the case and the actions of the different parties before concluding that the accused person’s right to counsel had not been contravened. The decision is noteworthy for the court’s willingness to identify and evaluate the interests of the accused person as well as that of other concerned parties.

Apart from recognizing the interests of the accused person, Singapore’s courts have increasingly recognized the interests of victims by directing the accused person to make compensation to the victim concerned. In the 2010 case of *Public Prosecutor v. AOB*, where the accused person had punched the victim in the face when the victim had intervened orally as the former slapped his daughter in public, the Singapore High Court decided to order the accused person to pay compensation to the victim though this had not been raised or considered by the lower court. In doing so, the court observed that compensation orders “are particularly suitable and appropriate for victims who may have no financial means or have other difficulties in commencing civil proceedings for damages against the offender.”⁴⁰ In a different case, *ADF v. Public Prosecutor*, which concerned the physical abuse of a domestic worker, the Court of Appeal noted that such compensation orders do not aim to punish the accused but aim to ameliorate difficulties faced by the victim. The court considered the particular circumstances faced by domestic workers: “When allegations of domestic maid abuse come to light and are investigated, the typical victim would often be left without income for some time. Recovering the lost income through the civil process may be difficult given that the victim might be unfamiliar with Singapore and the legal process here, and might wish to return to her home country speedily.”⁴¹ The court’s

37. *Id.*

38. *Tan Chor Jin v. PP*, [2008] 4 SLR 306, ¶ 54.

39. *Id.* ¶ 68.

40. *Public Prosecutor v. AOB*, [2011] 2 SLR 793, ¶ 23. The author would like to thank Adrian Loo and Prem Raj for bringing this case to the author’s attention.

41. *ADF v. Public Prosecutor*, [2010] 1 SLR 874, ¶ 158.

role in compensating victims has been strengthened by the 2010 CPC which requires judges to consider whether compensation should be made by the accused to victims if the former is convicted of the crime.⁴²

The work and practice of criminal justice agencies have come under judicial scrutiny of late, and their roles and responsibilities have been examined and delineated by Singapore's courts. In the 2011 case of *Muhammad bin Kadar and another v. Public Prosecutor*, the Singapore Court of Appeal held that the prosecutor has a common law duty to disclose certain evidence in addition to what is required under statutory law.⁴³ Any failure to do so which renders a conviction unsafe will result in an overturning of the conviction concerned.⁴⁴ The court additionally went on to emphasize that the duty of the prosecutor is "not to secure a conviction at all costs;" rather, he or she "owes a duty to the court and to the wider public to ensure that only the guilty are convicted."⁴⁵ Specifically, the court noted that the prosecutor's "freedom to act as adversary to defense counsel is qualified by the grave consequences of criminal conviction."⁴⁶ In a separate 2010 case, the Singapore High Court made a number of observations regarding the work of the Health Sciences Authority (HSA), which is the statutory body charged with drug testing duties. It stressed the need for the HSA to ensure that its internal procedure complied with the law and that a lack of human or other resources does not justify a failure to comply strictly with legal requirements.⁴⁷ In another 2010 case, the Singapore Court of Appeal criticized the work done by the prosecution's expert as falling short of recognized standards.⁴⁸

In these recent cases, Singapore's courts have identified a plurality of social actors with rights or responsibilities that should be recognized during the criminal justice process. There is always the danger that

42. CRIM. P. CODE § 359(1) (2010) (Sing.).

43. *Muhammad bin Kadar v. Public Prosecutor*, [2011] SGCA 32 (Sing.). For an overview of the case and its holdings, see Chen Siyuan, *The Prosecution's Duty of Disclosure in Singapore: Muhammad bin Kadar v. Public Prosecutor*, 11:2 OXFORD UNIVERSITY COMMONWEALTH LAW JOURNAL (2012) 207.

44. *Id.* ¶ 120.

45. *Id.* ¶ 200.

46. *Id.* ¶ 109.

47. *Lim Boon Keong v. Public Prosecutor*, [2010] SGHC 179, ¶¶ 41–42. As a follow-up to this case, the Singapore Court of Appeal has studied the HSA's urine-testing procedures in a separate case, concluding that they meet all legal standards. *Appeal Court Finds HAS Urine-Testing Procedures Adequate*, STRAITS TIMES (Sing.) (Aug. 11, 2011, 10:00PM), <http://sglinks.com/pages/1360206-appeal-court-finds-hsa-urine-testing-procedures-adequate>.

48. *Ong Pang Siew v. Public Prosecutor*, [2011] 1 SLR 606, ¶ 72 (Sing.). Singapore courts have exerted increased scrutiny over the prosecutor's case and evidence, resulting in convictions on a lesser charge or convictions being overturned. See also *Eu Lim Hoklai v. Public Prosecutor*, [2011] 3 SLR 167 and *Azman bin Mohamed Sanwan v. Public Prosecutor* [2012] 2 SLR 733. The author would like to thank Chen Siyuan for highlighting these two cases.

recognized “societal interests” may too easily trump the interests of the individual or serve as proxies for administrative or bureaucratic objectives, such as efficiency. It is, therefore, important for different interests to be clearly identified and assigned their appropriate value and weight. It should also be borne in mind that not all interests impacted by the criminal justice process have the same consequences or are of equal value. The accused person’s position is significantly different from that of others involved in the criminal justice process. Given the fact that the accused person’s fundamental liberties are at stake, extra care should be taken to ensure that the accused is treated fairly. The accused person’s interest in liberty is of a constitutional nature, and should be accorded due respect and protection.

C. Legislative Developments: Developing an Individualized Justice for the Accused Person

Before 2012, Singapore imposed the mandatory death penalty (MDP) on those found guilty of drug trafficking pursuant to the Misuse of Drugs Act (MDA). In 2012, changes to the MDP were introduced. The death penalty would no longer be mandatory in certain cases. In general, to qualify for this, an accused person would have to fulfill two conditions. First the accused person concerned must be a mere courier, as opposed to being involved in the supply or distribution of drugs.⁴⁹ Second, the Singapore Public Prosecutor must certify to the court concerned that “in his determination” the accused person has “substantively assisted” the Singapore Narcotics Bureau “in disrupting drug trafficking activities within or outside Singapore.”⁵⁰ Alternatively, the accused person must show he was suffering from “such abnormality of mind” that “substantially impaired his mental responsibility” for the offence concerned.⁵¹ In the former case, where the Public Prosecutor issues the certificate required, the court may decide to sentence the person to life imprisonment along with a minimum of 15 strokes of the cane.⁵² In the second case, involving abnormality of mind, the court may sentence the accused person to life imprisonment.⁵³ In this same year, the Singapore Penal Code was also amended to restrict the mandatory death penalty for murder to cases of intentional murder.⁵⁴ These amendments mean that Singapore’s courts will now have an important

49. Misuse of Drugs Act, § 33B (2)(a) & § 33B (3)(a).

50. Misuse of Drugs Act, § 33B(2)(b).

51. Misuse of Drugs Act, §33B(3)(b).

52. Misuse of Drugs Act, §33B(1)(a).

53. Misuse of Drugs Act, §33B(1)(b).

54. Penal Code, § 302(2).

role in deciding whether the death penalty should apply in cases of drug trafficking and unintentional murder.

The new 2010 CPC also introduced changes enhancing the discretionary role of courts. The CPC has been praised by all sides for introducing several community-based sentences (CBS) as alternatives to traditional forms of punishment. This enables the court concerned to tailor its response to the individual circumstances of the case. CBS are intended to apply to situations presenting rehabilitative potential, such as regulatory offences, younger offenders, and offenders with specific and minor mental conditions. The new CPC recognizes five types of CBS orders: (a) a mandatory treatment order (MTO); (b) a day reporting order (DRO); (c) a community work order (CWO); (d) a community service order (CSO); and (e) a short detention order (SDO).⁵⁵ A court may pass a CBS order comprising of one or more of these orders. In its Universal Periodic Review report, Singapore affirmed that it “believes strongly in the rehabilitation and reintegration of prisoners.”⁵⁶ While Singapore continues to maintain severe punishments for crimes deemed to be of particular social harm, such as drug trafficking, the CBS framework demonstrates the taking of a softer and case-specific approach when dealing with less serious offences.

This general move towards enhancing judicial discretion and individualized decision-making has also been affirmed by the executive. In 2012, the Minister of Law confirmed the government’s position of giving more discretion to courts over sentencing. He went on to note that mandatory sentences “are and should remain an exception.”⁵⁷ It is noteworthy that the Minister qualified his position by stating that judicial discretion in sentencing would be provided for only “[w]here possible, where practical, where it is realistic and where it does not substantially impact our crime control framework.”⁵⁸ During 2012 parliamentary debates about the appropriate scope of judicial discretion in cases of drug trafficking, the Minister rigorously defended the limited judicial discretion afforded by MDA amendments, emphasizing that such discretion should not be broadened in a way that undermines the deterrent effect of the death penalty.⁵⁹ Regardless, such steps in giving the judiciary more discretion over sentencing matters highlight the ever more important role played by legal representatives in the criminal justice process.

55. Criminal Procedure Code, § 336. For an overview of these sentences and the objective of this scheme, see *THE CRIMINAL PROCEDURE CODE OF SINGAPORE*, 501–04 (Jennifer Marie et al. ed., 2012).

56. SINGAPORE UPR REPORT, *supra* note 12, ¶ 125.

57. K. Shanmugam, vol. 89, Sing. Parl. Rep., Nov. 14, 2012.

58. *Id.*

59. *Id.*

Lawyers are best positioned to identify and bring relevant facts and legal arguments to the attention of judge. The new CPC strengthens the role played by lawyers by formalizing and defining certain duties of disclosure between the prosecution and the defense. Prior to this, the prosecution would be legally required to disclose certain documents only if the case was heard before the High Court.⁶⁰ For summary cases heard at the Subordinate Courts level, discovery was generally an informal process, limited in nature and governed by practice.⁶¹ The 2010 CPC specifies the documents that are to be exchanged between the defense and the prosecution as well as the order in which they are to be presented, in cases before the Subordinate Courts as well as the High Court. The court may decide to discharge the defendant if the prosecution fails to meet their discovery obligations, and it may decide to draw an adverse inference against the defendant if the defense fails to meet theirs.⁶² After the defendant indicates his or her desire to claim trial in either the District Court or the High Court, the prosecution is required to serve a “case for the prosecution” comprising the charge, a summary of facts, the names of prosecution witnesses, a list of exhibits, and any statement made by the defendant to the police that the prosecution intends to use.⁶³ Upon receipt of these documents, the defendant must then supply a “case for the defense” composed of the defense’s summary of facts, the names and particulars of defense witnesses, and explanations of any objections made to issues of fact or law raised by the prosecution.⁶⁴

The scope of these new discovery rights and obligations was influenced by expediency concerns as well as the interests of witnesses. When introducing the CPC in parliament, the executive was questioned on why discovery rights apply only to cases heard before the High Court and most cases heard before the District Court instead of applying to all cases. The minister-in-charge explained that the Subordinate Courts deal with around 250,000 charges a year.⁶⁵ Parliamentary questions were also raised as to why the discovery process did not include access to prosecutorial witness statements. This exclusion was defended by the

60. Criminal Procedure Code (Former Version), § 150 (Sing.).

61. In practice, the prosecution discloses only the charge specifying the nature of the offence, the police’s first information report, the arrest report, the defendant’s shorter cautioned statement and a pathologist’s report. Amarjeet Singh, *Equality of Arms—the Need for Prosecutorial Discovery*, L. GAZETTE 3 (2005) available at <http://www.lawgazette.com.sg/2005-9/Sep05-feature3.htm>.

62. Criminal Procedure Code 2010, § 169 (Sing.).

63. *Id.* § 162.

64. *Id.* § 163 (Sing.). In addition to these statutory duties, the prosecution would also have common law discovery obligations towards the accused, as confirmed by the Court of Appeal in *Muhammad bin Kadar v. PP* [2011] 3 SLR 1205 at ¶ 113.

65. K. Shanmugam, vol. 87, Sing. Parl. Rep., 19 May, 2010.

government as necessary because witnesses may be unwilling to come forward if they are aware that their statements are supplied to the accused. There were also concerns that witnesses may be threatened by the accused person.⁶⁶

Alongside legislative developments aimed at ensuring justice for the accused person, officials continue to emphasize the importance of maintaining the efficiency of Singapore's criminal justice system. For example, the Singapore Constitution permits the police to detain an individual up to 48 hours, beyond which police must apply for a court order.⁶⁷ Prior to 2010, the application process required the arrested person to be presented before the court. In 2010, the Constitution was amended to permit individuals to be presented before the court via video link. This change was argued to "enhance the management and security of the arrested person" as well as "lead to more efficient use of limited manpower resources."⁶⁸ In parliament, several legislators voiced concerns about how this change may render an arrested individual more vulnerable to police abuse as the judge may not be able to assess accurately whether the individual has been abused if he or she is not physically before the court.⁶⁹ The minister-in-charge responded by explaining that the accused person would be "in a separate room" without any police officer present. The accused person would have a "full visual of the court, of the public gallery, of the judge, of his defense lawyer, and of the prosecution In fact, he will have a sharper view of everyone." The minister went on to assure Parliament that "there is no question that the judge will not be able to see if a person in custody is under duress."⁷⁰

III. FRONT-END PROCESSES: ENSURING LEGAL REPRESENTATION THROUGH PRO BONO EFFORTS

In order for a court to deliver individualized and differentiated justice, it needs to know and understand all the facts relevant to the individual's case. Having skilled and conscientious counsel makes a substantial difference as to whether an accused person's story is fully placed before a court. The CPC's formalized disclosure procedure and the Singapore Court of Appeal's recognition of common law disclosure duties increase the potential impact of effective legal representation by enhancing

66. *Id.*

67. SINGAPORE CONSTITUTION, art. 9.

68. Wong Kan Seng, vol. 87, Sing. Parl. Rep., Apr. 26, 2010.

69. Sylvia Lim, vol. 87, Sing. Parl. Rep., Apr. 26, 2010.

70. Wong Kan Seng, vol. 87, Sing. Parl. Rep., Apr. 26, 2010.

access to prosecutorial evidence.⁷¹ Singapore's legal community has welcomed the official authorities change in approach to criminal justice issues. The ACLS, a local association of criminal lawyers, has lauded recent legislative and administrative initiatives of the Minister of Law and the Attorney General. It has further observed that Singapore courts have demonstrated "greater sympathy and compassion for the plight of the less privileged."⁷² The ACLS has in turn called upon the criminal bar to "rise to the occasion" in recognition of the important role played by defense lawyers in ensuring the "stability and integrity of the criminal justice system" through the defense of accused persons.⁷³

As explained above, in Singapore, the right to counsel is not immediately exercisable upon arrest. It is subject to investigation needs. There is also no legal obligation to inform the accused of this right. The narrow scope of this right in Singapore reflects a general trust in the investigative and prosecutorial authorities. Such trust in the authorities, as well as its risks, has been recognized by the Singapore Court of Appeal, which observed: "All in all, it seems that public policy is in favor of trusting the integrity of the police, and this gives them a certain freedom to conduct their investigations more effectively and efficiently . . . However, such an approach comes with certain inherent risks."⁷⁴ In contrast, defense lawyers have at times been viewed by the authorities with a certain level of distrust. During a 2010 parliamentary debate, the Minister of Law defended existing limits to the right to counsel, noting that if access to counsel was given immediately, "At least, in some cases, the advice would be 'don't cooperate with the Police.'"⁷⁵

The Law Society has suggested that Article 9 (3) of Singapore's Constitution, which requires access to counsel to be granted "as soon as may be" should be interpreted literally.⁷⁶ While public interest may at times require access to be reasonably denied, this should be an exception rather than the rule. The Law Society recommended that when the accused person states that he or she wishes to exercise his or her right to counsel, he or she should be given up to two hours to contact a lawyer during office hours.⁷⁷ Investigative authorities should start interviewing

71. Criminal Procedure Code; *Muhammad bin Kadar v. Public Prosecutor*, [2011] SGCA 32 (Sing.).

72. *Editorial: A Golden Age? Pro Bono*, Association of Criminal Lawyers of Singapore, 7, No. 1, Feb. 2011 at 1.

73. *Id.*

74. *Muhammad bin Kadar v. Public Prosecutor*, [2011] SGCA 32, ¶ 58 (Sing.).

75. K. Shanmugam, vol. 87, Sing Parl. Rep., May 19, 2010.

76. LAW SOCIETY CPC CONSULTATIONS, *supra* note 14 at 16.

77. *Id.* at 21.

the accused person only after he or she has consulted with counsel.⁷⁸ Presently, the authorities are not required to inform accused persons that they have such a right to counsel. Accused persons need to be informed of their rights so that they can make an informed judgment as to whether, and as to how, they would like to exercise these rights. The Law Society noted that it is “counterintuitive” to state that an accused person has a right to counsel without requiring him or her to be informed of this right, and how he or she “can go about contacting a lawyer.”⁷⁹ Accordingly, the Law Society proposed that arresting officers be required to inform accused persons of this right, verbally or in writing.⁸⁰

A. Recognizing the Contributions of Defense Counsel in Singapore

While there have been no constitutional or legislative efforts to amend or expand the right to counsel, Singapore authorities have increasingly sought to acknowledge and recognize the important role played by defense counsel.⁸¹ Singapore’s courts have, in a number of cases, formally recorded their praise and appreciation of the dedicated work done by defense counsel on behalf of their clients. In the case of *XP v. Public Prosecutor*, where the accused person’s conviction was overturned on appeal on the basis that the prosecution had failed to prove their case beyond reasonable doubt, the Singapore High Court formally recorded its “appreciation to counsel for the commendable industry they have so ably demonstrated in the preparation and presentation of their respective cases.”⁸² The judge went on to state, “[w]hile I have not accepted a number of points made by counsel, I have nevertheless found most of them helpful in arriving at my final determination.”⁸³ Similarly, in the *Kadar* case, where the accused person also had his conviction overturned, the Singapore Court of Appeal’s judgment officially recognized the defense counsel’s “impassioned advocacy” and “commendable conscientiousness,” crediting him “for placing on the record of proceedings many of the facts we have referred to above.”⁸⁴ It is undeniable that defense lawyers play an important role

78. *Id.* at 23.

79. *Id.* at 20.

80. *Id.*

81. The Singapore Attorney General has observed through his dialogues with defense counsel that “this segment of our profession has been under-appreciated and should be encouraged.” Attorney General Sundaresh Menon, *Speech of the Attorney General Sundaresh Menon SC*, Opening of Legal Year 2011, Jan. 7, 2011, ¶ 10 [hereinafter *2011 Attorney General’s Speech*].

82. *XP v. Public Prosecutor*, [2008] 4 SLR (R) 686, ¶ 100 (Sing.).

83. *Id.*

84. *Muhammad bin Kadar v. Public Prosecutor*, [2011] SGCA 32, ¶ 207 (Sing.).

in protecting their client's rights and interests. The Singapore Chief Justice has noted how defense counsel bear a "crucial responsibility" in defending their clients against "the forensic might" of the state's prosecutorial and investigative services.⁸⁵ By clearly presenting the relevant facts and laws, legal representatives assist the court in its decision making process.

In the not so distant past, defense counsel in Singapore used to observe, worryingly, "a growing perception of distrust" between the prosecution and defense counsel.⁸⁶ In a 2011 speech, the Singapore Attorney General noted that the "successful administration of criminal justice rests on the collaborative efforts" between the prosecution and the criminal bar.⁸⁷ Informal and formal efforts have been made by the official authorities and private practitioners to build new collaborative relationships. The Minister of Law and the Attorney General have both made efforts to meet with the legal community to understand more fully their concerns and initiate mutual projects.⁸⁸ For example, during the drafting of the CPC, the Ministry of Law consulted with various members of the legal community, including the Law Society and the ACLS.⁸⁹ The Law Society and the ACLS both submitted detailed consultative reports on the draft CPC to the government.⁹⁰ A number of these proposals were eventually taken onboard and incorporated into the final draft adopted by parliament. The Ministry of Law has engaged defense counsel on issues such as police investigative skills and recidivism rates.⁹¹ A number of joint projects have been undertaken at the Attorney General's Chambers, including the formulation of a joint code of conduct for the prosecution and the defense.⁹² This joint code of practice aims to "promote a smooth conduct of criminal proceedings in a spirit of mutual respect and cooperation."⁹³

These efforts take place against the Singapore legal community's concern that it is increasingly difficult to persuade younger lawyers to practice and form an expertise in criminal law. In Singapore most defense counsel come from small to medium-sized law firms. The fees received by defense lawyers are significantly lower than that

85. 2011 Chief Justice Response, *supra* note 8, ¶ 8.

86. Wendell Wong, *New Beginnings: Towards a Spirit of Camaraderie*, LAW GAZETTE, Dec. 27, 2011.

87. 2011 Attorney General's Speech, *supra* note 81, ¶ 8.

88. *A Golden Age*, *supra* note 72, at 1.

89. *Id.*

90. LAW SOCIETY CPC CONSULTATIONS, *supra* note 14; *Feedback on the Proposed Amendments to the Criminal Procedure Code*, Association of Criminal Lawyers of Singapore, Feb. 28, 2009.

91. *A Golden Age*, *supra* note 72, at 1.

92. *Id.*

93. 2011 Attorney General's Speech, *supra* note 81, ¶ 9.

commanded by their colleagues practicing commercial law. As observed by the Singapore Attorney General, these lawyers predominantly serve “the average Singaporean.” Singapore’s Chief Justice has similarly underscored the need to encourage younger lawyers to get involved in criminal practice, which does not pay as well as commercial work. Apart from meeting an essential public need that largely impacts ordinary citizens, a highly qualified and committed criminal bar contributes to the maintenance of a fair criminal justice system. The Attorney General has noted that “a vibrant Criminal Bar” is essential to maintaining “public confidence in the criminal justice system.”⁹⁴

B. Criminal Legal Aid and Pro Bono Efforts

Such official recognition of the important role played by defense counsel has been accompanied by an encouragement of on-the-ground pro bono initiatives. These initiatives play an important role in ensuring that all individuals, regardless of their economic circumstances, have access to legal representation. In 2010, the Singapore Chief Justice noted with concern that accused persons represent themselves in about one-third of criminal cases.⁹⁵ The Singapore Attorney General and the Singapore Chief Justice have both emphasized the importance of, and the need to promote, pro bono criminal legal work among private practitioners.⁹⁶ Indeed, to meet this need for legal representation, the Chief Justice has considered consulting the Law Society on the feasibility of reviving the “dock brief” system, based on which the court may appoint any lawyer who is available and who happens to be in court to represent an indigent.⁹⁷

In Singapore, the state provides legal aid for civil cases but not for criminal cases.⁹⁸ As explained by the authorities, this aims to avoid the “paradoxical” situation whereby “public funds should be used to defend an accused person which the State has decided ought to be charged in court and use public funds at the same time to get him off.”⁹⁹ More

94. *Id.* ¶ 4.

95. 2010 Chief Justice’s Keynote Address, *supra* note 6, ¶ 6.

96. 2011 Chief Justice’s Response, Opening of Legal Year 2011, *supra* note 8, ¶¶ 9, 10.

97. 2010 Chief Justice’s Keynote Address, *supra* note 6, ¶ 2.

98. The Legal Aid Bureau, which is part of the Ministry of Law, provides pro bono legal advice on civil matters to individuals who satisfy a financial eligibility test. In general, the Legal Aid and Advice Act provides that only those with a disposable income of not more than \$10,000 a year and a disposable capital of not more than \$10,000 a year satisfies this means test. The Director is given discretion under the Legal Aid and Advice Act to provide certain deductions if the applicant is facing “hardship.” However, it should also be noted that section 8 (3) of the Legal Aid and Advice Act authorizes the Director to “refuse legal aid if it appears to him unreasonable that the applicant should receive it in the particular circumstances of the case.” Legal Aid and Advice Act, Ch. 160, § 8(3).

99. Jayakumar, Sing., *Parliamentary Debates*, vol. 64, July 7, 1995.

recently, the Singapore Chief Justice explained that an across-the-board state-funded criminal legal aid may “be a social burden on the taxpayer if given too liberally to all indicted defendants.”¹⁰⁰ Due to tax implications, there is a need for “a sensible balance” to be struck.¹⁰¹ This balance, struck as of now, limits the state’s provision of criminal legal aid to capital offences through the Legal Assistance Scheme for Capital Offences (LASCO). LASCO is, however, not based on statute.¹⁰² Under this scheme, all defendants who face the death penalty in the High Court are automatically entitled to legal representation by volunteer lawyers on the LASCO’s Register of Counsel.¹⁰³ As of 2011, there are 200 lawyers on LASCO’s Register.¹⁰⁴ Defendants who face serious “non-capital” charges pursuant to the Corruption, Drug-trafficking, and Other Serious Crimes (Confiscation of Benefits) Act may also be afforded legal representation. Defendants are not subject to either a means or a merits test under this scheme.

Presently, the bulk of criminal legal aid in Singapore is provided by two pro bono schemes run by the Law Society and the ACLS. The Law Society established its Criminal Legal Aid Scheme (CLAS) in 1985. CLAS deals with offences falling within a list of specific statutes,¹⁰⁵ and does not deal with cases involving the death penalty. It also provides representation in Community Court cases.¹⁰⁶ To qualify for aid under

100. Chief Justice Chan Sek Keong, Speech at Dinner of the Legal Assistance Scheme for Capital Offences (LASCO), reproduced in Pro Bono, Association of Criminal Lawyers of Singapore, Feb. 2011, ¶ 2.

101. *Id.* ¶ 5.

102. LASCO Request Form, available at <http://app.supremecourt.gov.sg/data/doc/ManagePage/84/LASCO%20Request%20form.pdf>; LASCO Guidelines for Assigned Counsel, <http://app.supremecourt.gov.sg/data/doc/ManagePage/84/LASCO%20Guidelines-Assigned%20Counsel.pdf>.

103. Under the LASCO scheme, defendants are represented by two counsels: one lead and one assisting counsel. Volunteer lawyers who do not have sufficient years in practice or who have not had enough experience in criminal trials may seek permission from the Supreme Court Registrar to appear as Junior Assisting Counsel. In collaboration with the Law Society, the Supreme Court has undertaken two developments aimed at improving the quality of legal representation provided under LASCO. First, a LASCO selection panel comprised of representatives of Singapore Senior Counsel, the Law Society of Singapore, and the Supreme Court will “oversee and approve” the placement of counsel on the LASCO Registrar of Counsel. Second, the Law Society will extend and develop legal support services to assist LASCO counsel. See *Supreme Court Launches New Initiatives for the Legal Assistance Scheme for Capital Offences (LASCO): Enhancing the Standards of the Criminal Bar and Providing Greater Support for LASCO Counsel*, Singapore Supreme Court, May 20, 2011.

104. *Id.* at 4.

105. These are the Arms & Explosives Act; the Arms Offences Act; the Corrosive & Explosive Substances & Offensive Weapons Act; the Dangerous Fireworks Act; the Enlistment Act; the Explosive Substances Act; the Films Act; the Miscellaneous Offences (Public Order and Nuisance) Act; the Misuse of Drugs Act; the Penal Code; the Prevention of Corruption Act; the Undesirable Publications Act; the Vandalism Act; Sections 65(8) and 140(1)(i) of the Women’s Charter; and the Misuse of Computer Act.

106. For further information on the Singapore Community Court, which is part of the Singapore Subordinate Court, see <http://app.subcourts.gov.sg/criminal/page.aspx?pageid=10819>.

CLAS, the accused must not intend to plead guilty and must claim trial.¹⁰⁷ CLAS is open to all nationalities, but applicants are subject to a means test. If an accused is found to have been dishonest when providing information to CLAS, legal representation will be withdrawn. Accused persons are required to fill out an application form that includes personal and offence-related particulars, and complete a means test. Receipt of this application form is then followed by a CLAS interview. Two weeks upon receiving the application form and all relevant documents, a volunteer lawyer will be assigned by CLAS to represent the accused person. CLAS maintains a list of private practitioners who are called to the bar in Singapore and who have agreed to volunteer on CLAS cases. While the volunteer lawyer does not charge for his or her legal services, he or she has the discretion to ask the assigned accused person to pay for administrative expenses.

In 2005, a group of Singaporean lawyers who specialize in criminal defense established the Association of Criminal Lawyers in Singapore (ACLS). When the ACLS was first established, it was primarily intended to serve as a forum where its members could engage in public debate on criminal legal issues.¹⁰⁸ It started providing pro bono legal services when approached by the authorities to assist in Community Court cases. Currently, ACLS members provide pro bono legal representation in cases referred to the ACLS by the Singapore Subordinate Courts, specifically the Community Court and the Bail Court. The organization's members deal with about 100 pro bono cases a year, out of which approximately 80% are referrals from the Community Court.¹⁰⁹ Its pro bono program is structured on a more informal basis as compared to that run by CLAS. The organization maintains a roster of members based on which pro bono cases are assigned.¹¹⁰ It does not independently administer a means test; instead, ACLS pro bono cases are based on court referrals. ACLS members note that the court referral system has relieved them of the need to administer a means test, which requires a considerable amount of time and expertise.¹¹¹ This system of court referrals also functions as a merits-based control mechanism. The judiciary has been very supportive of ACLS pro bono work, and ACLS members recognize that such support has been crucial to facilitating much of their pro bono efforts.¹¹²

107. http://www.lawsociety.org.sg/public/you_and_the_law/criminal_legal_aid_scheme.aspx.

108. Interview with ACLS leaders, 29 July 2011.

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

D. Developing a Service-Oriented Legal Profession

Many Singapore lawyers who are active in pro bono work explain their involvement in value-based terms.¹¹³ Such a responsibility is justified because the legal community retains a monopoly on legal services, and it reflects a professional identity based on service.¹¹⁴ In seeking to promote pro bono work, its advocates have also emphasized the instrumental benefits of pro bono work to individual lawyers and law firms.¹¹⁵ Pro bono work gives younger lawyers or those with no previous exposure in a particular legal area a chance to gain legal expertise and courtroom experience. Law firms with formal pro bono programs may stand a higher chance of attracting and recruiting law school graduates who wish to work for a firm that is socially conscious and also gives them an opportunity to do pro bono work. There continues to be debate as to how best to translate pro bono aspirations into reality, such as whether pro bono work should be made mandatory or remain voluntary in nature. In Singapore, it was suggested in parliament that pro bono be made part of continuing professional development.¹¹⁶ Most appear to be of the opinion that pro bono involvement should remain voluntary.¹¹⁷ Since 2012, the Singapore Institute of Legal Education has been working with Singapore's two law schools to make pro bono involvement a mandatory part of law school education.¹¹⁸

Providing indigent accused persons who cannot afford legal counsel with criminal legal aid is essential to treating the individual with dignity. Most individuals confronted with the criminal justice system find it foreign and overwhelming. The stakes for these individuals are higher than those faced with civil proceedings. In such cases, legal representation should not be seen as merely protecting the accused person's interests. It plays the additional and important role of treating individuals confronted by the weight and consequences of the criminal process with dignity, by ensuring that they are assisted by knowledgeable and effective counsel throughout the process. It is important that accused persons feel that they are being treated fairly by the criminal process. Ensuring access to legal representation, regardless

113. For an overview of the main reasons in favour of pro bono in the US context, including the debate for and against mandatory pro bono requirements, see Deborah L. Rhode, *Cultures of Commitment: Pro Bono for Lawyers and Students*, 67 *FORDHAM L. REV.* 2415, 2418–25 (1998).

114. *Id.* at 2419.

115. *Id.* at 2420.

116. Michael Palmer, Sing. Parl. Rep. Mar. 9, 2011.

117. *Id.*

118. Chief Justice Chan Sek Keong, *Opening of Legal Year 2012: Response of Chief Justice Chan Sek Keong*, Sing. Acad. L. ¶ 8 (Jan. 6, 2012), http://www.sal.org.sg/content/PR_speeches.aspx.

of the accused person's social or economic status, is therefore necessary and important.

As mentioned above, in Singapore, legal representation for indigent accused persons continues to be predominantly provided for through voluntary pro bono efforts. As observed by legal scholar Richard Abel, there are a number of different mechanisms by which important services may be provided in society: the government, the market, philanthropy, or self-help.¹¹⁹ Each mechanism brings with it unique advantages and disadvantages. Depending on philanthropy for the delivery of an essential public good—like justice—may not guarantee a supply that is adequate or regulated. State provision of such services guarantees security and quality.¹²⁰ On the other hand, state monopolies may result in bureaucratic waste or inefficiency.¹²¹ The choice between philanthropy or the state need not be mutually exclusive. For example, the case referral system established between ACLS and the Community Court is based on a cooperative relationship between the state and a private initiative. Such a case referral system helps the ACLS save on the costs required to establish and administer a means test. One possible disadvantage of this system is that only cases deemed deserving by the court will be referred to ACLS for legal aid. In light of its success thus far, more creative collaborations between the state and private initiatives should be explored. The state's guarantee of legal aid and access to justice need not take the form of establishing and running an independent legal aid scheme. The authorities may indirectly support private initiatives by providing financial funding or infrastructure. Such state involvement in the provision of legal aid is important for practical as well as normative reasons. Justice is a public good and to the extent that it requires equal access to legal representation, it is essential for the state to invest, directly or indirectly, in criminal legal aid. By doing so, the state signals its commitment to ensuring that accused persons are treated with dignity.

IV. BACK-END PROCESSES: CRIMINAL REVISION AS A "SAFETY NET"

The pro bono initiatives described above focus on criminal defense. Neither the Law Society nor the ACLS run programs which focus on the back-end of the criminal justice process, specifically cases which have

119. Richard L. Abel, *State, Market, Philanthropy, and Self-Help as Legal Services Delivery Mechanisms*, in *PRIVATE LAWYERS AND THE PUBLIC INTEREST: THE EVOLVING ROLE OF PRO BONO IN THE LEGAL PROFESSION* 295 (Robert Granfield & Lynn Mather eds., 2009).

120. *Id.* at 299–300.

121. *Id.* at 299.

exhausted all avenues of appeal.¹²² Such back-end review plays a limited but important *ex post facto* role by addressing injustices which have slipped through the system, such as cases of wrongful conviction. It is premised on two important assumptions: first, it acknowledges the fallibility of human decision-making and institutional structures; second, it commits itself to securing a just outcome for the accused person regardless of time that has elapsed. Front-end legal defense and back-end review are in fact complementary. In particular, front-end processes do not accommodate factual discoveries that come to light after the appeals process has been concluded.

In general, the ordinary Singaporean retains a high level of trust in the Singapore judiciary and civil service. This has contributed to the popular perception that there is a very low risk of wrongful convictions by the Singapore criminal justice system. According to a public perception survey conducted by the Subordinate Courts in 2006, 95% of respondents were of the opinion that “there was trust and confidence in the fair administration of justice in Singapore,” 96% “agreed that the courts administered justice fairly to all regardless of actions by or against individuals, companies or the government,” and 97% “agreed that the courts administered justice fairly to all regardless of language, religion, race or social class.” As observed by some local commentators, Singapore has put in place a number of safeguards—such as stringent corruption laws that guard against abuse of power—which differentiate it from other jurisdictions and which ensure a low risk of wrongful convictions.¹²³ At this point, it should be noted that while such safeguards may ensure a low risk of wrongful convictions, they do not guarantee the complete absence of wrongful convictions. The Singapore High Court, through the criminal revision process that will be further explained below, has reviewed and dealt with a number of wrongful conviction cases. While such cases are far and few compared to the number of cases actually processed by Singapore’s courts, they demonstrate that mistakes may be made by a system that generally works with integrity and accuracy.

122. Criminal Procedure Code 2010, § 374(4) (Sing.). The procedure for criminal appeals is set out in the CPC. According to Section 374 of the CPC, an appeal “may lie on a question of fact or a question of law or on a question of mixed fact and law.” A convicted person may make an appeal “against his conviction, the sentence imposed on him or an order of the trial court.” The Singapore court system consists of the Supreme Court, which is composed of the High Court and the Court of Appeal, and the Subordinate Courts. For cases in which the High Court exercises original jurisdiction, an appeal may be made to the Court of Appeal. If original jurisdiction is exercised by the Subordinate Courts, an appeal may be made to the High Court. Cases which have exhausted this appeals process will generally have recourse only with the clemency procedure, which is a political rather than legal avenue.

123. See generally Chen Siyuan & Eunice Chua, *Wrongful Convictions in Singapore: A General Survey of Risk Factors*, 28 SING. L. REV. 98 (2010).

Indeed, due to the paucity of empirical research on this matter, public perception of the rarity of wrongful convictions in Singapore is not based on fact. Even if such rarity is proven, because a criminal conviction so seriously impacts an individual's life, the infrequency of wrongful convictions cannot justify inaction. There is a need for society to put in place measures that address the possibility of wrongful convictions. This is particularly so when the appeals process is clearly not structured to deal with errors that emerge only over time. Overseas research has identified a number of common causes of wrongful convictions, including bad lawyering, mistaken eyewitness identifications, faulty forensic evidence and false confessions.¹²⁴ Empirical research on this issue in Singapore is in its nascent stages, and further efforts are required to identify and assess the risk factors that are applicable in Singapore's context. Two important papers on this topic have recently been published in Singapore. In one of these, local commentator Audrey Wong, explains how the lack of adequate or effective legal representation has contributed to cases of wrongful conviction which were reviewed by the High Court.¹²⁵ Academic commentators, Chen Siyuan and Eunice Chua, note that "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," such as Singapore's tough approach to corruption.¹²⁶ All three commentators, however, stress that further research on this issue is necessary and propose improvements to the system. These pioneering and insightful works have been crucial to starting academic discussions on the issue, and have set the stage for future locally-based research efforts. Contextual studies are important as the causes of wrongful convictions may differ from country to country. In other words, the risk factors which operate overseas may not be applicable to Singapore. There needs to be more context-specific research before conclusions can be made on the state of wrongful convictions in Singapore.

Recent judicial and legislative attempts to define and emphasize the responsibilities of various criminal justice agencies reflect an increased

124. Krieger sets out a list of common factors contributing to wrongful conviction in the US: inaccuracy of eyewitnesses, perjured testimony, prosecutorial misconduct, inadequate defense representation, police misconduct and the pretrial criminal procedural process. Steven Krieger, *Why Our Justice System Convicts Innocent People and the Challenges Faced by Innocence Projects Trying to Exonerate Them*, 14 NEW CRIM. L. REV. 333, 310 (2011). In his empirical study based on the exoneration of individuals in the US based on post-conviction DNA testing, Garrett notes that the main types of evidence leading to wrongful convictions are mistaken eyewitness identifications, faulty forensic evidence, informant testimony and false confessions. Brandon L. Garrett, *Judging Innocence*, 108 COLUM. L. REV. 55, 112 (2008).

125. Audrey Wong, *Criminal Justice for All? Wrongful Convictions and Poverty in Singapore*, 28 SING. L. REV. 67 (2010).

126. Chen & Chua, *supra* note 123, at 122.

awareness of, and concern over, the possibility of system imperfections. Due to the high level of trust built into the system and the extensive powers afforded to criminal justice agencies within the criminal process, mistakes may go undetected for a long time and may have particularly serious consequences. In a recent case, the Court of Appeal observed that the legal framework applicable to the recording of statements by police officers “statutorily assume[s]” that police officers of a certain rank are “competent” and “will discharge their obligations conscientiously.”¹²⁷ This level of confidence that is invested in the authorities “comes with certain inherent risks.”¹²⁸ To counteract this, Singapore courts have demonstrated—particularly in recent cases—a willingness to scrutinize the conduct and practices of various agencies to prevent any injustice to the individual. For example, in the *Kadar* case, the Singapore Court of Appeal affirmed that it would take a “firm approach” to exclude statements taken with procedural irregularities if this has caused the prejudicial value of the statement to outweigh its probative value.¹²⁹ In the same case, the Court of Appeal laid down a number of common law principles on the disclosure of prosecutorial evidence.

A. Dealing with Wrongful Conviction Through Criminal Revision

Cases of wrongful conviction in Singapore have been dealt with by the Singapore High Court through its powers of criminal revision. These revisionary powers are relatively unusual and should be distinguished from the appeals procedure. The latter is not expressly recognized in Singapore’s constitution but is set out in ordinary legislation. At this point, it should be noted that the Singapore judiciary is composed of the Supreme Court, which includes the Court of Appeal and the High Court, and the lower Subordinate Courts. In general, the High Court exercises original jurisdiction in “more serious offences” such as “murder, culpable homicide not amounting to murder, drug trafficking, arms offences, kidnapping, rape, and carnal intercourse.”¹³⁰ For cases in which the High Court exercises original jurisdiction, an appeal may be made to the Court of Appeal. If original jurisdiction is exercised by the Subordinate Courts, an appeal may be made to the High Court.

According to Section 374 of the CPC, an appeal “may lie on a question of fact or a question of law or on a question of mixed fact and law.” A convicted person may make an appeal “against his conviction,

127. *Muhammad bin Kadar v. Public Prosecutor*, [2011] SGCA 32, ¶ 58 (Sing.).

128. *Id.* ¶ 58.

129. *Id.* ¶ 60.

130. <http://app.supremecourt.gov.sg/default.aspx?pgID=1362>.

the sentence imposed on him or an order of the trial court.” However, the right to appeal is limited in nature. Section 375 states that “an accused who has pleaded guilty and has been convicted on that plea in accordance with this Code may appeal only against the extent or legality of the sentence.” The appeal procedure is set out in further detail in the CPC. For example, Section 377 requires a notice for appeal to be lodged by the appellant within 14 days with the Registrar of the original trial court.

In addition to undertaking appeals, the Singapore High Court has powers of revision in criminal matters. This process is set out in Section 23 and Section 26 of the Supreme Court of Judicature Act which recognizes that the High Court may “exercise powers of revision in respect of criminal proceedings and matters in subordinate courts” and “call for and examine the record of any criminal proceeding before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of that subordinate court.”¹³¹ The CPC recognizes and further elaborated on this revisionary power.¹³² Local academic commentators have observed how this revisionary power of the High Court over lower courts may be historically explained.¹³³ During the colonial era, lower court judges may not be legally trained and the High Court’s revisionary powers were intended to address any errors made by lower court judges. Due to this, some commentators have characterized these revisionary powers as “paternal” in nature.¹³⁴ Even if the High Court’s revisionary powers were historically intended to deal with the limitations of lower courts, it performs an important and necessary corrective function today. As explained above, the right to appeal is governed by strict deadlines while mistakes or injustices may emerge only with time.

As recognized by the High Court in *Yunani*, the High Court’s power of criminal revision was legislated to “ensure that no potential cases of serious injustice are left without a meaningful remedy or real redress.”¹³⁵ Indeed, it held that the court would “fail in its constitutional duty . . . if it remains impassive and unresponsive to what may objectively appear to be a potentially serious miscarriage of justice.”¹³⁶ The Singapore High Court has emphasized that the criminal revision process is not intended

131. Section 400 of the CPC elaborates on the procedure for such revision. Criminal Procedure Code 2010, § 400 (Sing.); Supreme Court of Judicature Act, §§ 23, 26 (Sing.).

132. Sections 400-404, CPC.

133. Tan Yock Lin, CRIMINAL PROCEDURE ¶¶ 3904-4000, (2006).

134. *Id.*

135. *Yunani bin Abdul Hamid v. PP*, [2008] 3 SLR (R) 383(Sing.).

136. *Id.*

to act as a “backdoor appeal,” and is to be used “sparingly” and in instances of “serious injustice.”¹³⁷ It should be noted, however, that the High Court’s power of criminal revision is relatively narrow as it is only applicable to proceedings heard and decided upon by the Subordinate Courts which deal only with crimes that involve sentences below ten years.¹³⁸ Decisions of the High Court on criminal review are also not subject to appeal. Criminal review by the High Court may not be the only way by which Singapore’s courts can reconsider cases that have exhausted the appeals process. The Singapore Court of Appeal has observed that if it encounters, in the future, “an actual situation where new evidence is discovered,” it then would have to consider the question of whether it has “an inherent jurisdiction,” in light of previous precedent and the facts of the case, to review its own decision so as to address “any miscarriage of justice.”¹³⁹

B. The Establishment of an Innocence Project by NUS Law Students

In 2010 a group of students from the NUS Faculty of Law decided to establish the NUS Innocence Project.¹⁴⁰ Innocent Projects (IPs) have been established overseas based on a variety of models.¹⁴¹ Apart from studying and reviewing individual cases, many IPs engage in research and policy recommendations.¹⁴² Most are philanthropic or law school-based initiatives, but states have also established commissions with a similar function. For example, the UK’s Criminal Cases Review Commission is an independent statute-based body whose members are appointed by the Queen on the advice of the Prime Minister.¹⁴³ It receives and reviews cases and has the power to refer a conviction to the Court of Appeal if there is a “real possibility” that it will not be upheld.

137. *Id.*

138. Section 7 & 8, CPC.

139. *Yong Vui Kong v. PP* [2010] 2 SLR 192 at para. 13. See generally Goh Yihan, *The Inherent Jurisdiction and Inherent Powers of the Singapore Courts: Rethinking the Limits of their Exercise*, Singapore Journal of Legal Studies (2011) 178. See also the Court of Appeal’s observations on such inherent jurisdictional powers in *Re Nalpon Zero Geraldo Mario* [2013] SGCA 28.

140. For the official website of the NUS Innocence Project, see <http://sginnocenceproject.com/>. As explained in the website, upon completing a preliminary assessment and investigation of cases, the NUS IP brings applications to lawyers from the Law Society and ACLS. Upon further discussion and investigation, if necessary, the lawyers may decide to take on the case on a pro bono basis.

141. For a comparative review of the different types of Innocence Projects, see generally Kent Roach, *The Role of Innocence Commissions: Error Discovery, Systemic Reform or Both?*, 85 CHI.-KENT L. REV. 89 (2010).

142. *Id.* (Roach notes that IPs generally conduct a mix of these functions but argues that IPs need to be structured differently according to whether they are intended to function according to an “error-correction model” or a “systemic reform model”).

143. See generally CRIMINAL CASES REVIEW COMMISSION, <http://www.ccr.gov.uk/about.htm> (last visited May 15, 2012).

Apart from the CCRC, there are various independent IPs operating in the UK, such as Bristol University's IP.¹⁴⁴

Some independent IPs are established as clinical programs within law schools where law students work on cases under the supervision of clinical or permanent faculty, and may be able to do so for credit.¹⁴⁵ Others exist as independent organizations which provide placement opportunities for volunteers and law students.¹⁴⁶ Some newer programs are inter-disciplinary in nature, and some are housed in journalism schools. Most focus solely on claims of factual innocence that are based on new evidence,¹⁴⁷ though some scholars have highlighted the need for reforms not to focus solely on factually wrongful convictions but to take a broader approach that includes due process concerns.¹⁴⁸ In terms of techniques, IPs in the US generally specialize in DNA or non-DNA work. It is generally accepted that courts are more easily persuaded by DNA evidence. However, due to the incorporation of DNA testing into investigative procedures, non-DNA investigations will become more important in the future.

144. See BRISTOL INNOCENCE PROJECT, <http://www.bristol.ac.uk/law/aboutus/law-activities/innocenceproject/index.html> (last visited May 15, 2010).

145. Many of the US IPs are based in law schools and take the form of clinical programs. See for example, WISCONSIN INNOCENCE PROJECT, http://www.law.wisc.edu/fjr/clinicals/ip/student_info.html (last visited May 15, 2012) (University of Wisconsin Law School); OHIO INNOCENCE PROJECT, http://www.uc.edu/foundation/resources/for_volunteers/information_you_canuse/_jcr_content/MainContent/download_2/file.res/wp-oip.pdf (last visited May 15, 2012) (University of Cincinnati College of Law); CALIFORNIA INNOCENCE PROJECT, http://www.californiainnocenceproject.org/site/index.php?option=com_content&view=article&id=1&Itemid=10 (last visited May 15, 2012) (California Western School of Law).

146. For example, the Mid-Atlantic Innocence Project is a non-profit organization which has its own permanent staff and which works with volunteer lawyers and students. MID-ATLANTIC INNOCENCE PROJECT, <http://www.exonerate.org/about-2/> (last visited May 15, 2012).

147. Cincinnati Law School's IP assists individuals who "claim to be actually innocent of the crimes for which they were convicted" and that have "new evidence, whether newly discovered or that can be developed through investigation, supports the inmate's claim of innocence." *Ohio Innocence Project*, U. CINCINNATI COLLEGE L., <http://teachlaw.law.uc.edu/institutes/rosenthal/oip.shtml> (last visited May 15, 2012). Bristol University's IP takes cases of individuals that involve of factual innocence, as opposed to claims of a procedural miscarriage of justice; who have exhausted the normal appeals process; and who have no legal representation, or whose solicitors have granted permission for us to assist. *University of Bristol Innocence Project*, U. BRISTOL L. SCH., <http://www.bristol.ac.uk/law/aboutus/law-activities/innocenceproject/index.html> (last visited May 15, 2012).

148. Addressing the UK system where the Criminal Case Review Commission (CCRC) is to review and refer cases to the Court of Appeal where there is a "real possibility that it would not be upheld." The standard applied by the Court of Appeal is whether the conviction is "unsafe." Naughton notes how a focus on factual innocence has led to understanding "miscarriages of justice" purely from a factual innocence perspective. He argues for a broader understanding of the term "miscarriage of justice" that includes errors amended at the appeals level as well as procedural irregularities. Michael Naughton, *Redefining Miscarriages of Justice: A Revived Human-Rights Approach to Unearth Subjugated Discourses of Wrongful Criminal Conviction*, 45 BRIT. J. CRIMINOLOGY 165 (2005); see also, Hannah Quirk, *Identifying Miscarriages of Justice: Why Innocence in the UK Is Not the Answer*, 70 MOD. L. REV. 759 (2007).

From its very beginning, the NUS IP has been conceptualized and managed by students with support from their academic advisors. For its first two years, the NUS IP focused on formulating its mission, making partnerships, training its members, and establishing internal procedures. It started reviewing cases in August 2012, and held an official launch on 17 May, 2013.¹⁴⁹ Like most IPs, the NUS IP focuses on cases of factual innocence which have exhausted all avenues of appeal. The students of NUS IP explain that in doing so, they aim to serve as a “safety net” in an area that is yet to be addressed in a systematic way by official or non-official programs.

Starting public discussions on the possibility of wrongful convictions has been particularly important, given the scarcity of empirical research in this area. The NUS IP has organized talks by legal practitioners and non-legal experts working in the area of criminal justice to raise awareness and initiate discussions on this issue among students and faculty members. In addition to awareness-raising, NUS IP students have focused on building relationships with external stakeholders. This initially posed some challenges due to the relatively unknown topic of wrongful convictions, which they tried to address by explaining their objectives to the legal community and relevant criminal justice agencies.¹⁵⁰ By emphasizing that they aim to serve as a “safety net” in a cause that is shared by other actors in the justice system, the IP students were gradually able to build relationships with state and non-state bodies. Establishing and maintaining a good working relationship with state agencies, such as the prosecution, is necessary for pragmatic reasons. Unlike the US and other countries, Singapore does not have access to information laws that enable individuals to obtain data from state agencies, though the government has released increasing amounts of unclassified information and statistics to the public.¹⁵¹

The NUS IP students have also focused on undertaking research of an empirical nature. The experience of overseas IPs may serve as useful guides, but the factors contributing to wrongful convictions may differ from one country to the next. These factors are seldom purely legal in nature and require familiarity with other disciplines, such as forensic science or psychology. Due to the lack of secondary empirical literature

149. The launch was widely reported by the Singapore media, also receiving attention in Malaysian media. Ian Poh, *New NUS student-led initiative to give “safety net of last resort” to those in jail*, Straits Times, May 17, 2013; *Student help the “innocent,”* The Star, May 19, 2013.

150. Telephone Interview with NUS IP Student Leader 2 (May 6, 2011).

151. The advantages and disadvantages of having freedom of information laws was raised and debated in parliament in 2011. Pritam Singh, vol. 88, Sing. Parl. Rep., Oct. 20, 2011. The government observed that other countries having such laws incorporate “important exceptions to information access,” but also noted that these laws should be studied. Yaacob Ibrahim, vol. 88, Sing. Parl. Rep., Oct. 20, 2011.

on wrongful convictions, the NUS IP has spearheaded a number of research projects.¹⁵² These research projects are designed by students with the involvement and supervision of interested faculty and external practitioners. Apart from generating the practical knowledge required for innocence work, such collaborative projects raise awareness of the issue among the legal community.

C. Nurturing a Culture of Service among Law Students

A NUS IP student leader explained that he decided to join IP because “I can see how I can apply the law in a way to help people, or that will make a difference to people.”¹⁵³ To nurture and develop such a commitment and a culture of service at an early stage, law student initiatives such as the NUS IP should continue to be actively encouraged. A commitment to service and justice for the less fortunate are values that need to be inculcated early on in a lawyer’s career. Once the pressures of work set in, lawyers seldom have the resources or incentive to put time aside for non-law firm related work such as pro bono projects. Very often—as observed by Singapore lawyers who are active in pro bono work—the only exposure that lawyers have to the real life problems of ordinary persons is through pro bono internships or social justice initiatives undertaken during their student days.¹⁵⁴ Such exposure may inspire some to pursue careers in criminal justice.¹⁵⁵ Even if a student chooses not to take up such a career, being exposed to the real life legal problems of ordinary people will educate and sensitize young future lawyers to the law’s on-the-ground impact. Such an understanding of the law, even if not directly relevant to the lawyer’s day-to-day work, is essential to building a legal community that is sensitive to, and that prioritizes, the law’s commitment to building a more just society. Positive student experience may lead to a willingness to continue being involved in pro bono in the future.¹⁵⁶ Another NUS IP student leader observed how her IP experience enabled her to get to

152. Examples of topics examined are DNA testing, reasons for cases being overturned at the appeals stage, and policing guidelines.

153. Telephone Interview with NUS IP Student Leader 2 (Sept. 9, 2010).

154. Telephone Interview with ACLS Leaders (July 5, 2011).

155. A student leader of NUS IP notes that his experience with IP has inspired him to practice criminal defense. Telephone Interview with NUS IP Student Leader 2 (Sept. 9, 2010).

156. Based on empirical research material and a survey of how US law school pro bono programs are structured with the view of identifying the kind of law school experience that may lead to continued pro bono involvement on the part of graduating students, Rhodes cautiously concludes that: “From the limited evidence available, the safest generalization seems to be that positive experience with pro bono work as a student will at least increase the likelihood of similar work later in life.” Deborah L. Rhode, *Cultures of Commitment: Pro Bono for Lawyers and Law Students*, 67 *FORDHAM L. REV.* 2415, 2435 (1999).

know others with a similar passion for public interest work. She believes that the opportunity to work with and get to know others who are like-minded and knowing that one is not “alone” will be instrumental to her future involvement in public interest legal work.¹⁵⁷

Apart from contributing to building a law student culture based on service, student-run projects such as the NUS IP provide law students with the opportunity and space to learn a variety of legal and non-legal skills. Faculty supervisors of IPs overseas have highlighted the unique and important learning opportunities afforded by such projects to students.¹⁵⁸ Unlike other clinical programs, IPs bring students beyond courtrooms into the field of investigations. Students obtain a better appreciation of the criminal justice system as a whole. They learn about the importance of details and facts, the value of patience and meticulousness, and the meaning of ethics and justice—as opposed to merely substantive law or procedure.¹⁵⁹ In addition, due to the student-run nature of the NUS IP, students involved learn skills that go beyond simple lawyering. Students take charge of conceptualizing the project’s objectives and its work-plan. Such visionary and creative exercises require students to think outside the box. They are also in charge of day-to-day operations, such as the organization of events and the establishing of relations with external stakeholders. This teaches them organizational and administrative skills. More importantly, due to the NUS IP’s relatively flat structure, students have had to learn how to work together in groups and reach difficult decisions through discussion and debates. For example, a NUS IP student leader noted that she has learned how to deal with different “working styles” and “interpersonal relationships.”¹⁶⁰

As explained above, the NUS IP sees itself as serving as a “safety net.” Instead of positioning themselves in opposition to the system, NUS IP students view themselves as working towards a goal that is shared by

157. Telephone Interview with NUS IP Student Leader 3 (May 6, 2011).

158. Writing from a US perspective, Findley highlights some of the pedagogical benefits of the IP clinical learning experience which distinguishes it from other legal skills clinical programs: an appreciation of the importance of facts and the learning of investigative skills, the importance of paying attention to detail, being “thorough” and “skeptical,” legal ethics, an appreciation of justice issues, an critical awareness of how the criminal justice system operates and decision making skills. Keith A. Findley, *The Pedagogy of Innocence*, 13 CLINICAL L. REV. 1101, 1111–35 (2006). In the context of UK IPs and establishing a UK IP network, Naughton & McCartney note that the group investigations undertaken by volunteers and students in IPs develops “their skills of investigation” and “foster[s] in-depth understanding of appellate procedures.” It also provides opportunities for “unrivalled team-working” and “valuable interaction with the community.” In addition, such experiences nurture in future lawyers healthy “skepticism” as well as “a real commitment into ethical practice and *pro bono* work.” Michael Naughton & Carole McCartney, *The Innocence Network UK*, 7 LEGAL ETHICS 150 (2004).

159. *Id.*

160. Telephone Interview with NUS IP Student Leader 1 (Sept. 9, 2010).

other actors within the legal system, namely, the prevention of wrongful convictions and the improvement of the legal system.¹⁶¹ This conception of the criminal process as a truth-finding mechanism has similarly been articulated at the official level. For example, the Minister of Law has stated that Singapore's criminal justice procedure should aim at, among others, establishing a "system for arriving at the truth."¹⁶² Preventing and addressing wrongful convictions is a goal shared by all who subscribe to the criminal process's truth-seeking function. Opinion as to what this entails or what are the most appropriate means may differ, and there should be space for such differences to be articulated by those interested and involved. The prevention of wrongful convictions is an objective that is shared by criminal justice agencies as well as non-state initiatives, such as NUS IP. While encouraging mutual understanding and a good working relationship is important, the independence of each organization should be maintained and respected.¹⁶³

V. CONCLUSION: SITUATING PRO BONO AND INNOCENCE EFFORTS WITHIN A PEOPLE-CENTERED JUSTICE

This Essay has analyzed the Singapore authorities' recent change in approach towards criminal justice, which has resulted in a more empathetic consideration of the accused person's situation. Legislative amendments and judicial cases have focused on tailoring justice and punishment to the facts of individual cases. Such an individualized justice involves more comprehensive inquiry into the facts of a case and the circumstances of the accused person. More rigorous judicial oversight has also been exercised over the acts and practices of criminal justice agencies, so as to ensure that mistakes are identified and justice is done. In light of these developments, legal representatives of accused persons have an increasingly important role to play. Effective legal representation ensures that the facts and legal arguments relevant to an individual case are heard and considered by the court. There is a need to ensure that all accused persons, including those who are indigent, have access to reliable legal representatives. This Essay has evaluated a number of pro bono initiatives started by lawyers and law students in

161. Telephone Interview with NUS IP Student Leader 2 (May 6, 2011).

162. K. Shanmugam, vol. 87, Sing. Parl. Rep., May 18, 2010. The Minister of Law set out certain "key principles" underlying Singapore's criminal justice process: "(1) Every person is presumed innocent. One is guilty only upon conviction by a Court. While we have specific exceptions in the law to this approach, the presumption of innocence is fundamental. (2) The procedure that is set out must be fair, and (3) the procedure must provide a system for arriving at the truth."

163. Interview with NUS IP Student Leader 0 (6 May 2011), The student leader recognized the importance of working with other stakeholders, such as the Attorney General's Chambers, but also the need to maintain the independence of NUS IP.

Singapore to meet this need for criminal legal representation. There are important reasons why these pro bono efforts should be supported and encouraged. Apart from contributing to the building of a legal culture based on service, these initiatives play a significant role in securing justice as a public good.

In the process of examining these pro bono efforts, this paper has pointed out a number of challenges faced by lawyers and students involved in pro bono work. The new CPC has leveled the playing field somewhat between defense counsel and the prosecution, by explicitly requiring crucial information to be exchanged between the prosecution and defense counsel. This, along with the Singapore judiciary's recognition of common law disclosure duties, has put defense counsel in a better position to defend their clients and put their stories forward. In 2013, the Singapore Attorney General's Chambers and Law Society co-launched a code of practice.¹⁶⁴ The code commits both parties, including the prosecution, to a set of best practices, including maintaining the integrity of evidence and informing the court of all relevant decisions and laws "whether the effect is favorable or unfavorable towards the contention for which they argue."¹⁶⁵ Prosecutors and defense counsel are also required to draw the court's attention to "any apparent errors or omissions of fact or law or procedural irregularities."¹⁶⁶ While this does strengthen the accused person's position by committing the prosecution, along with defense counsel, to certain best practices, the code itself expressly notes that non-compliance does not create any right to initiate disciplinary action or judicial review.¹⁶⁷

Furthermore, as mentioned above, access to defense counsel remains subject to a "reasonable time" standard. It should be noted that the ordinary person on the street is often overwhelmed or ignorant of the criminal legal process. This may lead to false confessions or statements under stress, even in the absence of improper pressure. Cases and research have undermined the popular belief that only guilty individuals confess.¹⁶⁸ Many may inaccurately "confess" due to panic and stress. Allowing accused persons quicker access to defense counsel, who can then advise his or her client of the process and what to expect, may in fact lead to more accurate fact-finding. This need to ensure that the public is educated on their rights and the criminal legal process has in fact been recognized. The Law Society and the Attorney General's

164. Code of Practice, *supra* note 83.

165. *Id.*, section 6 and 5, respectively.

166. *Id.*, section 5.

167. *Id.*, para. 2.

168. See, for example, Adam Cohen, *Why Innocent Men Make False Confessions*, February 12, 2013, Time, <http://ideas.time.com/2013/02/11/why-innocent-men-make-false-confessions/>.

Chambers have worked together to produce a Pamphlet of Rights, which is to be issued in 2013 and made available widely to the public.¹⁶⁹

There is also a need to develop the legal framework governing the back-end review of criminal cases. As mentioned above, the High Court's power of criminal revision applies only to cases heard before the Subordinate Courts, though the Court of Appeal has indicated that it may be able to reconsider a case, post-appeals, if new evidence is discovered showing that there is a reasonable doubt that the conviction was correct in law.¹⁷⁰ It may be useful for parliament to adopt legislation providing for such a possibility, given the reality that mistakes or facts crucial to the defendant's case may be discovered only after the appeals process has been exhausted, through no fault of the defendant. In addition, there is a need to legally provide for the preservation and access to criminal evidence for testing and analysis. The Registration of Criminals Act regulates the taking of body samples, the testing of DNA by investigatory authorities, and DNA registration in a database.¹⁷¹ But it does not provide for access to evidence by interested persons, which would be necessary for DNA testing purposes. The ability to obtain and analyze "old" preserved evidence is crucial for post-appeal cases. Access to such evidence could be arranged through informal procedures, but having access provided for by law guarantees certainty and procedural clarity. Adopting such laws should not necessarily be taken to indicate a general lack of trust in the authorities. Access to DNA evidence and DNA testing has resulted in the detection and overturning of significant numbers of wrongful convictions overseas. The goal of preventing wrongful convictions is one that is shared by the courts, the prosecution, and defense counsel alike.

An additional question, which requires further study and analysis, is whether using pro bono efforts to meet the demand for legal representation is adequate or sustainable in the long run. Lawyers in Singapore have resisted attempts to make pro bono work mandatory.¹⁷² Even lawyers who are actively involved in pro bono are skeptical about making pro bono mandatory.¹⁷³ Forcing unwilling lawyers to take on

169. President of the Law Society Lok Vi Ming, *Opening of Legal Year 2013: Address by the President of the Law Society*, Sing. Acad. L. ¶ 29 (Jan. 4, 2013).

170. *Yong Vui Kong v. PP* [2010] 2 SLR 192 at para. 13.

171. For an overview of this law, see Monjur Jader, Stella Tan Wei Ling, and Sabrina Kuan Ling Li, *The Use of DNA Forensic Evidence in Criminal Justice*, 29 SINGAPORE LAW REVIEW (2011) 35.

172. Joyce Lim, "Compulsory pro bono work? Some reject idea," 15 December 2012, *The Straits Times*, available at: <http://www.asiaone.com/News/Latest%2BNews/Singapore/Story/A1Story20121212-389055.html>.

173. Daniel Chia, "Pro bono work should come from the heart," 17 December 2012, *The Straits Times*, available at: <http://www.straitstimes.com/premium/forum-letters/story/pro-bono-work-should-come-the-heart-20121217>.

criminal cases on a pro bono basis may not be in the best interest of the indigent accused person. It may be time for the Singapore authorities to consider establishing a public defense office to provide legal representation to accused persons in criminal cases. It is possible to address conflict of interest concerns through institutional and personnel arrangements. By guaranteeing legal representation to indigent accused persons, the Singapore state will send an important message to the general public. If justice is to be a public good accessible to all, its pursuit cannot be left solely or primarily to the efforts of private lawyers. The state, as society's ultimate guarantor of public goods, should play a bigger role in guaranteeing access to justice. By doing so, the state will signal to the accused person that it stands alongside him or her, even as it calls him or her to account before the law.