MIRRORING THE REALITY IN INTERROGATION ROOMS: A PROPOSAL TO RECORD INTERROGATIONS IN SINGAPORE

SUGENYA MANOGARAN

BACHELOR OF LAWS
SCHOOL OF LAW, MURDOCH UNIVERSITY
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DECLARATION

This thesis paper is presented to fulfil the requirements for the degree of Bachelor of Laws (Honours) of Murdoch University.

This thesis has not been previously submitted to meet the requirements for any award at this institution. I declare that this submission is my own work. To the best of my knowledge and belief, it contains no material previously published or written by another person except where due reference is made.

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Sugenya Manogaran

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ABSTRACT

Wrongful convictions are grave miscarriages of justice as the wrongfully convicted individuals endure catastrophic sufferings. Such convictions are only identified as 'wrongful' upon exonerations. The most basic wrongful conviction cases arise when individuals are adjudged guilty for crimes they did not commit (often known as 'wrong man' cases) or when convictions are obtained even though there was no commission of crimes (often known as 'no crime' cases). Though of noteworthy concern, cases of wrongful convictions plagued by 'no crime' errors are beyond the scope of this paper. Rather, this paper encompasses discussions on 'wrong man' cases, with an emphasis on false confessions.

Although false confessions remain one of the widely studied causes of wrongful convictions, they remain counterintuitive. A central issue in false confessions is that people, being rational, find it impossible to comprehend how people would confess to crimes they did not commit. Author David Karr Shipler wrote, 'intuition holds that the innocent do not make false confessions'.[1] At the heart of this statement is the assumption that no one engages in self-destructive behaviour. Some commentators have attributed the reasons for false confessions to mental illnesses or coercion by law enforcement officers. This paper agrees with the latter and will consider in-depth the causes of false confessions, including the investigative methods by which these confessions are elicited.

As a result of the analysis, this paper will recommend that all countries, particularly Singapore, record custodial interrogations. While Singapore has implemented new changes such as recording statements in the form of audiovisuals for selected offences, these have not wholly guaranteed the absence of false confessions and wrongful convictions.

Essentially, this paper is written with three purposes in mind: (a) to examine the extent of miscarriages of justice caused by false confessions and wrongful convictions; (b) to analyse the criminal justice system in Singapore in the context of obtaining statements from accused persons and the admissibility of such statements; and finally (c) to suggest that serious considerations should be accorded to recording custodial interrogations in Singapore as to

[1] David K Shipler, 'Why Do Innocent People Confess?', *The New York Times* (online, 23 February 2012) [6] <https://www.nytimes.com/2012/02/26/opinion/sunday/why-do-innocent-people-confess.html>.

enable a more adjudicated process which will, in turn, reduce false confessions and wrongful convictions.

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I also wish to acknowledge my mentor, Mr Thrumurgan Ramapiram of Trident Law Corporation, Singapore. He left an impression seven years ago, one that has cemented my passion for criminal law, and will continue to do so for as long as I am in this industry.

I wish, finally, to extend my gratitude and appreciation to my family and friends for their unwavering support and understanding throughout the development of this paper.

I dedicate this paper to and for all the victims of wrongful convictions who are already, and yet to be exonerated.

I INTRODUCTION

In criminal law, confessional evidence is potent yet fallible. Confessions are noted to be the 'most suspicious of all testimony; ever liable to be obtained by artifice, false hopes, promises of favour, or menaces; seldom remembered accurately, or reported with due precision; and incapable in their nature of being disproved by negative evidence'.[2] Consequently, a suspect's confessions have the 'greatest impact on decision-making' on a trier of fact.[3] Hence, it is not surprising for countries to exercise caution in relation to the admissibility of confessions. Despite the high probative value of confessions, there have been various cases involving innocent individuals who falsely confessed during custodial interrogations ('interrogations'), resulting in their wrongful convictions.[4] This then begs the question as to why innocent people would falsely confess for a crime they did not commit? The answer perhaps lies within the interrogation process. As this paper will demonstrate, the occurrences during interrogations remain a significant cause of false confessions.

Considering the growing concern of wrongful convictions at an international level is apposite, given that false confessions often lead to such convictions. More significantly, the paper will focus on Singapore, a country considered to be on a lower spectrum of wrongful convictions, yet not done enough to ensure that even the low rate of such convictions is reduced or becomes close to none. This paper canvasses wrongful convictions, identifies false confessions as their causal factor, and postulates that Singapore should mandate recordings of interrogations. This, successively, will guarantee that justice truly is the 'greatest interest' of mankind.[5]

This paper unfolds as follows. Following this introductory chapter, Chapter II starts with a brief history of wrongful convictions, followed by a description of commonly identified sources of wrongful convictions, including false confessions. This will provide an understanding as to how and why wrongful convictions occur. The chapter progresses with the aftermath of

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[2] Thomas M Cooley, *Commentaries on the Laws of England* (Callaghan and Company, 4th ed, 1899) 257.

[3] Charles Tilford McCormick, *McCormick's Handbook of the Law of Evidence* (West Publishing Company, 2nd ed, 1972) ('*McCormick's Handbook of the Law of Evidence*'). See also Saul Kassin and Katherine Neumann, 'On the Power of Confession Evidence: An Experimental Test of the Fundamental Difference Hypothesis' (1997) 21(5) *Law and Human Behaviour* 468, 471.

[4] See generally Frank R Baumgartner and Amber E Boydstun, *The Decline of the Death Penalty and the Discovery of Innocence* (Cambridge University Press, 2007) 39 ('*The Decline of the Death Penalty*').

[5] Lloyd Duhaime, 'Duhaime', It is the Ligament (Blog Post, 24 October 2010) <http://www.duhaime.org/LawMuseum/LawArticle-558/It-Is-The-Ligament.aspx>.

wrongful convictions, demonstrating the challenges faced by individuals upon exoneration. The chapter continues by identifying the efforts that have been taken to minimise wrongful convictions. The chapter will demonstrate with a multitude of cases that wrongful convictions are still an area of concern in Singapore. Chapter III reviews the literature on the role of false confessions in wrongful convictions. The chapter also distinguishes between three types of false confessions, and three sequential errors resulting in such confessions. Both global and Singapore cases are used to illustrate the different types of false confessions. Chapter IV deals with the varying models present in a criminal justice system and progresses to demonstrate the adoption of both models in Singapore.

Next, Chapter V discusses the due process for interrogations and statement-recording in Singapore. Notably, the chapter will examine the legislation and common law governing the admissibility of statements and procedural safeguards of interrogations. Chapter VI will, finally, provide the solution to mandate recording of interrogations in Singapore. Attention will be paid to the current reforms and how the limits of these reforms still pave the way for false confessions, and ultimately wrongful convictions. The chapter will address the advantages and disadvantages of recording interrogations and conclude that the mandatory recording of interrogations will promote a better criminal justice system in Singapore.

II WRONGFUL CONVICTIONS

A *History of Wrongful Convictions*

'Wrongful conviction' refers to people convicted of crimes they did not commit; or simply put, the conviction of the factually innocent.[6] Edwin Bouchard's ('Bouchard') study is often defined as the 'dawning era' of wrongful convictions.[7] In his book, Bouchard identified 65 cases where innocent individuals were wrongfully convicted and incarcerated.[8] The motivation of Bouchard's study stemmed from the supposition that it is a 'physical impossibility' for 'innocent men' to be convicted.[9]

Bouchard identified that wrongful convictions could occur in various ways: (i) prosecutors who transgress the law because they prioritised securing convictions over obtaining justice for suspects; or (ii) wrongfully understood evidence such as incorrect witness identification or DNA evidence; or (iii) police interrogators' unlawful actions to obtain convictions that violate suspects' human rights.[10] While Bouchard identified these, he did not attempt to analyse them systematically.[11] Many other academics followed Bouchard's path by merely describing the cases of wrongful convictions, rather than analysing and tabulating the sources of these errors in detail.[12] They published an article or book 'every decade or so on the subject of miscarriages of justice, many of which followed a familiar structure'.[13] However, these works were known

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[6] Ronald Huff, 'Wrongful Conviction and Public Policy: The American Society of Criminology 2001 Presidential Address' (2002) 40(1) *Criminology and Public Policy* 1.

[7] Robert J Norris, Catherine L Bonventre and James R Acker, *When Justice Fails: Causes and Consequences of Wrongful Convictions* (Carolina Academic Press, 2018) 11.

[8] Edwin M Bouchard, *Convicting the Innocent: Sixty-five Actual Errors of Criminal Justice* (Doubleday & Company Inc, 1932) 367.

[9] Ibid v.

[10] Ibid 425.

[11] Ibid.

[12] See Erle Stanley Gardner, *The Court of Last Resort: The True Story of a Team of Crime Experts Who Fought to Save the Wrongfully Convicted* (Open Road Media, 2017) 23; Jerome Frank and Barbara Frank, *Not Guilty* (Doubleday & Company Inc, 1957) 262.

[13] Ibid. See also Bruce P Smith, 'The History of Wrongful Execution' (2005) 56(6) *Hastings Law Journal* 1185, 1188–89 ('*The History*').

to be 'sporadic' and incoherent, as it appeared to suggest 'that the study of miscarriages of justice' was 'merely a series of unrelated and relatively infrequent articles and books'.[14]

The breakthrough came in 1987 when Hugo Adam Bedau ('Bedau') and Michael Radelet ('Radelet') unearthed 350 cases of wrongful convictions in the United States of America ('United States') between 1990 and 1987.[15] The focus was primarily on cases that may have or eventually did result in a death sentence.[16] Their study was significant for various reasons. In challenging the fallibility of the criminal justice system, they introduced the highest compiled data on wrongful convictions available at that point in time. Moreover, what distinguished their study from other preceding studies was that Bedau and Radelet systematically analysed the causes of the errors within the system that led to wrongful convictions.[17] Their study inspired others to follow with extensive research on analysing the sources and implications of wrongful convictions.[18] These works, while pursuing a 'familiar plot' collectively, were a reminder that wrongful convictions exist; such convictions violated the criminal justice system, and the errors leading to them had to be rectified.[19]

B *Sources of Wrongful Convictions*

Bedau and Radelet introduced a 'coding instrument' to classify variables such as demographics and outcomes found in wrongful conviction cases.[20] Subsequently, these were used to analyse

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[14] Jon B Gould and Richard A Leo, 'One Hundred Years Later: Wrongful Convictions after a Century of Research' (2010) 100(3) *Journal of Criminal Law and Criminology* 825, 828 ('*One Hundred Years Later'*). See also *The History* (n 13) 1215; Richard A Leo, 'Rethinking the Study of Miscarriages of Justice: Developing a Criminology of Wrongful Conviction' (2005) 21(3) *Journal of Contemporary Criminal Justice* 201, 204 ('*Rethinking the Study of Miscarriages of Justice*').

[15] Hugo Adam Bedau and Michael L Radelet, 'Miscarriages of Justice in Potentially Capital Cases' (1987) 40(1) *Stanford Law Review* 21, 23 ('*Miscarriages of Justice*').

[16] Ibid.

[17] Ibid.

[18] See generally Samuel Gross, 'The Risks of Death: Why Erroneous Convictions Are Common in Capital Cases' (1996) 44(2) *Buffalo Law Review* 469, 494; Samuel Gross, 'Lost Lives: Miscarriages of Justice in Capital Cases' (1998) 61 *Law and Contemporary Problems* 125; Richard A Leo and Richard J Ofshe, 'The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation' (1998) 88 *Journal of Criminal Law and Criminology* 429.

[19] *One Hundred Years Later* (n 14) 829; *Rethinking the Study of Miscarriages of Justice* (n 14) 207.

[20] *Miscarriages of Justice* (n 15) 33.

the ‘patterns, correlations, and outcomes that emerge from the aggregated data’.[21] Many fellow researchers followed this instrument in their studies on wrongful convictions.[22] The repeated use of this instrument makes it clear that the following sources are some common causes of wrongful convictions. Though the sources outlined below are profoundly problematic and lead to wrongful convictions, they, with the exception of false confessions and prosecutorial misconduct, are not the subject of this thesis and thus examined in brief.

1 *Defence Misrepresentation*

Professor Adele Bernhard opined that it is the responsibility of a defence counsel to protect an innocent person from the mistakes of others, such as witness misidentifications or prosecutorial misconduct.[23] Though others make these mistakes, ‘ineffective defence lawyering’ still plays a considerable role in wrongful convictions.[24] In some circumstances, the reasons for ineffective lawyering are attributed to ‘lack of motivation’, ‘absence of quality control’, and even ‘inadequate funding’.[25]

2 *Flawed Forensic Evidence*

In today’s technology era, the testing of forensic evidence, particularly deoxyribonucleic acid (commonly known as ‘DNA’), has played a remarkable role in the administration of criminal justice, specifically for prosecuting criminal cases and securing convictions.[26] Some examples

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[21] *Miscarriages of Justice* (n 15) 26. See also Richard A Leo and Jon B Gould, ‘Wrongful Convictions: Learning from Social Science’ (2009) 7 *Ohio State Journal of Criminal Law* 7, 19 (‘*Wrongful Convictions*’).

[22] *Wrongful Convictions* (n 21) 19. See also Barry C Scheck and Peter J Neufeld, ‘Toward the Formation of "Innocence Commissions" in America’ (2002) 86(2) *Judicature* 100, 104.

[23] Adele Bernhard, ‘Exonerations Change Judicial Views on Ineffective Assistance of Counsel’ (2003) 18 *Journal of Criminal Justice* 37, 45.

[24] Sheila Martin Berry, ‘Bad Lawyering: How Defense Attorneys Help Convict the Innocent’ (2003) 26 *Northern Kentucky Law Review* 487, 492.

[25] Adele Bernhard, ‘Effective Assistance of Counsel’ in Saundra D Westervelt (ed) and John A Humphrey, *Wrongly Convicted: Perspectives on Failed Justice* (Rutgers University Press, 2001) 227.

[26] Gerald LaPorte, ‘Wrongful Convictions and DNA Exonerations: Understanding the Role of Forensic Science’ (2018) 279 *National Institute of Justice Journal* 1 (‘*DNA Exonerations*’). See also Andre A Moenssens, ‘Novel Scientific Evidence in Criminal Cases: Some Words of Caution’ (1993) 84(1) *The Journal of Criminal Law and Criminology* 1, 5.

of such tests include the analysis of fingerprints, hairs, and even serology.[27] Although every individual has their unique set of DNAs, studies have shown that a DNA sample is not entirely sufficient to identify an individual in criminal matters.[28] Often, DNA evidence is labelled as 'misleading' because of its inaccuracy in identifying innocent people as suspects.[29] Though DNA evidence is the 'most powerful scientific tool' available to the criminal justice system, it can easily and instantly become flawed due to its inaccuracy.[30]

3 *Mistaken Identification*

Studies have shown that eyewitness misidentifications secure almost 88% of wrongful rape convictions in the United States.[31] These misidentifications are due to 'psychological errors in human judgement'.[32] For instance, victims who were fixated on the weapon when confronted with it during a crime may not recall important details of their perpetrators.[33] The stressful nature of the situation has been known to 'alter' the victims' perception of the event.[34]

Furthermore, studies revealed that victims could be influenced by the identification process, leading them to 'distort their reports of the witnessing experiences'.[35] This may happen when police officers confirm a suspect's identification, for instance, subtly thanking the witnesses

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[27] Edward J Imwinkelried, 'Forensic Hair Analysis: The Case Against the Underemployment of Scientific Evidence' (1982) 39 *Washington and Lee Law Review* 41; Larry S Miller, 'Procedural Bias in Forensic Science Examinations of Human Hair' (1987) 11 *Law Human Behaviour Journal* 157; Lyn Haber and Ralph Norman Haber, 'Scientific Validation of Fingerprint Evidence Under Daubert' (2008) 7(2) *Law, Probability and Risk* 87.

[28] *DNA Exonerations* (n 26) 3.

[29] Ibid.

[30] See also Robin Williams and Paul Johnston, *Genetic Policing: The Use of DNA in Criminal Investigations* (Willan Publishing, 2008) 23.

[31] Barry Scheck, Peter Neufeld and Jim Dwyer, *Actual Innocence: Five Days to Execution and Other Dispatches from the Wrongly Convicted* (Doubleday & Company Inc, 2000) 23; Samuel R Gross, Kristen Jacoby, Daniel J Matheson and Nicholas Montgomery, 'Exonerations in the United States 1989 through 2003' (2005) 95(2) *The Journal of Criminal Law and Criminology* 523, 528–529.

[32] *One Hundred Years Later* (n 14) 841.

[33] Ibid. See also Gary L Wells and Donna M Murray, 'What Can Psychology Say about the Neil v. Biggers Criteria for Judging Eyewitness Accuracy?' (1983) 68 *Journal of Applied Psychology* 347, 349 ('*Neil v Biggers Criteria'*).

[34] Ibid.

[35] *One Hundred Years Later* (n 14) 842. See also Gary L Wells and Amy L Bradfield, '"Good, You Identified the Suspect": Feedback to Eyewitnesses Distorts Their Reports of the Witnessing Experience' (1998) 83(3) *Journal of Applied Psychology* 360, 366.

'for confirming their suspicions'.[36] This might instill false confidence in the witnesses even if their identifications were incorrect.[37]

4 *Prosecutorial Misconduct*

Prosecutors may engage in misconduct merely to secure a conviction at all costs.[38] This misconduct includes failing to dismiss charges against accused persons they suspect, despite being unable to prove their guilt to the requisite standard.[39] Some prosecutors also fail to disclose exculpatory evidence to defence counsel or excessively engage in 'suggestive' witness coaching.[40] This is further discussed below.[41]

5 *False Confessions*

False confessions occur when suspects admit their involvement in a crime that they are not guilty of.[42] Significantly, Bedau and Radelet found that false confessions played a role in 49 of the 350 identified cases of wrongful convictions.[43] As the issue of false confessions forms the crux of this paper, it will be discussed below in detail.[44]

C *The Aftermath of Wrongful Convictions*

1 *The Loss of Time*

The American National Registry of Exonerations ('Registry'), instituted in 2012, is a collaboration between the University of California Irvine, Michigan State University College

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[36] *One Hundred Years Later* (n 14) 843.

[37] *Neil v Biggers Criteria* (n 33) 357–358.

[38] Bennett L Gershman, 'Witness Coaching By Prosecutors' (2002) 23 *Cardozo Law Review* 829 (2002) 839, 843.

[39] Ibid.

[40] Ibid. See also Andrea Elliott and Benjamin Weiser, 'When Prosecutors Err, Others Pay the Price; Disciplinary Action Is Rare After Misconduct or Mistakes', *New York Times* (New York, 21 March 2004). See, eg, *United States v Bagley*, 473 US 667 (1985); *Brady v Maryland*, 373 US 83 (1963).

[41] See below Part F.

[42] Saul M Kassin and Gisli H Gudjonsson, 'The Psychology of Confessions: A Review of the Literature and Issues' (2004) 5 (2) *Psychological Science Public Interest* 33, 35 ('*The Psychology of Confessions*').

[43] *Miscarriages of Justice* (n 15) 35.

[44] See below Chapter III.

of Law and University of Michigan School of Law.[45] The Registry collates data of all known exonerations in the United States from 1989 to the present.[46] The Registry indicated that the exonerations were mainly possible through DNA evidence that was essential to establishing the innocence of many convicted individuals.[47] As of 1 June 2021, the total number of exonerations were 2,795, and the time exonerees have lost across all wrongful convictions exceeded 25,000 years.[48] The Registry reported that dozens of exonerees served more than 25 years in prison after being wrongfully convicted.[49]

Amongst them was Ronnie Long ('Long'), who served 44 years in prison after being wrongfully convicted of rape by an all-white jury in 1976.[50] There was no evidence tying Long to the scene; however, a witness' mistaken identification secured the conviction.[51] Long's legal team continued pursuing various petitions throughout the years while he was in prison.[52] In 2005, the final petition succeeded, wherein the courts ordered to review the biological evidence from the scene.[53]

Investigations revealed that the clothing fibers and hair samples collected at the crime scene did not match Long's.[54] Furthermore, none of these samples was made available to the defence

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[45] See generally 'About the Registry', *The National Registry of Exonerations* (Web Page, 14 November 2021) <https://www.law.umich.edu/special/exoneration/Pages/mission.aspx>.

[46] See generally 'Our Mission', *The National Registry of Exonerations* (Web Page, 14 November 2021) <https://www.law.umich.edu/special/exoneration/Pages/mission.aspx>. Note that an exoneration occurs when 'a person who has been convicted of a crime is officially cleared based on new evidence of innocence', and an exoneree is defined as a 'person who was convicted of a crime and later officially declared innocent of that crime, or relieved of all legal consequences of the conviction because evidence of innocence was not presented at trial that now required a reconsideration of the case'.

[47] Ibid.

[48] See '25,000 Years Lost to Wrongful Convictions', *The National Registry of Exonerations* (Web Page, 14 June 2021) <https://www.law.umich.edu/special/exoneration/Documents/25000%20Years.pdf>.

[49] Ibid.

[50] See *Ronnie Wallace Long v Erik A Hooks, Secretary, Department of Public Safety* 18-6980 (4th Circuit, 2020) ('*Ronnie Long*').

[51] Ibid.

[52] See 'Ronnie Long – Longest Incarcerations', *The National Registry of Exonerations* (Web Page, 5 April 2021) <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5801> ('*Ronnie's Incarcerations*').

[53] Ibid.

[54] *Ronnie Long* (n 50) 55.

counsel during the discovery stage of Long's trial proceedings.[55] Remarkably, the rape kit administered on the victim was not found as well.[56] The most startling discovery came in 2015 when Long participated in the Postconviction DNA Testing Assistance Program by the North Carolina Innocence Inquiry Commission.[57] It revealed that the 43 DNA prints taken from the crime scene were never disclosed to Long's defence counsel.[58] The testing of these prints excluded Long as its 'source'.[59] The fact that this evidence was different from what was presented during the trial proceedings supported Long's declaration that he was innocent.[60] Shortly after, the courts withdrew Long's guilty verdict and dismissed the case.[61]

2 *The Individual – Social Norms*

Victims of wrongful convictions often struggle with various consequences upon exoneration. These consequences include the social stigma of being imprisoned, losing loved ones, and even the end of a career for many exonerees.[62] They may find it challenging to adapt to social norms upon being released, such as finding employment, housing,[63] or even obtaining medical attention.[64]

It is worth noting that many individuals are already subjected to these social consequences the moment they are wrongfully charged. Such was the case for one Tan Kah Heng ('Heng'), who was wrongfully accused of eight outrage of modesty offences against his two employees sometime in 2017.[65] He was eventually acquitted in February this year after the prosecution

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[55] See generally *Ronnie's Incarcerations* (n 52).

[56] *Ronnie Long* (n 50) 62.

[57] See generally *Ronnie's Incarcerations* (n 52).

[58] Ibid. See also Michelle Boudin, '44 years later, federal appeals court rules the rights of Concord man were violated at trial', *WCNC* (North Carolina, 25 August 2020.)

[59] *Ronnie Long* (n 50) 74.

[60] Ibid 75.

[61] Ibid 155.

[62] Campbell K and Denov M, 'The Burden of Innnocence: Coping with a Wrongful Imprisonment' (2004) 46(2) *Canadian Journal of Criminology and Criminal Justice* 139, 145 ('*The Burden of Innocence*').

[63] Ibid.

[64] Ibid 152.

[65] See Louisa Tang, 'The Big Read: Accused persons get no sympathy but long proceedings are tough, more so on those not found guilty', *Channel News Asia* (Singapore, 19 April 2021) ('*The Big Read*').

failed to prove its case beyond a reasonable doubt.[66] Though Heng was exculpated, the ramifications of the allegations remained.[67] Heng had to close his new business and struggled to find even odd jobs while being on bail.[68] He went from renting his own place to staying with his sister.[69]

More recently, Dr Lui Weng Sun was acquitted of an outrage of modesty charge against his female patient.[70] He stated that he was told to leave the clinic he worked at merely to 'preserve the reputation' of the clinic and fellow practitioners.[71]

3 *The Individual – Emotional Scars*

A similar finding in most victims of wrongful convictions is the existence of Post-Traumatic Stress Disorder ('PTSD').[72] Academic writers note that victims of wrongful convictions are likely to experience PTSD similar to victims of wars.[73] PTSD is brought about by trauma, in which the person has 'experienced, witnessed or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of the self or others'.[74] In response to these events, a person reacts by fear, horror, denial or helplessness.[75] Similarly, individuals, though exonerated, may be emotionally scarred from the incarceration.[76] Lawyers from Kalidass Law Corporation opined that they suffer 'so much stress and anxiety that they develop psychiatric issues, requiring medication or counselling'.[77]

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[66] Ibid.

[67] Ibid.

[68] Ibid.

[69] Ibid.

[70] Ibid.

[71] Ibid.

[72] Ibid. PTSD was introduced as a diagnosis in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-III).

[73] Samantha K Brooks and Neil Greenberg, 'Psychological Impact of being Wrongfully Accused of Criminal Offences: A Systematic Literature Review' (2021) 61(1) *Medical Science Law Journal* 44, 47.

[74] Ibid.

[75] Ibid.

[76] *The Burden of Innocence* (n 62) 147.

[77] *The Big Read* (n 65).

Studies also show that these individuals are prone to emotional outbursts and estrangement from their loved ones.[78] They may struggle to reconnect with their family members and children after being away for an extended period.[79] In addition to victims, family members of victims can also suffer various consequences including PTSD.[80] They may have had different traumatic experiences with society, or their relationships with the victims may be strained due to their incarceration.[81]

4 *The Society – Potential Rise in Crime Rates*

When wrongful convictions occur, cases remain unsolved, often leaving the perpetrator out on the streets. Professor Frank Baumgartner stated that the 'perpetrator remains at liberty' and may continue committing crimes.[82] He identified the period between the commission of the original crime and the perpetrator's arrest as one of 'wrongful liberty'.[83] The Innocence Network supported his theory in 2016, which revealed that almost 165 perpetrators committed more crimes after committing the original crime for which they were not convicted.[84] For instance, in the sexual assault case of Jennifer Thompson-Cannino, the perpetrator committed six more crimes after Ronald Cotton was wrongfully convicted.[85]

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[78] S Hattenstone, 'I am dead inside', *The Guardian* (London,17 June 2002).

[79] Ibid.

[80] Sion Jenkins, 'Secondary Victims and the Trauma of Wrongful Conviction: Families and Children's Perspectives on Imprisonment, Release and Adjustment' (2013) 46 *Australian & New Zealand Journal of Criminology* 119, 127.

[81] Ibid.

[82] Frank R Baumgartner, Amanda Grigg, Rachelle Ramirez and J Sawyer Lucy, 'The Mayhem of Wrongful Liberty: Documenting the Crimes of True Perpetrators in Cases of Wrongful Incarceration (2018) 4 *Albany Law Review* 81, 82.

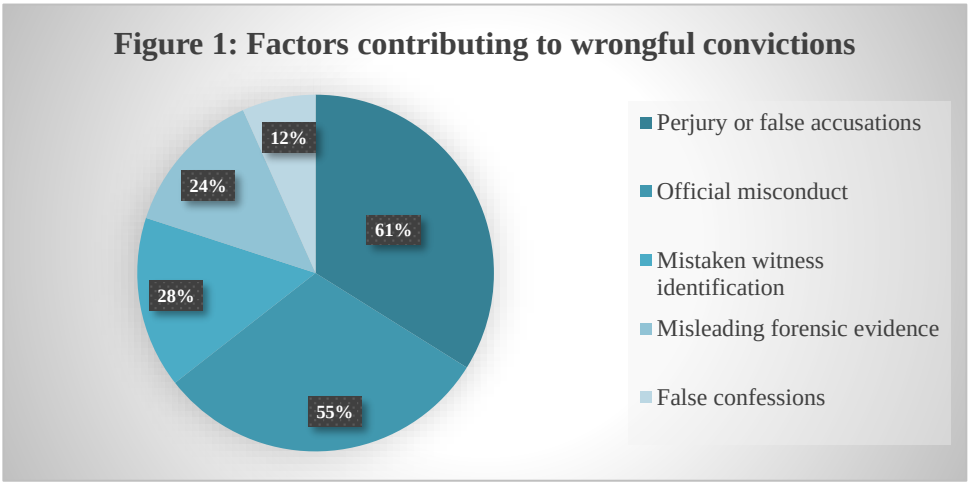
[83] Ibid.

[84] See 'The DNA Exonerations in the United States', *The Innocence Project* (Web Page, 14 November 2021) < https://innocenceproject.org/dna-exonerations-in-the-united-states/>.

[85] See generally Erin Torneo, Jennifer Thompson-Cannino and Ronald Cotton, *Picking Cotton (Our Memoir of Injustice and Redemption)* (St Martin's Publishing Group, 2009).

D *The Innocence Network*

The Innocence Network, originating from the United States, is an organisation that seeks to exonerate individuals who were wrongfully convicted.[86] Its mission is to investigate miscarriages of justice with a central focus on wrongful convictions.[87] As per the graph illustrated below, the Innocence Network found that 61% of wrongful convictions can be traced to perjury or false accusations, while 12% derived from false confessions.[88]



Strikingly, the rate of false confessions and official misconduct appeared to be the highest in homicide cases.[89]

1 *Global Expansion of the Innocence Network*

The expansion of the Innocence Network in various countries makes it evident that wrongful convictions remain a global issue to date. Currently, the Innocence Network has over 65 organisations in multiple countries, including Canada and England.[90]

In 2011, the Innocence Network hosted its first-ever conference in Cincinnati – the 'International Exploration of Wrongful Conviction' Conference ('Conference'). The four-day

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[86] See 'About', *The Innocence Project* (Web Page, 14 November 2021) < https://innocenceproject.org/about/ />.

[87] See 'Get Involved', *The Innocence Project* (Web Page, 14 November 2021) <https://innocenceproject.org/getinvolved/>.

[88] See 'Contributing Factors by Type and Crime', *The National Registry of Exonerations* (Web Page, 7 November 2021) <https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx>.

[89] Ibid.

[90] See 'Get Involved', *The Innocence Project* (Web Page, 14 November 2021) <https://innocenceproject.org/getinvolved/>.

Conference was dedicated to exploring the phenomenon of wrongful convictions.[91] It involved over 500 representatives from 25 jurisdictions, including Singapore.[92] These representatives came from all walks of life – lawyers, academic scholars and exonerees.[93] The Conference detailed various wrongful conviction issues specific to each jurisdiction, including problems concerning global human rights.[94] Many exonerees worldwide gave first-hand accounts of their experiences in prison and how the wrongful convictions affected their lives upon release.[95]

2 *Singapore's Own Innocence Network*

The Innocence Network based in Singapore is called the 'Recourse Initiative'.[96] Formerly known as the 'Innocence Project', it is a collaboration between the National University of Singapore, the Association of Criminal Lawyers of Singapore, and the Law Society of Singapore.[97] However, as it is a student-led initiative, the scope of the Recourse Initiative primarily surrounds the empirical research of wrongful convictions.[98] This research includes factors contributing to wrongful convictions and the importance of DNA testing in criminal law matters.[99] In addition to research, the Recourse Initiative team has also organised various talks to raise awareness about wrongful convictions.[100] Legal practitioners and criminal justice experts often lead these talks.[101]

In stark contrast with the Innocence Network and the Registry, the Singapore government does not have a database capturing the data of wrongful convictions or exonerations. This may be due to the perception that such a database is un-needed. In this regard, academic writers Chen Siyuan and Eunice Chia noted that 'the risk of wrongful convictions in Singapore may not be

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[91] Ibid.

[92] Ibid.

[93] Ibid.

[94] Ibid.

[95] Ibid.

[96] 'The Recourse Initiative', *NUS Criminal Justice Club* (Web Page, 14 November 2021) <https://nuscriminaljustice.com/tri/>.

[97] Ibid. See also Nisha Francine Rajoo, 'Than That One Innocence Suffer' (2012) 30 *Singapore Law Review* 23, 32.

[98] Ibid.

[99] Ibid.

[100] Ibid.

[101] Ibid.

high because of the system's strong values and high standards'.[102] In 2006, the State Courts, formerly known as the Subordinate Courts, commissioned a survey to determine the level of public confidence in the criminal justice system.[103] The survey revealed that 95% of respondents felt 'trust and confidence in the fair administration of justice'.[104] A further 97% agreed that this administration of justice was 'regardless of language, race, religion or social class'.[105] In 2015, the Ministry of Law conducted a similar survey wherein 92% of participants had trust and confidence in Singapore's legal system.[106]

While this paper agrees with these perceptions about the high standard of Singapore's criminal justice system, one cannot disagree that there appears to be a lack of public awareness about the issue of wrongful convictions in Singapore.

E *Wrongful Convictions in Singapore*

There are indeed no statistics concerning the actual number of wrongful convictions in Singapore; however, there are several well-known cases, as discussed below.[107] The courts have overturned various convictions, as allowing them to hold would cause 'serious injustice'.[108]

1 *Gao Hua v Public Prosecutor*

In *Gao Hua v Public Prosecutor*, investigations revealed that the accused was innocent and yet only pleaded guilty due to the pressures from her lawyers.[109] Upon appeal, the Supreme Court overturned her conviction.[110]

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[102] Chen Siyuan and Eunice Chua, 'Wrongful Convictions in Singapore: A General Survey of Risk Factors' (2010) 28 *Singapore Law Review* 98, 122 ('*General Survey of Risk Factors in Singapore*').

[103] Subordinate Court of Singapore, *Annual Report* (Report, 2007) <https://www.statecourts.gov.sg/cws/Resources/Documents/AnnualReport2007.pdf>.

[104] Ibid.

[105] Ibid.

[106] Singapore, *Parliamentary Speech*, MP, 21 March 2018, Christopher de Souza.

[107] See *Kwan Peng Hong v Public Prosecutor* [2000] 2 SLR (R) 824; *Abdul Munaf bin Mohd Ismail v Public Prosecutor* [2004] SGHC 4.

[108] *Ang Poh Chuan v Public Prosecutor* [1995] 3 SLR (R) 929 [17].

[109] *Gao Hua v Public Prosecutor* [2009] SGHC 95.

[110] Ibid.

2 *Muhammad bin Kadar v Public Prosecutor*

Another prominent case was *Muhammad bin Kadar v Public Prosecutor* wherein two Appellants, Muhammad bin Kadar ('Muhammad') and Ismil bin Kadar ('Ismil'), were convicted for murdering an elderly woman in her flat.[111] Ismil was initially arrested for an unrelated offence but was later interrogated about this offence.[112] During the interrogations, Ismil initially denied but eventually confessed to murdering the woman. His confessions were delineated in two statements.[113] It bears mention that the investigating officers failed to comply with the requisite procedures when recording Ismil's statements: (i) to read his statements back to him; and (ii) to ensure that Ismil signed the statements to confirm they were true.[114] Furthermore, Ismil was also not given any opportunity to make any amendments to the statements.[115]

Subsequently, Muhammad was charged for the same offence based on DNA evidence found at the victim's flat.[116] In his statements, Muhammad stated that both he and Ismil were present at the victim's flat.[117] He, however, said that he only assisted in robbing the victim while Ismil committed the murder.[118] After Muhammad had provided his statements, Ismil provided further statements indicating that Muhammad was present too and had only assisted in robbing the victim.[119] It is pertinent to note that Ismil's additional statements contrasted with his first two statements, where he confessed to being the sole offender.

During the trial, both Ismil and Muhamad argued the admissibility of their statements in that the statements were not provided voluntarily.[120] This was on the basis that they, as chronic abusers of various substances, were suffering from withdrawal symptoms at the time of

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[111] *Muhammad bin Kadar v Public Prosecutor* [2011] 3 SLR 1205 ('*Kadar*').

[112] Ibid 1205, 1231, 1246.

[113] Ibid 1206, 1282–1283.

[114] Ibid 1207,1235–1239. Note that officers involved in the interrogation process are generally termed as 'investigaitng officers' in Singapore.

[115] Ibid 1206.

[116] Ibid 1207.

[117] Ibid 1206,1212–1213.

[118] Ibid 1206.

[119] Ibid 1206.

[120] Ibid 1206.

statement-recording. Specifically, that they were under the influence of Dormicum, which was intended to cause drowsiness.[121] The trial judge dismissed their arguments and held their statements to be admissible.[122] Further evidence, including the statements of the victim's husband, was adduced during the trial.[123] These statements indicated that there was only one intruder present at the flat. Regardless, without determining whether Ismil or Muhammad was the actual offender, the trial judge convicted both of murder.[124]

On appeal, the Court found that Ismil's first two statements were inadmissible as they were obtained in breach of various procedural requirements.[125] Even if the statements were to be admissible, they directly contradicted the statements of the victim's husband.[126] Furthermore, it was noted that Ismil suffered from low intelligence and a 'malleable personality'.[127] Therefore, the Court held that the prosecution failed to prove that Ismil was present at the victim's flat and had committed the murder.[128] Eventually, after spending six years on remand, Ismil was acquitted of the murder charge and freed from prison.

3 *Parti Liyani v Public Prosecutor*

More recently, the Court of Appeal acquitted one Parti Liyani ('Parti') of four theft-related charges.[129] The acquittal was on the basis that the prosecution had failed to prove its case beyond a reasonable doubt.[130]

Parti, a foreign domestic worker, was accused of stealing various items from her employers before she was terminated.[131] Parti maintained her position that (i) she had purchased some of the items; or (ii) her employers had given the items to her; or (iii) she had found the items after

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[121] Ibid 1207.

[122] Ibid 1207.

[123] Ibid 1206,1213,1223.

[124] Ibid 1206.

[125] Ibid 1207. See also *Criminal Procedure Code* (Singapore, cap 68, 2012 rev ed) s 121(3) ('*CPC*').

[126] Ibid.

[127] *Kadar* (n 107) 1207,1276.

[128] Ibid 1207, 1212,1283,1293.

[129] *Parti Liyani v Public Prosecutor* [2020] SGHC 187.

[130] Ibid 235.

[131] Ibid 188.

they were discarded.[132] The trial judge found the evidence of the employers to be highly credible and compelling as they provided consistent details as to the items stolen, their estimated values and whether they were ever discarded or given away.[133] On the contrary, Parti's evidence in court was found to be inconsistent with her statements.[134] Therefore, the trial judge convicted Parti of all four charges and sentenced her to an aggregate sentence of 26 months' imprisonment.[135]

In overturning these convictions, the Court of Appeal found that the prosecution failed to prove beyond a reasonable doubt that Parti's employers had no improper motive.[136] Furthermore, there was the question of 'proper handling of evidence by the police' and the employer's recording of the allegedly stolen items were 'crucial to preserve the chain of custody'.[137] Though this case does not concern false confessions, it serves as a gentle reminder of the prosecution's role in criminal matters coupled with the fact that wrongful convictions still exist in Singapore today.

F *The Burden of the Prosecution in Singapore*

The preceding paragraphs identified in Part B identified prosecutorial misconduct as one of the sources of wrongful convictions. The role of the prosecutors is fundamentally relevant to this discussion as eliminating human fallibility in the criminal legal system may result in a lower rate of wrongful convictions. The Court in *Kadar* noted that a prosecutor's duty was 'not to secure a conviction at all costs'.[138] Instead, he 'owes a duty to the court and the wider public to ensure that only the guilty are convicted'.[139]

As expressed in Latin '*ei incumbit probatio qui dicit, non qui negat*', the burden of proof lies upon the one who affirms, but not who denies.[140] Thus, the prosecution bears the burden of

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[132] Ibid 192–193.

[133] Ibid 193.

[134] Ibid193.

[135] Ibid 193.

[136] Ibid 193–194,197–200.

[137] Ibid 228.

[138] *Kadar* (n 111) 1267.

[139] Ibid.

[140] Jonathan Law and Elizabeth A Martin, *Oxford: A Dictionary of Law* (Oxford University Press, 7th ed, 2014).

proving elements of an offence and disproving any defence that the accused person may rely on.[141] This is provided for in the *Evidence Act*.[142]

The Supreme Court of the United States, in the case of *Re Winship,* stated that 'a society that values the good name and freedom of every individual should not condemn a man for the commission of a crime where there is reasonable doubt about his guilt'.[143] *Re Winship* was fundamental to establish that an accused would not be convicted unless the prosecution proves his guilt beyond a reasonable doubt.[144] This burden borne by the prosecution was regarded as the 'golden thread' of criminal law as established in *Woolmington v DPP*.[145] The courts in Singapore have agreed and illustrated this golden thread in various cases.[146] In the Court of Appeal, Justice Andrew Phang opined that this golden thread being 'precious and indispensable' will be upheld in Singapore.[147] The former Chief Justice, Chan Sek Keong opined that the prosecution only prosecutes when there is a 'reasonable prospect of a conviction'.[148] Otherwise, it becomes an 'abuse of the public trust and may undermine confidence in a criminal justice system'.[149]

G *Concluding Remarks*

This paper argues that no criminal justice system is flawless, and thus, wrongful convictions are inherent in the system. 'The test of a country's justice is not the blunders which are sometimes made but the zeal with which they are put right'.[150] These words of Cyril Connoly that were said 60 years ago remains just as accurate today. Countries like the United States focus on advanced DNA technology to uncloak wrongful convictions, while Canada has chosen

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[141] Ibid.

[142] *Evidence Act* (Singapore, cap 97, 1997 rev ed) s 103, s 105 ('*Evidence Act*').

[143] *Re Winship* 397 US 358 (1970) 362.

[144] Ibid.

[145] *Woolmington v DPP* [1935] AC 462, 481. See also Glanville Williams, *The Proof of Guilt* (Stevens & Sons Limited, 3rd ed, 1963)185.

[146] *Ramakrishnan s/o Ramayan v Public Prosecutor* [1998] 3 SLR 161; *Took Leng How v Public Prosecutor* [2006] 2 SLR 70. See also *Mohammed Ali Bin Johari v Public Prosecutor* [2008] 4 SLR 158.

[147] *AOF v Public Prosecutor* [2012] 3 SLR 34 [3].

[148] Chan Sek Keong, 'Rethinking the Criminal Justice System of Singapore for the 21st Century' (Speech, Singapore Conference: Leading the Law and Lawyers into the New Millenium, 12 April 2000) 26.

[149] Ibid.

[150] Bob Woffinden, *Miscarriages of Justice* (Hodder and Stoughton, 1988) 247.

to eradicate the death penalty due to the high risk of wrongful convictions.[151] While these measures prove the existence of wrongful convictions, they do not ultimately provide a solution to reduce wrongful convictions. What then is the right solution to prevent wrongful convictions? This paper, in Chapter VI, will attempt to provide this solution, particularly for Singapore, to envisage and ultimately reduce wrongful convictions.[152] Though Singapore does not have an actual database capturing wrongful convictions, the existence of such convictions are apparent in the demonstrated cases.

[151] Harry Kreisler, 'A Passion for Justice: Conversation with Peter Neufeld' (2001) *Institute of International Studies* 2.

[152] See below Chapter VI.

III FALSE CONFESSIONS

A *Background to False Confessions*

A confession refers to a detailed statement in which a suspect acknowledges that he is guilty of being involved in a crime.[153] A confession can be provided in an oral or written form.[154] The existence of a confession is said to 'make other aspects of a trial in court superfluous'.[155] Yet, errors in relation to obtaining confessions still occur.[156]

A false confession refers to 'an admission of a criminal act the suspect did not commit'.[157] However, it is usually not a 'mere bare bone admission of guilt'.[158] Generally, false confessions are said to have a 'simple admission that "I did it"', followed by a narrative statement that details how the crime was committed.[159] While it is hard to fathom why someone would confess to a crime that they did not commit, it is the reality that the pressure placed on a suspect during interrogations may give rise to false confessions.

The issue of false confessions is not a new phenomenon. In 1666, Robert Hubert ('Hubert') falsely confessed to starting the Great Fire of London that lasted four days and destroyed almost 80 percent of the city.[160] He was executed after being found guilty of various murder and arson charges.[161] Years after his execution, it transpired that Hubert had only reached the shores of London two days after the fire had started.[162] This meant that he was not in the city at the time

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[153] *The Psychology of Confessions* (n 42) 36.

[154] David Ormerod, *Blackstone's Criminal Practice 2012* (Oxford University Press, 2012) 2655 [17.3].

[155] *McCormick's Handbook of the Law of Evidence* (n 3) 316.

[156] Saul M Kassin, 'False Confessions' (2010) 73(4) *Albany Law Review* 1227, 1230 ('*False Confessions*').

[157] Saul M Kassin, Steven A Drizin, Thomas Grisso, Gisli H Gudjonsson, Richard A Leo and Allison D Redlich, 'Police-Induced Confessions: Risk Factors and Recommendations' (2010) 34 *Law and Human Behaviour Journal* 3, 5 ('*Police-Induced Confessions*').

[158] *False Confessions* (n 156) 1232.

[159] Ibid. See generally Brandon L Garrett, 'The Substance of False Confessions' (2010) 62(4) *Stanford Law Review* 1051.

[160] Neil Hanson, *The Dreadful Judgement: The True Story of the Great Fire of London, 1666* (Doubleday Publishers, 2001); Neil Hanson, *The Great Fire of London: In that Apocalyptic Year, 1666* (John Wiley & Sons Publishing, 2002).

[161] Ibid.

[162] Ibid.

of the fire.[163] There were many explanations as to why Hubert falsely confessed, in which the main assertion was that the officers tortured him into confessing.[164] Despite his inconsistent confessions, Hubert was convicted and sentenced to death.[165] Subsequently, the fire was attributed to 'great wind and very dry seasons'.[166] Consequently, Hubert was posthumously exonerated in 1670.[167] Another prominent example was the Salem witch trials in 1692, where more than 50 women falsely confessed to using witchcraft due to the nature of the interrogations that they were subjected to.[168]

In 1908, Hugo Munsterberg, the first psychologist to write on false confessions, understood such confessions to be a common phenomenon that was merely prompted by extraordinary circumstances.[169] There were no further substantial developments in this area till the 1980s. In 1987, Michael Radelet and Hugo Bedau identified 49 false confessions in their study of wrongful convictions.[170] This was followed by the 15 cases revealed by Barry Scheck, Jim Dwyer and Peter Neufeld in 2000.[171] In 2008, Richard Leo and Steven Drizin identified 125 cases of false confessions.[172] They opined that false confessions are 'inherently prejudicial and highly damaging to a defendant, especially if they result from coercive interrogations'.[173]

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[163] Simon Winchester, 'When London Started Over', *The New York Times* (online, 22 September 2002) <https://www.nytimes.com/2002/09/22/books/when-london-started-over.html>.

[164] Ibid.

[165] Ibid.

[166] 'Investigate The Great Fire of London', *Museum of London* (Web Page, 27 April 2006) <https://web.archive.org/web/20060427114020/http://www.museumoflondon.org.uk/learning/features_facts/tudor_stuart_london_2.html>.

[167] Ibid.

[168] Ibid.

[169] Hugo Munsterberg, *On the Witness Stand: Essays on Psychology and Crime (Classics in Psychology)* (Greentop Academic Press, 2009).

[170] Hugo Adam Bedau and Michael L Radelet, 'Miscarriages of Justice in Potentially Capital Cases' (1987) 40(1) *Stan L Rev* 21, 78. See also Richard Ofshe, 'Coerced Confessions: The Logic of Seemingly Irrational Action' (1989) 6(1) *Cultic Studies Journal* 1, 2 ('*Coerced Confessions*').

[171] See generally Barry Scheck, Jim Dwyer and Peter Neufield, *Actual Innocence: Five Days to Execution and Other Dispatches from the Wrongly Convicted* (Doubleday Publishers, 2000).

[172] Steven A Drizin and Richard A Leo, 'The Problem of False Confessions in the Post-DNA World' (2008) 82 *North Carolina Law Review* 892, 900.

[173] Ibid 959.

B *Types of False Confessions*

Kassin opined that false confessions could be identified in four ways: (i) when the confessed crime did not occur; (ii) when it becomes 'physically impossible' for the confessor to commit the crime; (iii) when the actual perpetrator is 'apprehended and his guilt clearly established'; and (ii) forensic evidence, including DNA, supports the confessor's innocence.[174]

Kassin and Wrightsman introduced a typology to distinguish three different types of false confessions: (i) coerced compliant false confessions; (ii) coerced internalised false confessions; and (iii) voluntary false confessions.[175] It is essential to note that mentally ill people can be prone to making false confessions without being coerced.[176] However, that area of false confessions is beyond the scope of this paper.

1 *Coerced Compliant False Confessions*

(a) The Theory

Kassin and Wrightsman identified that a coerced compliant false confession is when 'a suspect publicly professes guilt in response to extreme interrogation methods', despite knowing that they are genuinely innocent.[177] This type of confession is bound to occur when innocent confessors succumb to the pressure of the interrogations and believe in the interrogators' promises.[178] Such promises are considered to be 'coercive in law and psychology'.[179]

This may be the most common type of false confessions, as Kassin stated that 'the pages of legal history are filled with stories of coerced compliant confessions'.[180] Compliant false

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[174] *False Confessions* (n 156) 1228.

[175] Saul M Kassin and Lawrence S Wrightsman, *The Psychology of Evidence and Trial Procedure* (SAGE Publications, 1985) 76 ('*The Psychology of Evidence and Trial Procedure*').

[176] Hollida Wakefield and Ralph Underwager, 'Coerced or Nonvoluntary Confessions' (1998) 16(4) *Behavioral Sciences and the Law Journal* 423, 425. See generally *Reck v Pate,* 367 US 433, 435 (1961).

[177] *The Psychology of Evidence and Trial Procedure* (n 175) 77. See also Lawrence S Wrightsman and Saul M Kassin, *Confessions in the Courtroom* (SAGE Publishing, 1993) 57.

[178] *The Psychology of Evidence and Trial Procedure* (n 175) 77.

[179] Richard A Leo and Richard J Ofshe, 'The Social Psychology of Police Interrogation: The Theory and Classification of True and False Confessions' (1997) 16 *Studies in Law, Politics and Society* 189, 195 ('*The Social Psychology of Police Interrogation*').

[180] Saul M Kassin, 'The Psychology of Confession Evidence' (1997) 52(3) *American Psychologist Association* 221, 225 ('*The Psychology of Confession Evidence*').

confessions are caused by several factors, namely psychological coercion, stress, and pressure.[181] It is essential to note that these factors are external to the suspect, and therefore, not caused by the suspects' characters.[182]

Kassin and Wrightsman noted that suspects confessed to avoid physical coercion such as torture and assault in the past.[183] However, in the modern era, 'psychological coercion' gives rise to false confessions and can extract false confessions in the same way physical coercion used to.[184]

The basis of a compliant false confession is that an 'intolerable' custodial environment is created in which an innocent suspect falsely confesses to finding an escape from that environment.[185] Interrogators may make promises of long-term or short-term benefits.[186] Long-term benefits for confessing include a less severe punishment or immediate release from custody, while short-term benefits may include food, sleep or even access to a phone.[187] In some circumstances, innocent suspects, at that moment, may perceive that the benefits they are promised in exchange for their confessions are more advantageous than subjecting themselves to lengthy interrogations.[188]

Kassin further stated that the techniques used by interrogators are mainly designed to induce stress on the suspects.[189] Some of these techniques include being demanding, hostile, or even manipulative.[190] Author David Simon wrote that a 'good interrogator controls the physical environment from the moment a suspect is dumped in the small cubicle….'[191] He further stated,

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[181] Ibid 234.

[182] Ibid.

[183] *The Psychology of Evidence and Trial Procedure* (n 175) 77.

[184] Ibid 78. See generally G Daniel Lassiter, *Interrogations, Confessions and Entrapment* (Springer Publishers, 2004) 37–82.

[185] *The Psychology of Evidence and Trial Procedure* (n 175) 80. See also G H Gudjonsson and Brek LeBegue, 'Psychological and Psychiatric Aspects of a Coerced-Internalized False Confession' (1989) *Forensic Science Journal* 261, 263 ('*Psychological and Psychiatric Aspects*').

[186] *The Psychology of Evidence and Trial Procedure* (n 175) 81.

[187] *Police-Induced Confessions* (n 157) 11. See also Gisli H Gudjonsson, *The Psychology of Interrogations and Confessions: A Handbook* (John Wiley & Sons Publishing, 2003) ('*Psychology Handbook*') 67.

[188] *Police-Induced Confessions* (n 157) 14.

[189] Saul M Kassin, 'On the Psychology of Confessions: Does Innocence Put Innocents at Risk?' (2005) 60(3) *American Psychologist Association* 215, 225 ('*Kassin's Psychology of Confessions*').

[190] Ibid. See also Richard J Ofshe and Richard A Leo, 'The Decision to Confess Falsely: Rational Choice and Irrational Action' (1997) 74(4) *Denver Law Review* 979, 1006 ('*The Decision to Confess Falsely*').

[191] David Simon, *Homicide: A Year on the Killing Streets* (Canongate Publishers, 1991) 28.

"every time a suspect has to ask for…. water… or a trip to the bathroom, he is being reminded that he's lost control'.[192] The interrogation, extending for hours, 'weaken the suspect's resistance, inducing fatigue and heightening suggestibility'.[193] Due to the lack of control, suspects may end up telling interrogators what they want to hear, which may seem like the only escape at that point in time.[194]

(b) Case Studies – Global

The infamous Central Park Five indictment ('Central Park indictment') in 1989 is a prominent example of a coerced compliant confession.[195] The Central Park indictment sparked public interest in its miscarriage of justice, which led to the wrongful convictions of five innocent black juveniles ('juveniles') between the ages of14 and 16.[196] They were charged with assaulting and raping a 28-year-old white woman.[197] The brutality of the crime turned the case into a 'media tsunami' – the victim was bludgeoned with a rock, raped, and left for dead.[198] The juveniles were detained individually and interrogated for approximately 14 to 30 hours without any food and sleep.[199] The police officers employed various techniques in their interrogations, including using a 'good-cop bad-cop routine'.[200] The interrogation process also included numerous threats from the police officers that the juveniles' family members would lose their jobs if they did not confess to the crime.[201] As DNA evidence at the scene did not

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[192] Ibid.

[193] Richard A Leo, 'False Confessions: Causes, Consequences and Implications' (2009) 37 *The Journal of the American Academy of Psychiatry and the Law* 332, 339. See also *The Psychology of Evidence and Trial Procedure* (n 175) 82.

[194] *The Psychology of Confessions* (n 42) 43.

[195] Sarah Burns, *Central Park Five: The Untold Story Behind One of New York City's Most Infamous Crimes* (Vintage Publishers, 2012). ('*The Untold Story*').

[196] Ibid.

[197] *The People of the State of New York v Kharey Wise, Kevin Richardson, Anton Mccray, Yusef Salaam and Raymond Santana* 194 Misc 481 (New York Supreme Court, 2002), 2 ('*New York v The Defendants*').

[198] Yusef Salaam, 'I'm one of the Central Park Five. Donald Trump won't leave me alone', *The Washington Post* (Washington DC, 12 October 2016) ('*Yusef Salaam's Story*'). See generally *The Untold Story* (n 195).

[199] See generally *The Untold Story* (n 195).

[200] Ibid.

[201] Ibid. See also Kate Storey, ''When They See Us' Shows The Disturbing Truth About How False Confessions Happen', *Esquire* (United States, 1 June 2019).

match any of the juveniles, police officers collaborated with the prosecutors to solely rely on the interrogations to obtain the juveniles' convictions.[202]

The police officers and prosecutors wholly disregarded the juveniles' conflicting confessions and the lack of physical evidence.[203] The only evidence that tied the juveniles to the crime was their coerced confessions.[204] Yusef Saalam, one of the juveniles, stated that the police deprived them of food, drink and sleep for more than 24 hours when they were arrested.[205] He added that they 'falsely confessed under duress'.[206] They were convicted and sentenced to imprisonment terms ranging from 5 to 15 years, based mainly on their incriminating statements.[207] The juveniles were subsequently exonerated from their charges after the perpetrator, Matias Reyes, came forward to give a full confession that included unknown details of the crime.[208] Furthermore, the DNA found at the scene matched Reyes'.[209]

Upon their exonerations, the juveniles pursued a lawsuit against the City of New York for their wrongful convictions.[210] They received a compensation of $41 million.[211] However, the City failed to admit any liability.[212] While the compensation may be argued to be a remedy for the juveniles' pain and sufferings, one cannot agree that the compensation will heal all wounds. The anguish remains that the truth was only revealed after years of being branded as rapists, and four of the juveniles had already served their sentences in their entirety. Borrowing the words from one of the juveniles, Kharey Wise, who served 13 years in prison, 'you can forgive,

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[202] See generally *The Untold Story* (n 195).

[203] Carl Suddler, 'How the Central Park Five Expose the Fundamental Injustice in our Legal System', *The Washington Post* (United States, 12 June 2019).

[204] Ibid. See generally *The Untold Story* (n 195).

[205] *Yusef Salaam's Story* (n 198).

[206] Ibid.

[207] *New York v The Defendants* (n 197).

[208] See *The Untold Story* (n 195) 78.

[209] Ibid.

[210] Ibid.

[211] Alissa Wilkinson, 'A Changing America Finally Demands that the Central Park Five Prosecutors Face Consequences', *Vox Media* (online, 8 July 2019) <https://www.vox.com/the-highlight/2019/6/27/18715785/linda-fairstein-central-park-five-when-they-see-us-netflix>.

[212] Ibid.

but you can never forget'.[213] The Central Park indictment was an exemplar that exposed the significance of how coerced confessions can lead to miscarriages of justice.

Another clear example of coerced compliant false confessions is seen in the case of David Saraceno ('Saraceno') in 1994.[214] The 18-year-old teenager was arrested for burning 15 school buses in Connecticut, United States of America.[215] Saraceno was interrogated for more than 10 hours.[216] During the interrogation, the interrogators repeatedly accused him of starting the fire.[217] Saraceno denied doing so as he was at his girlfriend's house the night of the fire.[218] Every time Saraceno attempted to explain his innocence, the interrogators interrupted him by repeating that he had started the fire.[219] Interrogators said, 'don't bother wasting our time…. we are not idiots… you know you did this… just admit to it….'[220] Saraceno said he felt confused and knew that the interrogators were not going to stop.[221] Apart from the false accusations, the interrogators used promises to convince Saraceno to confess falsely.[222] Specifically, as Saraceno recalled, 'why don't you make this easy… you know… we will let you go'.[223] While the exact words of 'you can go home if you admit' was not used, Saraceno understood from 'let you go' to mean he could go home if he confessed.[224]

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[213] Laura Jane Turner, 'Korey Wise: What really happened in the Central Park Five case and where is he now?', *The Digital Spy* (online, 3 June 2019) < https://www.digitalspy.com/tv/ustv/a27696057/korey-wise-prison-guard-now-central-park-five-when-they-see-us/>.

[214] Donald Connery, 'A Disgraceful End to the Bus-Burning Case', *Hartford Courant* (online, 17 December 1999) <https://www.courant.com/news/connecticut/hc-xpm-1999-12-17-9912170995-story.html> ('*A Disgraceful End*'). See also Joseph O'Brien, 'Man Says Confession was False; Defendant Claims Fear of Jail Led to Lies in Bus Burning Case', *Hartford Courant* (online, 2 June 1995) ('*Man Says Confession was False*').

[215] *A Disgraceful End* (n 214) [1].

[216] Ibid [5].

[217] Ibid.

[218] Ibid.

[219] Ibid [7].

[220] *Man Says Confession was False* (n 214).

[221] Ibid.

[222] Ibid.

[223] Robert P Burns, *Kafka's Law: "The Trial" and American Criminal Justice* (University of Chicago Press, 2014) 2 ('*Kafka's Law*').

[224] Ibid.

Furthermore, the interrogators used the promise of leniency - that they would speak to the prosecutors to ensure that Saraceno would get only community service or probation.[225] Towards the end of the interrogation came the interrogators' most severe threats. They said Saraceno would not survive in prison because it would be similar to 'throwing a lamb to the lions' where he would 'be raped by a big black nigger'.[226] Upon hearing these threats, Saraceno recalled that he felt nauseous and thought he was going to faint.[227] He told the interrogators about this and requested medical attention.[228] The interrogators denied his request and said to him that his guilt was causing the nausea.[229]

Saraceno eventually gave in and asked the interrogators if they wanted him to lie.[230] They responded by saying that he should do what he felt was right.[231] At this point, Saraceno began fabricating his confessions with details that the interrogators had told him.[232] Along the way, he continued agreeing to the interrogators' suggestions of how he set the fire and other facts that were crucial to his conviction.[233] The interrogators, however, did not record the interrogation or take written notes of his confessions.[234] Instead, they reconstructed his confessions purely from memory two days later.[235] Saraceno's confessions secured his convictions of arson and other related charges.[236]

After Saraceno was convicted, private investigators found evidence leading to the actual perpetrators of the crime the State was trying to protect.[237] However, the statute of limitations had expired, and it was too late to charge the actual perpetrators.[238] Saraceno's ordeal did not

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[225] *Man Says Confession was False* (n 214).

[226] *Kafka's Law* (n 223) 2.

[227] Ibid.

[228] *Man Says Confession was False* (n 214).

[229]Ibid.

[230] *Kafka's Law* (n 223) 2.

[231] Ibid.

[232] Ibid.

[233] *A Disgraceful End* (n 214) [6].

[234] Ibid.

[235] Ibid.

[236] *Man Says Confession was False* (n 214).

[237] Ibid.

[238] *A Disgraceful End* (n 214) [9].

end even when his conviction was overturned. The prosecutors threatened to prosecute further unless Saraceno pleaded 'no contest' to a less severe fire charge.[239] This essentially meant that Saraceno was not admitting guilt to the offence but agreed to the facts of the crime.[240] The prosecutors subsequently offered him a deal to plead guilty to the offence of 'hindering prosecution by falsely confessing'.[241] Saraceno eventually agreed to the deal to end the 'surreal prosecution'.[242]

(c) Case Studies – Singapore

The methods used by the investigating officers in the Singaporean case of *Public Prosecutor v Lim Kian Tat* bear some similarity to that of the Central Park indictment.[243] The accused was interrogated for an extensive period of 18 hours and was only accorded a one-hour break.[244] One of the statements were obtained during the fourth night in a row in which the accused did not have any sleep.[245] The Court believed that the accused had only provided his statements after the police had rejected his previous statements and 'only spoke when he would not have otherwise'.[246] In this regard, the Court excluded his statements on the basis that they were obtained by oppression.[247] The concept of oppression is further discussed in Chapter V.[248]

The *Lim Kian Tat* case is not an isolated one. The case of *Public Prosecutor v Azman Bin Mohamed Sanwan* provides a more recent example of coerced compliant confessions.[249] Azman Bin Mohamed Sanwan ('Azman') was charged with trafficking a controlled drug, namely cannabis, under the *Misuse of Drugs Act*.[250] Azman alleged that the investigating officer

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[239] *A Disgraceful End* (n 214) [10].

[240] Ibid.

[241] *Man Says Confession was False* (n 214).

[242] *A Disgraceful End* (n 214) [10].

[243] *Public Prosecutor v Lim Kian Tat* [1990]1 SLR (R) 273 ('*Lim Kian Tat*'). See also Hock Lai Ho, 'On the Obtaining and Admissibility of Incriminating Statements' (2016) *Singapore Journal of Legal Studies* 249, 260.

[244] *Lim Kian Tat* (n 243) [26].

[245] Ibid.

[246] Ibid.

[247] Ibid [29].

[248] See below Chapter V.

[249] *Public Prosecutor v Azman Bin Mohamed Sanwan* [2010] SGHC 196 ('*Azman's Trial*'). See generally *Abdul Munaf bin Mohd Ismail v Public Prosecutor* [2004] SGHC 4.

[250] *Misuse of Drugs Act* (Singapore, cap 185, 2001 rev ed) s 5.

obtained his confessions through threats - that the officer would take action against his wife if he did not cooperate.[251] Azman also alleged that he was informed that he would be spared the death penalty if he cooperated and thus admitted guilt to the offences.[252]

The main contention in the case was whether Azman's confessions were voluntarily given and whether he was the victim of police misconduct due to the threats and inducements from the investigating officers.[253] The trial judge accepted the investigating officer's evidence that the allegations did not occur; Azman's confessions were voluntary, thus admitting his confessional statements into evidence.[254]

However, the Court of Appeal considered various facts that challenged the reliability of Azman's statements.[255] The Court held that there were reasonable doubts about the voluntariness of Azman's confessional statements for multiple reasons.[256] Firstly, the statements were obtained when the investigating officer's initial investigations had already concluded.[257] The investigating officer visited Azman while he was on remand to record two inculpatory statements.[258] The investigating officer reasoned that the purpose of his visits was to seek clarification on a DNA analysis report and to serve an additional drug charge on Azman.[259] However, these visits were 'questionable' given that they were uninformed and further made in the absence of Azman's counsel.[260]

Secondly, the fact that his inculpatory statements were only obtained after several months from the date of his arrest invited 'keen scrutiny', given that Azman had 'unequivocally and consistently denied his guilt right from the date of his arrest'. [261] Lastly, the interpreter who

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[251] *Azman's Trial* (n 249) [45].

[252] Ibid.

[253] Ibid [54].

[254] Ibid [52– 56], [71–76].

[255] *Azman bin Mohamed Sanwan v Public Prosecutor* [2012] SGCA 19 ('*Azman's Appeal*').

[256] Ibid [19].

[257] Ibid [20].

[258] Ibid.

[259] Ibid [16–18].

[260] Ibid [16], [22].

[261] Ibid [20].

accompanied the investigating officer to assist with translation had not recorded any notes of what transpired during the interview.[262]

The Court questioned whether the investigating officer needed to serve further drug charges so late given that it is 'common sense practice not to given the irreversible nature of a conviction on a capital charge'.[263] This led the Court to conclude that the investigating officer's evidence was unpersuasive and ambiguous.[264] Investigations further revealed that the investigating officer made promises to Azman during multiple interrogations, which led to his self-inculpatory statements.[265] Consequently, the Court of Appeal set aside Azman's conviction.[266]

As discussed above, the investigating officer's promise to Azman that he would be spared the death penalty is a benefit. This is apparent because Azman only cooperated with the investigating officer's interrogations upon this promise. Therefore, it can be said that the promise of such a benefit influenced Azman's decision to cooperate.

2 *Coerced Internalised False Confessions*

(a) The Theory

Coerced internalised false confessions occur when innocent suspects believe that they may have committed the crime despite having no actual memory of it.[267] The interrogators use an array of extremely 'suggestive and misleading' tactics on innocent yet vulnerable suspects, creating distrust in their own memory.[268] This distrust then leads the suspects to raise doubts about their innocence in the crime.[269] Therefore, the suspects' dilemma is only resolved when they confess to the crime.[270] This type of false confession differs from the previously discussed coerced

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[262] Ibid [25].

[263] Ibid [25].

[264] Ibid [32].

[265] *Azman's Appeal* (n 255) [40].

[266] Ibid.

[267] *The Psychology of Evidence and Trial Procedure* (n 175) 77.

[268] Ibid. See also Saul M Kassin, 'Internalised False Confessions' in Michael Toglia, J Pon Read, David F Ross and R C L Lindsay (ed), *The Handbook of Eyewitness Psychology: Volume I* (Lawrence Erlbaum Associates Publishers, 2007) 171.

[269] *The Psychology of Evidence and Trial Procedure* (n 175) 77.

[270] Ibid.

compliant false confessions where innocent suspects do not believe the interrogators but merely confess to escape an 'intolerable situation'.[271] Kassin described this typology to be the 'most interesting' from a psychological perspective.[272] He further opined that this type of confession is 'particularly frightening' because innocent suspects' respective memory of their actions 'may be altered, rendering the original contents potentially irretrievable'.[273]

Gudjonsson stated that this type of false confession results from 'Memory Distrust Syndrome' ('MDS').[274] MDS is defined as a 'condition where people develop a profound distrust of their memory recollections, as a result of which they are particularly susceptible to relying on external cues and suggestions'.[275] MDS is said to occur in two situations: (i) where suspects have no memory of the offence possibly due to alcohol or amnesia, even if they committed it; or (ii) where suspects have no recollection of committing the offence at the initial stage of interrogations, but gradually began to distrust their own beliefs because of manipulations from the officers during interrogations.[276]

(b) Case Studies - Global

In 1998, one Michael Crowe ('Crowe') was arrested for the murder of his 12-year-old sister in California.[277] The interrogations occurred for more than ten hours over three days.[278] During the interrogations, the interrogators employed various tactics in an attempt to extract his confessions.[279] They used false evidence, namely that they had found blood prints in his room

[271] *Psychological and Psychiatric Aspects* (n 185) 267.

[272] *The Psychology of Confession Evidence* (n 180) 226.

[273] Ibid. See also *Psychology Handbook* (n 187) 194.

[274] *Psychology Handbook* (n 187) 196.

[275] Ibid. See also *Police-Induced Confessions* (n 157) 20.

[276] *Psychology Handbook* (n 187) 196. See also *Police-Induced Confessions* (n 157) 32; Pekka Santtila MA, Petri Alkiora, Magnus Ekholm and Pekka Niemi, 'False Confessions to Robbery: The Role of Suggestibility, Anxiety, Memory Disturbance and Withdrawal Symptoms' (1999) 10 *Journal of Forensic Psychiatry* 399, 402.

[277] See generally *Crowe v County of San Diego* Crim No. (2008) 99-0241-R ('*Crowe v San Diego*').

[278] Ibid 23.

[279] Ibid.

and his hair strands in his sister's hands.[280] Crowe repeatedly denied that he murdered his sister.[281]

Subsequently, the interrogators administered a 'Computer Voice Stress Analyser' test on Crowe.[282] Before the test, they told Crowe that the test would help prove his innocence given its accuracy.[283] After Crowe took the test, the interrogators told him that he failed and was guilty of murdering his sister.[284] Crowe, who remembered being asleep during the murder, began to question his memory and started crying.[285] The interrogators suggested that Crowe may have blacked out since he did not remember having murdered his sister.[286] They also told him, '…what happened is not an issue…why it happened and how we will help you get through this …'.[287]

Crowe maintained his position that he did not murder his sister throughout the interrogation, while the interrogators continued accusing him.[288] They said, 'there were two Michaels… you will be treated as if this was an unconscious act… use your imagination...'[289] Crowe responded that he did not have the answers to the questions that were being asked.[290] Though Crowe maintained that he was not responsible for the murder of his sister, he started having doubts about his involvement.[291] Specifically, he said:

> If I did it, I hope she forgives me…. If I did this, then I must be subconsciously blocking it out or something like that….'[292] Crowe eventually caved in to the interrogators' suggestions and

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[280] Ibid.

[281] Michael Crowe, 'Deposition of Michael Crowe', Submission in *Stephen Crowe v City of Escondido*, Crim No. 99-0241-R, 18 December 2002, ('*Deposition of Michael Crowe*').

[282] *Crowe v San Diego* (n 277) 30.

[283] Ibid.

[284] *Deposition of Michael Crowe* (n 281) [62].

[285] Ibid.

[286] Ibid.

[287] 'Interrogation Transcript of Michael Crowe', *Stephen Crowe v City of Escondido* (California Police Department, No 99-0241-R, 22 January 1998) [88] ('*Interrogation of Michael Crowe*').

[288] Ibid. See also *Deposition of Michael Crowe* (n 281) [172].

[289] *Interrogation of Michael Crowe* (n 287) [74], [76].

[290] Ibid.

[291] Ibid.

[292] Ibid [94], [103].

> said, '…I know I did it but don't know how… I think the reason I don't remember was rage... All I know is I am positive I killed her.[293]

Crowe was placed on remand for seven months in a juvenile prison after his confessional statements while waiting for his trial.[294] The charges against Crowe were eventually dismissed when investigators found his sister's blood on a mentally unstable person, one Richard Tuite.[295] Years later, during a deposition in 2002, Crowe stated that the reason for his doubts arose from the interrogators' suggestions in that: (i) though he was sleeping during the time of the murder, he could not have remembered murdering his sister because he possibly blacked out; (ii) there was irrefutable evidence pointing towards his guilt such as the blood and hair; and (iii) his failure of the administered test.[296]

MDS was also present in the American case of Ryan Ferguson.[297] Ferguson was charged with the murder of a newspaper editor.[298] Ferguson and an acquaintance, Charles Erickson, were at a bar at the time of the murder.[299] There was no physical evidence tying Ferguson or Erikson to the murder scene.[300] However, what led to Ferguson's arrest was an anonymous phone call by someone who heard from Erickson that they might have been involved in the crime.[301] Investigators questioned Erickson, who stated that he was unsure but felt that he might have been involved.[302] As Erickson had no recollection of committing the murder or being present when the crime occurred, the investigators incorporated details to known facts of the crime scene to fit the story.[303] This constituted Erickson's confessions.[304]

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[293] Ibid [163], [173].

[294] *Crowe v San Diego* (n 277) 42.

[295] Ibid.

[296] *Deposition of Michael Crowe* (n 281) [193].

[297] Chris Hamby, 'The Ryan Ferguson Case: An Examination of a Strange Murder and Conviction' (2010) *University of Missouri Journalism Projects* 2.

[298] Ibid 16.

[299] Ibid.

[300] Ibid 14.

[301] Ibid 17.

[302] Ibid.

[303] Ibid 21.

[304] Ibid.

Furthermore, Erickson gave investigators the name of Ferguson, given that two men were seen leaving the crime scene.[305] During the trial, various prosecution witnesses recanted their statements and provided evidence that Ferguson and Erickson were not the two men seen at the scene.[306] In addition, these witnesses cited pressure from the prosecution and investigators to help make their case.[307] A review of the interrogations revealed that Erickson was unaware of what occurred during a possible blackout, and the investigators had to 'educate' him on how the murder occurred.[308] However, it is strange that Erickson still claimed that he was involved in the crime during his testimony at trial.[309] Nevertheless, Ferguson's conviction was subsequently overturned in 2013.[310]

3 *Voluntary False Confessions*

(a) The Theory

Voluntary false confessions are when innocent suspects voluntarily confess in response to little or no police pressure.[311] They are known to do so for various reasons. Firstly, innocent individuals may voluntarily confess due to a desire to gain notoriety.[312] They may be feeling inadequate and worthless and thus possess a pathological need to be famous, even if it means confessing to a severe crime and facing harsh sentences.[313] For some individuals, being famous could also help to boost their self-esteem.[314]

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[305] Ibid 23.

[306] Ibid. See generally Brent E Turvey and Craig Cooley, *Miscarriages of Justice: Actual Innocence, Forensic Evidence, and the Law* (Academic Press, 1st ed, 2014).

[307] Ibid 31.

[308] Ibid.

[309] Ibid 40.

[310] Ibid.

[311] See generally *The Psychology of Evidence and Trial Procedure* (n 175) 77. See also *Police-Induced Confessions* (n 157) 14.

[312] See *Police-Induced Confessions* (n 157) 14. See also Gisli H Gudjonsson, Jon Fridrik Sigurdsson, Olafur O Bragason, Emil Einarsson and Eva B Valdimarsdottir, 'Confessions and Denials and the Relationship with Personality' (2004) 9(1) *Legal and Criminological Psychology* 121, 129.

[313] *The Psychology of Evidence and Trial Procedure* (n 175) 79. See also *Police-Induced Confessions* (n 157) 16.

[314] Ibid. See also *Psychology Handbook* (n 187) 195.

Secondly, individuals may voluntarily confess to aid and protect the actual offender. Mental illnesses are unlikely to fuel this reason of confessing.[315] Instead, the main reason would be to spare the protected party from the consequences of the crime.[316] Gudjonsson opined that this, however, is most likely to occur in less severe criminal cases.[317] Thirdly, voluntary false confessions may also arise in circumstances where confessors possess the need to atone for their previous wrongdoings. This guilt could be an actual as well as an 'imagined' act.[318]

(b) Case Studies – Global

Voluntarily confessing to gain notoriety is evident in the famous *Charles Lindbergh* case where over 200 people falsely confessed to kidnapping the Lindbergh baby.[319] One John Mark Karr also admitted for the same reason to the murder of one JonBenet Ramsey in 2006.[320] Karr had provided a detailed confession of how he committed the murder even though he was not the perpetrator.[321] Experts opined that Karr might have had a pathological need for notoriety and attention.[322] Another possibility was that Karr was suffering from delusion, where reality and fantasy became a blur after he studied the case and deluded that he was involved when, in fact, he was not.[323] However, investigators ultimately excluded him as a viable suspect with the use of DNA evidence.[324]

The case of Gunther Kaufmann is an example of a confession made to protect the actual offender.[325] Kaufmann was sentenced to an imprisonment term of 15 years.[326] During his

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[315] *Psychology Handbook* (n 187) 197.

[316] Ibid.

[317] Ibid 195.

[318] Ibid.

[319] Vivian Lord and Allen D Cowan, *Interviewing in Criminal Justice: Victims, Witnesses, Clients, and Suspects* (Jones & Bartlett Publishers, 1st ed, 2010) 22–23.

[320] Kris Axtman, 'Why would John Mark Karr lie about JonBenet?', *The Christian Science Monitor* (Blog Post, 30 August 2006) <https://www.csmonitor.com/2006/0830/p02s01-usju.html>.

[321] Ibid.

[322] Ibid.

[323] Ibid.

[324] Ibid.

[325] Teresa Schneider, Melanie Sauerland, Harald Merckelbach, Jens Puschke and J Christopher Cohrs, 'Self-Reported Voluntary Blame-Taking: Kinship Before Friendship and No Effect of Incentives' (2021) *12 Frontiers in Psychology* 1, 2.

[326] Ibid.

imprisonment, Kaufmann revealed that he only confessed because he wanted to protect his cancer-stricken wife, who had hired three accomplices to commit the murder.[327]

4 *Critiques of Kassin and Wrightsman's Theory*

Kassin and Wrightsman's theory has undoubtedly played an essential role in understanding false confessions.[328] However, some critics opined that the element of 'coerced' will not necessarily be present in all compliant false confessions and internalised false confessions.[329] Notably, Davison and Forshaw opined that other factors might result in a compliant false confession, other than coercion from police interrogators.[330] For example, a heroin addict may irrationally confess, though there was extremely subtle coercion from police officers.[331] Therefore, they took the view that 'coercion' in Kassin and Wrightsman's threefold theory should be accorded a broader meaning.[332]

In 1997, Ofshe and Leo agreed with Davison and Forshaw that Kassin and Wrightsman's threefold theory failed to consider the absence of coercion in compliant false confessions.[333] They further argued that persuasion, not internalisation, set the basis of coerced internalised confessions.[334] Their study surrounded the theory that such persuaded confessions can be categorised into coerced-persuaded and non-coerced persuaded false confessions.[335] During interrogation, the suspect may use words such as 'I guess I did it' or 'I probably did it', reflecting his confused state.[336] Ofshe and Leo established this as the 'grammar of

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[327] Ibid.

[328] See generally *The Social Psychology of Police Interrogation* (n 179); Richard A Leo, 'False Confessions: Causes, Consequences and Implications' (2009) 37 *The Journal of the American Academy of Psychiatry and the Law* 332; McCann J T, 'A Conceptual Framework for Identifying Various Types of Confessions' (1998) 16 *Behavioral Sciences and the Law* 441, 448.

[329] Ibid. See also *Psychology Handbook* (n 187) 201.

[330] Davison SE and Forshaw DM, 'Retracted Confessions: Through Opiate Withdrawal to a New Conceptual Framework' (1993) 33(4) *Medical Science and Law Journal* 285, 292.

[331] Ibid 235.

[332] Ibid.

[333] *The Social Psychology of Police Interrogation* (n 179) 213. See also *Psychology Handbook* (n 187) 205.

[334] Ibid.

[335] *The Social Psychology of Police Interrogation* (n 179) 224; *Psychology Handbook* (n 187) 206.

[336] *The Social Psychology of Police Interrogation* (n 179) 212.

confabulation', which is observed in persuaded false confessions.[337] In 1997, Kassin agreed and opined that the 'suspect's memory of his actions may be altered' due to inferences.[338] He further elaborated in 2005 that an 'innocent person can sometimes form a false memory in this process'.[339] Notably, Kassin himself, in collaboration with Gujdonsson, agreed on the concept of 'persuasion'.[340]

Ofshe concluded that this persuasion to confess is bound to happen in three sequential stages.[341] Firstly, interrogators will plant the seed of doubt in suspects' minds about whether they are innocent or guilty.[342] In creating this doubt, interrogators will convince suspects of the 'certainty of their conviction' through 'gross distortion' of essential facts and 'intervention of evidence'.[343] These are mainly to contradict suspects' knowledge or account that they did not commit the crime.[344] Secondly, interrogators will proceed to manipulate suspects' emotional states, including 'attacking' any denials of committing the offence.[345] The last step is ultimately to coax the suspect into giving an 'immediate confession' due to the possibility of having a less severe punishment.[346]

C *The Three Sequential Errors - Essence of Involuntariness*

The question of whether a confession is involuntary turns on whether 'a suspect's will was overcome and the confession was obtained by compulsion'.[347] Academics Steven Drizin and Richard Leo ('Drizin and Leo') established that law enforcement officials make three consequential errors that lead to involuntary false confessions: (i) misclassification error; (ii) coercion error; and (iii) contamination error.[348] They further opined that investigators are more

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[337] Ibid 223.

[338] *The Psychology of Confession Evidence* (n 180) 229.

[339] *Kassin's Psychology of Confessions* (n 189) 221.

[340] *The Psychology of Confessions* (n 42) 52.

[341] *Coerced Confessions* (n 170) 1.

[342] Ibid.

[343] Ibid 2.

[344] Ibid 3.

[345] Ibid.

[346] Ibid 2–3.

[347] *Police-Induced Confessions* (n 157)14.

[348] Richard A Leo and Steven A Drizin, 'The Three Errors: Pathways to False Confession and Wrongful Conviction' (2012) *American Psychological Association* 4 ('*The Three Errors*') 12.

likely to elicit false confessions under certain interrogation conditions, and 'individuals with certain personality traits may be more easily pressured into giving false confessions'.[349]

1 *Misclassification Error*

As noted by Drizin and Leo, 'the path to false confessions begins' when interrogators identify innocent suspects for interrogation.[350] The identification of suspects may be based on the suspects' antecedents, random witnesses, or police informants.[351] However, this identification is often 'based on nothing more than a first impression formed' during the interview.[352] Upon this first impression, the interrogations are thereafter 'guided by a presumption of guilt'.[353] This error in misclassifying innocent suspects is a 'necessary condition for all false confessions and wrongful convictions'.[354]

Drizin and Leo opined that interrogators, particularly American police officers, are falsely trained to think that they are 'human lie detectors capable of distinguishing truth from deception at high rates of accuracy'.[355] Drizin and Leo believed that this perception of being human lie detectors has wrong and dangerous consequences – conviction of innocent individuals and the actual perpetrators' escape, leading to their freedom to continue committing more crimes.[356]

Studies have demonstrated that professionals, including police officers, who make judgments regularly, 'typically cannot distinguish truth-tellers from liars at levels significantly greater than chance'.[357] It is established that police officers are trained using the 'Reid Technique'.[358] This Technique consists of a two-step process wherein they are taught skills for an accusatory

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[349] Ibid 13. See also Davis D and Leo R A, 'Strategies for Preventing False Confessions and their Consequences' in M Kebbell & G Davies (ed), *Practical Psychology for Forensic Investigations and Prosecutions* (John Wiley and Sons, 2006) 124 ('*Strategies for Preventing False Confessions*'.)

[350] Ibid.

[351] Ibid.

[352] Saul M Kassin, 'The Social Psychology of False Confessions' (2015) 9(1) *Social Issues and Policy Review* 25, 28.

[353] *Strategies for Preventing False Confessions* (n 345) 125.

[354] *The Three Errors* (n 348) 13.

[355] Ibid.

[356] Ibid.

[357] Ibid 14.

[358] Ibid. See generally Joseph P Buckley, Fred E Inbau, Brian C Jayne and John E Reid, *Criminal Interrogation and Confessions* (Jones & Bartlett, 5th ed, 2011).

interrogation followed by an information-gathering interview.[359] The purpose of the Technique is to allow police officers to assess if the suspect is innocent or guilty.[360] Officers are taught that specific non-verbal cues indicate signs of guilt.[361] For example, suspects who touch their nose or avert their glaze are likely to be lying.[362] However, innocent suspects may also present these same cues when they are merely feeling anxious due to the pressure of the interrogations.[363]

Therefore, any reliance on the 'diagnostic of human deception' is wrong for the apparent reason that it may lead officers to make assumptions about innocent suspects' guilt erroneously and thereafter subject them to an accusatorial interrogation, which may lead to a false confession.[364]

An illustration of a misclassification error is evidenced in the case of *Jeffrey Mark Deskovic* ('Deskoviv').[365] Officers in New York believed that Deskoviv was guilty of the rape of his 15-year-old classmate solely because he appeared to be 'overly distraught' at her funeral.[366] He also displayed suspicious behaviour by starting his own investigations about possible suspects.[367] The officers subsequently interrogated him for an extensive period of six hours, wherein he provided his alleged confessions.[368] His confessions included accurate details, particularly details unknown to the public.[369] Whilst DNA testing revealed that Deskoviv was not the source of semen found on the victim, the prosecution continued its case on the merits of his alleged confession.[370] The Innocence Project team took on Deskoviv's case in 2006.[371]

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[359] Ibid.

[360] Ibid.

[361] Ibid 27.

[362] Ibid.

[363] Ibid 37.

[364] Aldert Vrij, Samantha Mann, & Ronald P Fisher, 'An Empirical Test of the Behavioural Analysis Interview (2006) 30(3) *Law & Human Behaviour Journal* 329, 336.

[365] Synder L, McQuillan P, Murphy W L and Joselson R, Westchester County District Court, *Report on the Conviction of Jeffery Deskovic* (2007) ('*Report on Jeffery*').

[366] Ibid 4.

[367] Ibid 8.

[368] Ibid.

[369] Ibid 14.

[370] Ibid.

[371] The Innocence Project, *Jeff Deskovic - Time Served: 16 Years* (Webpage, 6 June 2021) <https://innocenceproject.org/cases/jeff-deskovic/> ('*Innocence Project – Jeff*').

The semen from the rape kit, tested with modern technology, matched the DNA of a convicted murderer in the database.[372] Subsequently, Deskovic's conviction was overturned.[373] Following an apology from the prosecution, the State of New York paid him $13.7 million in compensation for wrongful conviction.[374] This wrongful conviction caused Deskovic 16 years of his life.[375]

The Deskoviv case demonstrates how false confessions is not one of the circumstances that occur due to chance. Instead, such confessions are 'carefully constructed during an interrogation'. [376] The following coercion error provides the basis for such construction.

2 *Coercion Error*

Once investigating officers misclassify innocent suspects as guilty, they proceed to subject them to an 'accusatorial' style of interrogations.[377] This interrogation becomes essential to extract a confession, especially when there is no other evidence against the suspects.[378] Thus, interrogators tend to use various techniques during the interrogations to 'break down' a suspect.[379] During interrogation, the primary cause of false confessions is the 'psychologically coercive methods that sequentially manipulate a suspect's perception of the situation, expectations for the future, and motivation to shift from denial to admission'.[380] One such coercive method is to induce extreme exhaustion and fatigue by depriving the suspect of necessities.[381] This was discussed above of this section that deals with coerced compliant false confessions.[382]

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[372] Ibid. See also *Report on Jeffery* (n 365) 25.

[373] *Innocence Project – Jeff* (n 371).

[374] Ibid.

[375] Ibid.

[376] Brandon L Garrett, 'The Substance of False Confessions' (2010) 62(4) *Stanford Law Review* 1051, 1097.

[377] *The Three Errors* (n 348) 15.

[378] Ibid.

[379] See Samuel R Gross, 'The Risks of Death: Why Erroneous Convictions are Common in Capital Cases' (1996) 44(2) *Buffalo Law Review* 469, 485.

[380] *The Three Errors*' (n 348) 15; *The Decision to Confess Falsely* (n 190) 983.

[381] *The Three Errors*' (n 348) 18.

[382] See above Part A.

Another common coercive technique is the use of fabricated evidence, such as non-existent eyewitnesses, fake polygraph tests, etc.[383] The purpose of this method is to convince a suspect that the prosecution's case against him is so compelling - that the prosecution can establish his guilt beyond any reasonable doubt and that conviction is inevitable'.[384]

Coercion error, particularly the use of fabricated evidence, was demonstrated in a laboratory experiment conducted by Kassin and Kiechel in 1996.[385] Known as the 'Computer Crash' paradigm, participants were tasked to type letters on a keyboard.[386] A member of the research team read these letters out. Before starting the experiment, participants were strictly instructed not to touch the ALT key on the keyboard, as it would crash the computer system.[387] A few minutes into the experiment, the manipulated computer crashed, and participants were falsely accused of touching the ALT key.[388] A further manipulation was that the member, who was tasked to read the letters, witnessed some participants touching the ALT key.[389] Almost 69% of the participants signed a false confession stating that they hit the ALT key, causing an error in the system.[390] A further 9% fabricated details to substantiate their beliefs that they were indeed responsible for the error.[391]

Whilst this experiment demonstrated the effect of false evidence to obtain confessions, it raised concerns.[392] Many scholars criticised that the experiment was not comparable with confessing to an actual crime, given that there are no real, severe consequences.[393] Furthermore, the experiment consisted of only innocent participants, making it impractical to compare the

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[383] Ibid 19.

[384] Ibid.

[385] Saul M Kassin and Katherine L Kiechel, 'The Social Psychology of False Confessions: Compliance, Internalisation and Confabulation' (1996) 7(3) *Americal Psychological Society* 125, 126.

[386] Ibid.

[387] Ibid.

[388] Ibid 129.

[389] Ibid.

[390] Ibid 129.

[391] Ibid.

[392] See generally Horselenberg R, Merckelbach H and Joseph S, 'Individual Differences, False Confessions: A Conceptual Replication of Kassin, Kiechel' (2003) 9(1) *Psychology, Crime and Law* 1.

[393] See, eg, Levesque R J R, *The Psychology and Law of Criminal Justice Processes* (Nova Publishers, 2006) 356.

accuracy between a true or false confession.[394] Whilst these criticisms seem reasonable, it is essential to understand the purpose of the experiment. The experiment did help to understand why innocent suspects would confess to something that they did not do, simply because false evidence was used as bait in interrogations.

3 *Contamination Error*

Drizin and Leo opined that the contamination of the suspect's confession is the 'third mistake in the trilogy of police errors' that cumulatively leads to a false confession.[395] A confessional statement not only includes the confession that a suspect committed the crime but also a narrative as to how he committed the crime.[396] Drizin and Leo identified that this narrative must have a 'believable' plotline.[397] To make it believable and show the suspect's motive for committing the crime, officers often contaminate the suspect's memory and suggest crime facts to him.[398] Such contamination was evident in *Deskoviv*, as this was the only explanation of how Deskoviv learned details of the crime in which only the actual perpetrator would have known.[399] In this regard, scholars were of the view that 'flaws in the investigation in some measure must be to blame if Deskoviv had information about the victim's death that was not widely known'.[400]

D *Concluding Remarks*

As this chapter has shown, there is a wealth of literature on false confessions, their different types and how various interrogation techniques result in the extraction of such confessions. Though false confessions are somewhat counterintuitive, they can be obtained by coercive measures. The consequences of false confessions have been primarily addressed in Chapter II on wrongful convictions.[401]

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[394] Ibid. See also Jennifer T Perillo and Saul M Kassin, 'The Lie, The Bluff, and False Confessions' (2010) *Law Human Behavior Journal* 1.

[395] '*The Three Errors*' (n 348) 20.

[396] Ibid 21.

[397] Ibid 20.

[398] Ibid.

[399] See generally *Report on Jeffery* (n 365).

[400] Ibid.

[401] See above Chapter II.

IV THE CRIMINAL JUSTICE SYSTEM

According to Andrew Ashworth, the law on confessions demonstrates a conflict in the criminal justice system, specifically in criminal procedures.[402] This conflict is due to the differing models of a criminal justice system where one model focuses on crime control while the other on the rights of accused persons.[403] This chapter will analyse the different models and determine which model is primarily used in Singapore. This is particularly important as it helps to better understand the current criminal justice system and any shortcomings in the criminal justice system that may inadvertently steer the path to false confessions, and subsequently, wrongful convictions, as explained below.

A *Differing Models of a Criminal Justice System*

Herbert L Packer ('Packer') introduced two models that describe the criminal justice process framework, namely the 'crime control model' and 'due process model'.[404] His theory was that every criminal justice system in the world 'falls 'somewhere in between the spectrum' of crime control model and due process model.[405] However, it bears mention that no justice system would ever incorporate either of the models on a sole, exclusive basis.[406] As Packer stated, doing so would be 'fanatic'.[407]

1 *Crime Control Model*

The crime control model aims to 'represses criminal conduct'.[408] To achieve this purpose, the model predominantly focuses on the efficiency of the justice system, its criminal process, and its competency to process offenders.[409] This model demands a high conviction rate as its 'focal

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[402] Andrew Ashworth, 'Excluding Evidence as Protecting Rights' (1977) *Criminal Law Review* 723, 725.

[403] Ibid.

[404] Herbert L Packer, 'Two Models of the Criminal Process' (1964) 113(1) *University of Pennsylvania Law Review* 1, 6 ('*Two Models of the Criminal Process*'). See also Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) 147 ('*The Limits of the Criminal Sanction*').

[405] *Two Models of the Criminal Process* (n 404) 6; *The Limits of the Criminal Sanction* (n 404) 101.

[406] *Two Models of the Criminal Process* (n 404) 8; *The Limits of the Criminal Sanction* (n 404) 154.

[407] Ibid.

[408] *Two Models of the Criminal Process* (n 404) 9; *The Limits of the Criminal Sanction* (n 404) 160.

[409] *Two Models of the Criminal Process* (n 404) 10; *The Limits of the Criminal Sanction* (n 404) 159.

device' appears to be the guilty plea rather than the adjudicative process.[410] The model allows the criminal process to be 'perfunctory', thus demanding as much freedom as possible for police officers to lead criminal investigations.[411] Therefore, police officers and the prosecution are entrusted with the administrative expertise to determine 'probable guilt or innocence' during the initial phase of the case.[412]

As Packer stated, the crime control model instils 'confidence in the reliability of informal administrative fact-finding activities'.[413] Under this model, it can be presumed that an accused is highly likely to be guilty once the case has been comprehensively investigated. By virtue of this 'presumption of guilt', the crime control model has been said to resemble an 'assembly-line conveyor belt which moves an endless stream of cases' towards their disposition.[414] Specifically, the process of charging and convicting the supposed guilty persons progresses expeditiously, while the supposedly innocent persons are removed from the process at an early stage.[415] In essence, as the model is focused on controlling crime, securing convictions takes priority over the rights of individuals.[416] Instead, the model aims to protect society as a whole by reducing crime rates.

2 *Due Process Model*

The adage that it is 'better to let ten guilty men go free than to convict a single innocent person' sets the premise of the due process model.[417] Under this model, the purpose of the criminal justice system is to be just, fair, and consistent to individuals.[418] The emphasis of the model is

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[410] *Two Models of the Criminal Process* (n 404) 12; *The Limits of the Criminal Sanction* (n 404) 162.

[411] *Two Models of the Criminal Process* (n 404) 12; *The Limits of the Criminal Sanction* (n 404) 159.

[412] Chan Sek Keong, 'The Criminal Process - The Singapore Model' (1996) 17 *Singapore Law Review* 433, 441 ('*The Singapore Model*'). See also *Two Models of the Criminal Process* (n 404) 11; *The Limits of the Criminal Sanction* (n 404) 159.

[413] *Two Models of the Criminal Process* (n 404) 12; *The Limits of the Criminal Sanction* (n 404) 161.

[414] *Two Models of the Criminal Process* (n 404) 11; *The Limits of the Criminal Sanction* (n 404) 159.

[415] Ibid.

[416] Ibid.

[417] David Rose, *In the Name of the Law: Collapse of Criminal Justice* (Vintage Publishers, 1996) 2.

[418] *Two Models of the Criminal Process* (n 404) 12; *The Limits of the Criminal Sanction* (n 404) 160.

the ‘primacy of individuals’, as opposed to repressing criminal conduct to benefit the society under the crime control model.[419]

The due process model distinguishes accused persons who are ‘legally guilty’ and ‘factually guilty’ through its high tolerance for the adjudicative process.[420] The question of whether accused persons committed the offence becomes secondary. The primary focus is that accused persons went through the proper adjudicative process while preserving their individual constitutional rights. For instance, though factually guilty, accused persons may not be considered legally guilty if procedural irregularities are found within the system. As Packer illustrated, the due process model recognises the potential errors within a justice system and acknowledges that innocent suspects may tell the officers ‘what they want to hear rather than the truth’.[421]

Additionally, Packer analogised the due process model to an ‘obstacle course’, where there are ‘formidable impediments’ at every stage of the criminal process.[422] This ‘obstacle course’ ensures that the criminal process is filled with various procedural safeguards to protect individuals – convicting only the guilty and protecting the innocents.[423]

In essence, the due process model propagates for an adversarial system of justice while pivoting towards the reliability of the justice system.[424] Therefore, it is focused on recognising possible errors such as coerced confessions or witness misidentifications within the system.[425] The model ensures that such errors do not infringe the constitutional rights of accused persons, thus, limiting corruption or the existence of such errors within the system.

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[419] *Two Models of the Criminal Process* (n 404) 14; *The Limits of the Criminal Sanction* (n 404) 165. See also *The Singapore Model* (n 412) 442.

[420] *Two Models of the Criminal Process* (n 404) 17; *The Limits of the Criminal Sanction* (n 404) 185.

[421] *Two Models of the Criminal Process* (n 404) 16; *The Limits of the Criminal Sanction* (n 404) 215.

[422] Ibid.

[423] Ibid.

[424] *Two Models of the Criminal Process* (n 404) 12, 16; *The Limits of the Criminal Sanction* (n 404) 163, 166.

[425] *Two Models of the Criminal Process* (n 404) 13; *The Limits of the Criminal Sanction* (n 404) 164.

B *Criminal Justice System in Singapore*

1 *Singapore's Favorable Disposition*

The goal of the criminal justice system in Singapore is to achieve a 'high rate of conviction of the factually guilty'.[426] This would require the adoption of various aspects of the crime control model.[427] Consequently, there are various laws in place to ensure conviction of the factually guilty persons.[428] At the outset, it appears that Singapore has adopted the crime control model as the fundamental values of Singapore's criminal justice system appear 'approximate to the value system of the crime control model'.[429] This is further elucidated by former Prime Minister Mr Lee Kuan Yew, who clarifies that the priority in Singapore is the society as a whole, as opposed to the individual rights of criminals:

> [The] basic difference in our approach springs from our traditional Asian value system, which places the community's interests over and above that of the individual. In English doctrine, an individual's right must be the paramount consideration. We shook ourselves free from English norms, which did not accord with the values of Singapore. Our priority is the security and well-being of law-abiding citizens rather than the rights of the criminals to be protected from incriminating evidence.[430]

It may be understood from the above statements that Mr Lee Kuan Yew did not want the justice system to protect factually guilty persons through an unwarranted focus on their rights. Additionally, various commentators have opined that the criminal justice system in Singapore is more favourably disposed towards the crime control model rather than the due process model.[431] For instance, Chen Siyuan and Eunice Chua opined that the 'balance in Singapore's

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[426] Steven Chong, 'Recalibration of the Death Penalty Regime: Origin, Ramifications and Impact' (2017) 35 *Singapore Law Review* 1, 10. See also *The Singapore Model* (n 412) 442.

[427] Ibid.

[428] Ibid.

[429] Chan Sek Keong, 'Rethinking the Criminal Justice System of Singapore for the 21st Century' in *The Singapore Conference: Leading the Law and Lawyers into the New Millennium @ 2020* (Butterworths, 2000) 49.

[430] Lee Kuan Yew, 'The Grand Opening of the Singapore Academy of Law' (Speech, Singapore Academy of Law Journal, 31 August 1990).

[431] See generally Gan Wee Kiat Gregory, 'The Crippled Accused: Miranda Rights in Singapore' (2010) 28 *Singapore Law Review* 123; 'Nisha Francine Rajoo, '…. Than That One Innocent Suffer: The Innocence Project in Singapore' (2012) 30 *Singapore Law Review* 23 ('*Than That One Innocent Suffer*').

criminal process is struck by heavily weighting the criminal control side of the scale'.[432] Another commentator opined that the level of trust in the 'efficiency and reliability of administrative procedures and prosecutor expertise' under Singapore's crime control model leads to cases being 'processed and concluded' in an expeditious manner.[433] Similarly, Chan CJ stated that Singapore has effectively controlled crime by delivering criminal justice 'quickly, efficiently and effectively'.[434]

2 *Adoption of Crime Control Model in Singapore*

An application of the crime control model may be seen in relation to drug trafficking offences. The *Misuse of Drugs Act* (1973) ('*MDA*'), specifically Section 17, provides for the presumption in relation to drug trafficking.[435] It states that any persons who have in their possession more than the amount prescribed in the statutory limitation are presumed to have that drug for the purposes of drug trafficking.[436] This displays the crime control model, as it helps to expedite the conviction process by 'removing an obstacle' that the due process model would have otherwise preferred.[437]

The former Deputy Prime Minister, Mr Teo Chee Hean, stated that there has always been a 'highly deterrent posture towards drug trafficking'.[438] When the *MDA* was first enacted in 1973, the maximum penalty for drug trafficking was the imprisonment of 30 years or a fine of $50,000.00, including 15 strokes of the cane.[439]

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[432] *General Survey of Risk Factors in Singapore* (n 102) 101.

[433] *Than That One Innocent Suffer* (n 431) 33.

[434] Chan Sek Keong, 'From Justice Model to Crime Control Model' (Speech, International Conference on Criminal Justice Under Stress: Transnational Perspectives, India, 24 November 2006) ('*Chan Sek Keong's Justice Model'*).

[435] *Misuse of Drugs Act* (Singapore, cap 185, 2008 rev ed) s 17 ('*MDA*').

[436] Ibid s 11(a).

[437] *General Survey of Risk Factors in Singapore* (n 102) 100.

[438] *Singapore Parliamentary Debates, Official Report* (9 July 2012) [vol 89] (Teo Chee Hean, Deputy Prime Minister and Minister for Home Affairs). Mr Teo Chee Hean is the current Senior Minister and Coordinating Minister for National Security.

[439] *Singapore Parliamentary Debates, Official Report* (20 November 1975) [vol 34] at cols 1381–1382, (Chua Sian Chin, Minister for Home Affairs) ('*Chua Sian Chin's 1997 Debate*'); *Singapore Parliamentary Debates, Official Report* (27 May 1977) [vol 37] (Chua Sian Chin, Then Minister f or Home Affairs).

Two years later, in 1975, the penalty for certain drug offences, including drug trafficking, was amended to a mandatory death penalty.[440] The then Minister for Home Affairs, Mr Chua Sian Chin, elucidated the rationale for this amendment in the *Second Reading Speech of the MDA Amendment Bill.*[441] He stated that the increased penalty was to 'provide the necessary deterrence to drug traffickers'.[442] He further mentioned that drug-related crimes pose a 'dangerous national security problem' and would potentially threaten the 'survival' of Singapore if left uncontrolled.[443]

Sometime in 2012, the Minister of Law, Mr Shanmugam Kasiviswanathan ('Mr Shanmugam'), and the Deputy Prime Minister and Minister for Home Affairs, Mr Teo Chee Hean ('Mr Teo'), proposed various amendments to the *MDA*, specifically to the mandatory death penalty.[444] The proposal was that the death penalty would no longer be mandatory for drug traffickers and would be 'imposed at the discretion of the courts' when certain conditions are satisfied.[445] These include the conditions where (i) the trafficker proves on a balance of probabilities that he only played the role of a courier and was not involved in any supply or distribution of the drugs; and (ii) the Public Prosecutor provides a Certificate of Assistance ('Certificate') certifying that the trafficker has substantially cooperated with the Central Narcotics Bureau.[446]

Otherwise, the trafficker must prove that he was only a courier and had a mental disability which 'impaired his appreciation of the gravity of the act'.[447] Mr Teo further stated that the amendments are meant to 'introduce more calibration into the legal framework against drug trafficking' yet 'retain the strong deterrent posture of [Singapore's] capital punishment regime'.[448] Mr Shanmugam espoused that the 'cardinal objectives' remain the same: 'crime

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[440] Ibid.

[441] Ibid.

[442] Ibid.

[443] Ibid.

[444] *Singapore Parliamentary Debates, Official Report* (9 July 2012) [vol 89] (Teo Chee Hean, Deputy Prime Minister and Minister for Home Affairs). See also Mr K Shanmugam, Parliamentary Speeches and Responses, Ministry of Law, "Ministerial Statement by the Minister for Law Mr K Shanmugam on the changes to the Applications of the Mandatory Penalty to Homicide Offences", Parliamentary Speech (9 July 2012).

[445] Ibid.

[446] Ibid.

[447] Ibid.

[448] Ibid.

must be deterred, and society must be protected against criminals'.[449] These proposed amendments subsequently gave rise to the new Section 33B in the MDA.[450]

On the face of it, the amended MDA appears to be lenient compared to the preceding MDA. However, the courts' discretion to avoid meting the death penalty is extremely narrow. If the Public Prosecutor does not provide the Certificate, the Court does not have any discretionary powers and must impose a death penalty. The fact that the Prosecutor has the discretion to provide the Certificate creates a situation where officers can pressure innocent individuals into confessing solely to obtain the Certificate. When innocent individuals are interrogated, they may realise that confessing may spare them execution; thus, they may be tempted to confess to a crime they did not commit. This, to a certain extent, encourages false confessions. This paper adopts the views of Amnesty International that granting the Public Prosecutor the power to issue the Certificate violates the rights of individuals to a fair trial. This is because the discretionary power 'places life and death decisions in the hands of an official who is neither a judge nor a neutral party in the trial'.[451]

3 *Adoption of the Due Process Model in Singapore*

As discussed above, Singapore seems to have favoured the existence of a crime control model more than a due process model. However, Singapore does have various procedural safeguards that are in congruence with the due process model to help prevent miscarriages of justice, particularly wrongful convictions.[452] These safeguards are demonstrated in the *Constitution of the Republic of Singapore* ('Constitution'), *Criminal Procedure Code* and *Evidence Act*.[453]

(a) Right to Fundamental Rules of Natural Justice

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[449] Ibid.

[450] *Misuse of Drugs Act (Amendment) Act 2012 (No 30 of 2012* (Singapore).

[451] Amnesty International, *Cooperate or Die: Singapore's Flawed Reforms to the Mandatory Death Penalty* (Report, October 2017) 7.

[452] Singapore, *The Constitutional Right of Silence: Abridged?*, No 2, 2003. See also *General Survey of Risk Factors in Singapore* (n 102) 99.

[453] *Constitution of the Republic of Singapore* (Singapore, 1999 rev ed) ('*Constitution*'); *CPC* (n 125); *Evidence Act* (n 142).

The *Constitution* expressly provides the guarantee that no person (i) shall be deprived of his life or personal liberty save in accordance with the law; and[454] (ii) be entitled to equal protection of the law.[455] Though the term 'life' is not defined in the *Constitution*, the Court of Appeal in *Yong Vui Kong v Public Prosecutor* stated that having a right to life is the 'most basic [form] of human rights'.[456] In *Lo Pui Sang v Mamata Kapildev Dave*, the High Court established that 'personal liberty' only meant liberty from unlawful detention or incarceration.[457] The phrase 'accordance with the law' referred to fundamental principles of natural justice.[458] The Court in *Haw Tua Tau v Public Prosecutor* provided some guidance on the scope of these principles. These principles are to be considered in view of the entire justice system, including the perspectives of people operating the system.[459] The Council further noted that the principles are not permanent and, therefore, may vary over time. The rule in question must not be 'obviously unfair'.[460] Particularly in relation to the present discussion, a fundamental rule of natural justice is that individuals will not be punished for an offence unless it has been 'established to the satisfaction of an independent and unbiased tribunal' that they committed the offence.[461]

(b) The Right to Remain Silent – Privilege Against Self-Incrimination

The general stance is that suspects can remain silent and refuse to answer questions if their answers could potentially expose them to criminal proceedings.[462] This is on the basis that no one should be put in a position to forcefully incriminate themselves.[463] This is further discussed below.[464]

(c) The Right to Counsel

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[454] *Constitution* (n 453) art 9(1).

[455] Ibid art 12 (1).

[456] *Yong Vui Kong v Public Prosecutor* [2010] 3 SLR 489, 528.

[457] *Lo Pui Sang v Mamata Kapildev Dave* [2008] 4 SLR 754, 760.

[458] *Ong Ah Chuan v Public Prosecutor* [1981] AC 648, 670.

[459] *Haw Tua Tau v Public Prosecutor* [1980] SLR 133, 135.

[460] Ibid 137.

[461] Ibid.

[462] *Rank Film Distributors Ltd and Others v Video Information Centre and Others* [1980] 2 All ER 273.

[463] G D Nokes, *An Introduction to Evidence* (Sweet & Maxwell Ltd, 4th rev ed, 1967) 206.

[464] See below Part D.

The *Constitution* provides suspects with the right to consult counsel upon arrest.[465] However, in reality, this right has proven to be futile as it is easily abrogated for the following reasons.

Accused persons in Singapore certainly have a right to counsel; however, the issue is the time as to when this right becomes operational. It is established that investigating officers can delay an accused's right to counsel until after interrogations have ended and their statements have been obtained.[466] Mr Shanmugam, in a parliamentary debate, stated that suspects would be granted access to counsel when the interrogations were near completion.[467]

In *Jasbir Singh v Public Prosecutor*, the investigating officers deprived the accused from access to counsel for almost two weeks while interrogating him.[468] The Court found that this period was 'within a reasonable time', as per the criterion in *Lee Mau Seng v Minister for Home Affairs*.[469] The Court further held that there was no 'statutory basis' that suspects must be allowed access to counsel before providing their statements.[470]

Various commentators have suggested that the delay in granting access to a counsel is for the investigating officers to 'extract incriminatory statements' from the suspects while ensuring that the suspects are 'undisturbed by any advice' from counsel.[471] This paper agrees with these views and concludes that promptly providing suspects with the right to counsel will keep a tight rein on investigating officers during the interrogation process.

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[465] *Constitution* (n 453) art 9(3).

[466] *Singapore, Parliamentary Debates, Official Report* (19 May 2010) [vol 87] (Mr K Shanmugam, Minister for Law and Foreign Affairs).

[467] Ibid.

[468] [1994] 1 SLR 782 ('*Jasbir Singh*').

[469] [1971] 2 MLJ 137.

[470] *Jasbir Singh* (n 464) [32].

[471] *Death Penalty Singapore Style* (n 459) 330; See also Michael Hor, 'Singapore's Innovations to Due Process' (2001) *Criminal Law Forum* 12, 25.

C *Concluding Remarks*

The preceding discussions show that crime control 'has always been and is a high priority' in Singapore.[472] Nonetheless, the privileges and rights of accused persons in the *Constitution* are examples of procedural safeguards that direct towards the existence of a due process model. These safeguards, however, do not entirely prevent false confessions and wrongful convictions. It is beyond the scope of this paper to suggest changes to these safeguards. It can, nevertheless, be established that these safeguards are somewhat limited in nature and do not strike a balance between the crime control model and the due process model. This balance is necessary to ensure that the rights of accused persons are protected, hence, potentially resulting in a lower rate of false confessions and wrongful convictions. Further, as the due process model is primarily concerned with procedural rules, it will only aid to avoid false confessions, ultimately resulting in fewer wrongful convictions of the factually innocent.[473] Hence, the proposed solution in Chapter VI attributes more emphasis to the due process model.[474]

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[472] *The Singapore Model* (n 412) 438.

[473] *Chan Sek Keong's Justice Model* (n 434).

[474] See below Chapter VI.

V THE LAW IN SINGAPORE: STATEMENT-RECORDING

The importance of recording police interrogations and suspects' confessions has been emphasised throughout this paper. This chapter examines the existing statutory requirements that govern the interview process in Singapore. In its analysis, the chapter will discuss the admissibility of statements and the circumstances in which their probative value may be reduced. Reference will be made to the relevant legislation and common law and how the courts generally deal with statements.[475]

A *Statement-Recording in Singapore*

During investigations, investigating officers can record two types of statements that are provided for in the *CPC*.[476] For ease of reference, the statements are distinguished by the time they are obtained – pre-charge and post-charge. The statements will only be admissible when by a police officer above the rank of sergeant.[477]

1 *Pre-Charge*

Section 21(1) of the *CPC* provides that investigating officers can issue a written order to any person in Singapore who 'appears to be acquainted with any facts and circumstances of the case' to attend an interview.[478] This power allows police officers to question suspects or witnesses and obtain statements from them.[479] These statements obtained under Section 22 of the *CPC* are often known by their colloquial term, 'long statements' or 'investigation statements'.[480]

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[475] This paper will only discuss statements provided by suspects, not witnesses.

[476] *CPC* (n 125) s 122, 123.

[477] Ibid s 258(2), (3).

[478] Ibid s 121(1).

[479] Ibid s 22.

[480] Ibid s 22(a), (b); Lionel Leo and Chen Siyuan, *Law of Evidence in Singapore* (Sweet & Maxwell, 2016) 520 ('*Law of Evidence in Singapore'*). See also *Public Prosecutor v Mohamad Noor bin Abdullah* [2017] 3 SLR 478 [9].

These statements contain facts and circumstances surrounding the offence being investigated and are prima facie admissible.[481]

The procedural requirements for obtaining statements are prescribed in Section 22(3) of the *CPC*.[482] For instance, the statement must be recorded in writing or the form of an audio-visual recording.[483] If the statement was recorded in writing, the investigating officer must read over what was written, and the suspect or witness must sign the statement.[484] In circumstances where they do not understand English, there must be an interpreter present to interpret on behalf of the officer in a language the suspects understand, and finally, read the written statement to them.[485]

Suspects and witnesses have a right to silence if they choose not to provide a statement.[486] This is discussed in detail below[487]. However, if they decide to speak, they have an obligation to 'state truly what they know of the facts and circumstances of the case'.[488] Failing to do so would attract specific penalties for fabricating evidence under the *Penal Code*.[489]

2 *Post-Charge*

The second type of statement is obtained under Section 23 of the *CPC*.[490] It is a 'cautioned statement' obtained from accused persons who are formally charged with an offence.[491] Accused persons can provide an explanation or defence to the charged offence when giving their cautioned statement.[492]

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[481] *CPC* (n 125) s 22 (2), s 258(1).

[482] Ibid s 22 (3).

[483] Ibid s 22(3).

[484] Ibid.

[485] Ibid s 23(3A) (b).

[486] *CPC* (n 125) s 22(2).

[487] See below Part D.

[488] Ibid s 22(2).

[489] *Penal Code* (Singapore, cap 224, 2008 rev ed) Chapter XI.

[490] *CPC* (n 125) s 23.

[491] Ibid s 23.

[492] Ibid.

The procedural requirements for obtaining statements under Section 23 are prescribed in Section 23(3) of the *CPC*.[493] They, as explained above, are similar to the requirements for obtaining a statement under Section 22.[494] However, there are additional requirements for statements obtained pursuant to Section 23.[495] Investigating officers are required to read the following caution to the accused person; thus, it is known as a 'cautioned statement':[496]

> You have been charged with [the charge]. Do you want to say anything about the charge that was just read to you? If you keep quiet now about any fact or matter in your defence and you reveal this fact or matter in your defence only at your trial, the judge may be less likely to believe you. This may have a bad effect on your case in court. Therefore it may be better for you to mention such fact or matter now. If you wish to do so, what you say will be written down, read back to you for any mistakes to be corrected and then signed by you.[497]

Upon listening to this caution, accused persons have the right to remain silent or say anything in response that indicates their refusal to provide a statement.[498] This is discussed below.[499]

B *The Importance of Statements and Confessions*

The Courts have accorded a broad meaning to confession; 'any statement that connects the accused in some way with the offence'.[500] In this regard, the Court of Appeal in *Lee Chez Kee v Public Prosecutor* stated that a confession 'is a statement made against the interests of its maker and hence inherently reliable'.[501] It is well settled that accused persons may be convicted on their confessional statements alone, and no further corroborations are required.[502] This is also true in circumstances where accused persons retract their confessions. The Court of Appeal in *Yap Sow Keong v Public Prosecutor* stated that even when accused persons retract their

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[493] Ibid s 23(3).

[494] Ibid.

[495] Ibid s 23(1).

[496] Ibid.

[497] Ibid.

[498] Ibid s 23(2).

[499] See below Part D.

[500] *Tong Chee Kong v Public Prosecutor* [1998] 1 SLR(R) 591 [18].

[501] *Lee Chez Kee v Public Prosecutor* [2008] 3 SLR(R) 447 [102].

[502] See, eg., *Ismail bin U K Abdul Rahman v Public Prosecutor* [1974] SLR(R) 91 [83].

confessions, they may still be convicted on the strength of their confessions alone, as long as the courts are satisfied with the accused's guilt beyond a reasonable doubt.[503]

These Section 22 and Section 23 statements that are recorded during investigations provide key evidence in criminal cases.[504] These statements often contain facts and information that aid to secure convictions.[505] It is essential to note that these statements have multifaceted purposes. The courts have taken into account various mitigating factors that are evident in accused persons' statements for the purposes of sentencing. For instance, these statements could demonstrate accused persons' cooperation with investigations or their genuine remorse when they provide 'full and frank disclosure of criminal activities beyond the offences' for which they were presently charged.[506] For example, the Court in *Public Prosecutor v Wong Jia Yi* noted that the accused was 'forthcoming' and had cooperated fully with the investigating officers, 'even to the extent of providing information as to her drug sources'.[507]

C *The Admissibility of Statements*

The *Evidence Act* defines confession as 'an admission made at any time by a person accused of the offence, stating or suggesting the inference that committed that offence'.[508] An admission is further defined to be a statement, either oral or documentary, 'which suggests any inference as to any fact in issue or relevant fact'.[509] A plain reading of these definitions suggests that a statement only amounts to a confession when accused persons admit to elements of the offence, namely having had the intention to commit the crime and actually committing the crime. This was considered in *Anandagoda v R*, where the Privy Council held that the test for determining whether a statement is a confession is 'objective in nature'.[510] The test was whether a reasonable

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[503] (1947) 13 MLJ 90.

[504] *CPC* (n 125) s 22, 23.

[505] *Law of Evidence in Singapore* (n 480) 520. See also Chin Tet Yung, 'Criminal Procedure Code 2010: Confessions and Statements by Accused Persons Revisited' (2012) 24(1) *Singapore Academy of Law Journal* 60 [60] ('*CPC Revisited*').

[506] *Public Prosecutor v Siow Kai Yuan Terence* [2020] SGHC 82 [56], [61].

[507] *Public Prosecutor v Wong Jia Yi* [2003] SGDC 63 [35-36]. See also *Praveen s/o Krishnan v Public Prosecutor* [2017] SGHC 324 [40]; A *Karthik v Public Prosecutor* [2018] SGHC 202 [74].

[508] *Evidence Act* (n 142) s 17(2).

[509] Ibid s 17(1).

[510] [1962] 1 MLJ 289, 292.

man reading the statement in that circumstances would have perceived the statement to conclude that the accused intended to commit and committed the offence.[511]

Section 258 of the *CPC* governs the admissibility of statements provided by accused persons to investigating officers.[512] It prescribes that statements provided by accused persons will generally be admissible as evidence.[513] The *Evidence Act* further defines evidence as all statements 'which the court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry'.[514] This includes statements made under Section 22 and Section 23 of the *CPC* by the accused persons at any time, before or after they were formally charged.[515] Any challenge on the admissibility of statements under Section 22 and Section 23 is usually dealt with similarly.[516] There are two grounds wherein one can challenge the admissibility of statements, as discussed below.[517]

1 *Substantial Grounds – Voluntariness of Statements*

It is entrenched that the burden lies on the prosecution to prove beyond a reasonable doubt that accused persons provided their statements voluntarily to the investigating officers.[518] Likewise, the defence counsel does not have to prove on a balance of probabilities that accused persons did not voluntarily provide their statements.[519]

(a) The Twofold Test of Voluntariness

[511] Ibid.

[512] *CPC* (n 125) s 258(1).

[513] Ibid; *Sulaiman bin Jumari v Public Prosecutor* [2020] SGCA 116 [36]. See also *Law of Evidence in Singapore* (n 480) 521.

[514] *Evidence Act* (n 142) s 3.

[515] *CPC* (n 125) s 22, 23.

[516] Ibid.

[517] *Law of Evidence in Singapore* (n 480) 523.

[518] *Public Prosecutor v BDA* [2018] SGHC 72 [23]. See also *Public Prosecutor v Lim Boon Hiong* [2010] 4 SLR 696.

[519] *Chai Chien Wei Kelvin* v *Public Prosecutor* [1998] 3 SLR(R) 619 [52] ('*Kelvin'*).

This 'test of voluntariness' is twofold - consisting of an objective and subjective limb.[520] The subjective limb will only be reckoned once the objective limb has been satisfied.[521]

The objective limb is concerned with whether accused persons provided their statements in response to 'inducement, threat, or promise from a person in authority in relation to the charge'.[522] The inducement, threat, or promise 'may be implied from the circumstances of the case'.[523]

Issues may arise where actions and statements from officers may not appear to be an inducement, threat, or promise. The point is not whether the officers intended to make any inducement, threat, or promise, but whether the accused person perceived the actions and statements of the officers as such.[524] The standard is whether a reasonable person, in the shoes of the accused, would have rationally understood the actions of officers to be such.[525] This standard is especially of relevance in circumstances where accused persons are intoxicated or drugged.[526] Such were the circumstances of the accused in *Kadar*, as discussed in Chapter III.[527]

However, mere suspicion of such inducement, threat, or promise would be insufficient for the statements to be involuntary.[528] The inducement, threat, or promise must be sufficient to have 'operated' on the minds of accused persons 'through hope of escape, fear or punishment connected with the charge'.[529] This constitutes the subjective limb of the test. The court will 'clothe itself with the mentality' of accused persons to determine whether they had reasonable grounds to believe that providing confessional statements would gain them some advantage or temporarily relieve them of evil.[530] Therefore, words to the effect of 'you had better tell the truth' were considered to 'vitiate confessions' in *Lim Kim Tjok* but not in *Ramasamy a/l*

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[520] Ibid [53]; *Public Prosecutor v Omar bin Yacob Bamadhaj* [2021] SGHC 46 [36] ('*Omar*').

[521] *Omar bin Yacob* (n 506) [38]. See also *Lu Lai Heng v Public Prosecutor* [1994] 1 SLR(R) 1037.

[522] Ibid. *CPC* (n 125) s 258(2), (3).

[523] *Public Prosecutor v Law Say Seck* [1973] 1 MLJ 199, 199.

[524] *DPP v Ping Lin* [1976] AC 574, 594 ('*Ping Lin*').

[525] Ibid.

[526] Ibid.

[527] See above 21.

[528] *Panya Martmontree v Public Prosecutor* [1995] 2 SLR (R) 806 ('*Panya*').

[529] *Kelvin* (n 519) [52]; *Omar* (n 520) [36].

[530] *Ping Lin* (n 524) 561.

Sebastian.[531] In *Ramasamy a/l Sebastian*, the Court found that these words, though they had been said to the accused, did not affect the accused's willingness to provide a statement.[532]

More recently, the fulfilment of the twofold voluntariness test was evident in *Public Prosecutor v Mohamed Ansari bin Mohamed Abdul Aziz.*[533] The accused only confessed when the threat from the officers induced some form of fear in his mind.[534] The accused alleged that the investigating officers threatened that they would not release his girlfriend unless he confessed.[535] The accused further alleged that he only provided his incriminatory statements to protect his girlfriend because the officers used words to the effect of 'it depends on what you say'.[536] The Court found these words to constitute inducement and thus impugn the voluntariness of the accused's statement.[537] The Court also observed the accused's evidence to be much more compelling and credible than the officers, given that the officers' evidence appeared to be 'oscillating'.[538] The accused's statement was found to be inadmissible.[539]

There have been various concerns that the courts would naturally believe investigating officers rather than the suspects, given that it is 'hard to believe that officers would resort to the conduct of mistreating suspects to extract a confession'.[540] It is also the view of the courts that investigating officers 'work in difficult circumstances and would never be able to achieve anything if they are required to remove all doubt of influence or fear'. [541] This was reflected in *Yeo See How v Public Prosecutor.*[542] The Court found that the accused had provided his

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[531] *Lim Kim Tjok v Public Prosecutor* [1978] 2 MLJ 94; *Ramasamy a/l Sebastian* [1991] 1 MLJ 75, 78 ('*Ramasamy*'). See also Jeffrey Pinsler, *Evidence, Advocacy and the Litigation Process* (Butterworths, 1992) 81.

[532] *Ramasamy* (n 531) 78.

[533] *Public Prosecutor v Mohamed Ansari bin Mohamed Abdul Aziz and another* [2019] SGHC 268 [10] ('*Ansari*')

[534] Ibid.

[535] Ibid [23].

[536] Ibid [37].

[537] Ibid [38].

[538] Ibid [38].

[539] Ibid [39].

[540] *Singapore, Parliamentary Debates, Official Report* (19 May 2010) [vol 87] (Wong Kan Seng, Deputy Prime Minister and Minister for Home Affairs). See also Michael Hor, *Review of Judicial and Legal Reforms in Singapore between 1990 and 1995* (Butterworths Asia, 1996).

[541] *Panya* (n 528) [29].

[542] *Yeo See How v Public Prosecutor* [1999] 2 SLR (R) 277.

statements voluntary, notwithstanding his assertions.[543] The accused alleged that he was hungry and cold throughout the investigation. [544] He also stated that the investigating officers did not give him any medication for his gastric pain.[545] The issue surrounded the question of whether his discomfort resulted in him providing an involuntary statement.[546] The Court of Appeal expressed the following:

> There is no necessity for interrogating officers to remove all the discomfort. Some discomfort must be expected. The issue is whether such discomfort is of such a great extent that it causes the making of an involuntary statement.[547]

(b) The Doctrine of Oppression

The voluntariness test has since been extended to 'subsume' oppression.[548] This means that statements may be rendered inadmissible if they were obtained under oppressive circumstances. Taking reference from the English courts, oppression is seen to 'import something which tends to sap, and has sapped, that free will which must exist before a confession is voluntary'.[549] The occurrence of an oppressive circumstance is said to depend on the 'length of time of each period of questioning, length of intervening periods between question times, and the sort of person being interrogated'.[550]

Although the test for oppression is provided for in the statutes, common law development shows that oppressive circumstances are relatively narrow.[551] In this regard, the Singapore High Court in *Public Prosecutor v Tan Boon Tat* held that the accused's feelings of hunger, stress, and fatigue would not equate to oppression unless accused persons were placed in a position

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[543] Ibid [31].

[544] Ibid [33].

[545] Ibid.

[546] Ibid [35].

[547] Ibid [40]. See also *Tey Tsun Hang v Public* Prosecutor [2014] 2 SLR 1189 [112] ('*Tey Tsun Hang').*

[548] *Gulam bin Notan Mohd Shariff Jamalddin v Public* Prosecutor [1999] 1 SLR(R) 498 at [53]; *CPC* (n 125) s 258(3) Explanation Note 2. See also *CPC Revisited* (n 505) 63.

[549] *R* v *Prager* [1972] 1 WLR 260, 266; *R* v *Priestley* (1967) 51 Cr App R 1.

[550] Chin Tet Yung, *Evidence* (Malaya Law Review and Butterworths Publishers, 1988) 64 ('*Chin's Evidence*').

[551] *CPC* (n 125) s 258.

where they had no will to resist providing their statements.[552] Similarly, the Court in *Ong Seng Hwee v Public Prosecutor* held that there must be a 'requisite weakening' of the accused's free will.[553] The oppressive circumstance must be in existence at the time of recording the accused's statement.[554]

2 *Procedural Grounds – Prejudicial Effect vs Probative Value*

As demonstrated above, there are statutory provisions in place to exclude involuntary statements.[555] There are, however, no provisions to exclude voluntary statements that are obtained by legal impropriety. The High Court in *Law Society of Singapore v Tan Guat Neo Phyllis* ('*Phyllis*') considered this matter and held that the courts do not have the power or discretion to exclude evidence simply because they were obtained by improper means.[556]

Specifically, the courts are 'not concerned with how the evidence is obtained' as it is not the role of the courts to 'discipline the police'.[557] In making this statement, the Court noted that 'all relevant evidence is admissible unless specifically expressed to be inadmissible' as per the *Evidence Act*.[558] Furthermore, the Court sought guidance from the English Court's considerations in *R v Sang* and held that evidence would be admissible if the probative value of evidence exceeds its prejudicial effect.[559]

The case of *Kadar*, discussed in Chapter III of this paper, is once more relevant to this discussion.[560] The Court of Appeal rendered one of the accused's statements inadmissible

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[552] [1990] 2 SLR 1. See also *Fung Yuk Shing v Public* Prosecutor [1993] 2 SLR(R) 770.

[553] *Ong Seng Hwee v Public Prosecutor* [1999] 4 SLR 181, 192.

[554] Ibid.

[555] *CPC* (n 125) s 258(3).

[556] *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR (R) 239 [150].

[557] Ibid.

[558] Ibid [126].

[559] Ibid; *R v Sang* [1980] AC 402.

[560] *Kadar* (n 109). See above Chapter III.

because he was suffering from drug withdrawal symptoms during the interrogations.[561] These symptoms caused him to be confused, and he was unable to cope with the demands of the interrogations.[562] The Court affirmed *Phyllis* and held that courts do have the discretion to exclude statements if the 'prejudicial effect exceeds their probative value'. This power was described as an 'exclusionary discretion'.[563]

D *Exercising the Right to Silence – Privilege against Self-Incrimination*

The discussion above on the admissibility of statements is premised on situations where accused persons provided their statements. It is now essential to give due considerations to circumstances where accused persons decline to provide a statement. These include choosing to remain silent, refusing to answer officers' questions or exercising their rights 'to say anything that may expose them to a criminal charge'.[564] The issue is whether the silence has any 'evidential value'.[565]

This right to silence appears to be limited in various ways. Firstly, officers do not have to inform accused persons that they are entitled to such a right.[566] There have been various judicial debates on whether the privilege against self-incrimination embedded within the right to silence should be regarded as a principle of natural justice pursuant to the *Constitution*.[567] At the outset, the *Constitution* appears to offer suspects some form of protection against the pressure of making false confessions. However, judicial decisions have proven otherwise. In *Mazlan*, the Court of Appeal held that suspects do not have to be expressly notified of their rights to remain

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[561] Ibid [1207], [1287].

[562] Ibid [1288].

[563] Ibid 1238.

[564] *CPC* (n 125) s 22(2), 23.

[565] *Chin's Evidence* (n 550) 56.

[566] Ibid. See also *Public Prosecutor v Mazlan bin Maidun and another* [1992] 3 SLR(R) 968 ('*Mazlan*').

[567] *Constitution* (n 453) art 9(1), 9(3); Michael Hor, 'The Privilege Against Self-Incrimination and Fairness to the Accused: PP v Mazlan bin Maidun' (1993) *Singapore Journal of Legal Studies 2* ('*Privilege Against Self-Incrimination*').

silent during interrogations.[568] It was further held that this failure to inform suspects of such rights would not infringe their constitutional rights.[569]

Secondly, the *CPC* provides courts with the discretionary power to draw adverse inferences from the silence of accused persons.[570] The Court espoused this in *Kwek Seow Hock v Public Prosecutor* that adverse inferences can be drawn on an individual's failure to state facts that may prove their innocence when providing a statement.[571] This is contrary to other jurisdictions in which the criminal justice system leans towards a due process model. For instance, the courts in Western Australia are not permitted to draw adverse inferences from a silent accused.[572]

The High Court noted that the primary purpose of allowing the courts to draw adverse inferences is to 'compel' accused persons to 'outline the main aspects of their defence immediately upon being charged as to guard against the accused raising defences at trial which are merely afterthoughts'.[573] This is in tandem with the notice read out to accused persons for statements obtained under Section 23. The words used are to the effect that the courts are less likely to believe them if they remain quiet when providing their statements. At the outset, it appears that the notice required under Section 23 and the courts' power to draw adverse inferences are merely used to encourage accused persons to make an 'early disclosure of any exculpatory facts' known to them.[574] Nonetheless, exercising the right to remain silent can be used against the accused persons. It bears mention that an accused's silence will not solely form the basis for conviction, yet it can be used to build a case to secure a conviction.[575]

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[568] *Mazlan v Public Prosecutor* [1993] 1 SLR 512, 531. See also *Public Prosecutor v Tan Ho Teck* [1983] MLJ 264.

[569] Ibid. See also *Rajeevan Edakalavan v Public Prosecutor* [1998] 1 SLR 815.

[570] *CPC* (n 125) s 261(1). See also *Mazlan* (n 66) 978; *Mohamed Bachu Miah v Public Prosecutor* [1992] 2 SLR(R) 783 at [43], [48].

[571] [2011] 3 SLR 157.

[572] *Evidence Act* 1906 (WA) ss 8, 11; *Petty v The Queen* (1991) 173 CLR 95, 101.

[573] [1998] 2 SLR (R) 855 [39].

[574] *Kwek Seow Hock v Public Prosecutor* [2011] 3 SLR 157 [18].

[575] *Public Prosecutor v Chee Cheong Hin Constance* [2006] 2 SLR(R) 24 [92].

E *Concluding Remarks*

Both statute and common law positions in relation to interrogations appear to be of substandard because of their stance towards the privilege against self-incrimination. It is not disputable that accused persons have a right to silence, according them the said privilege. However, this very right that protects accused persons can be used against them if and when exercised. There are statutory requirements in place to ensure that accused persons provide their statements voluntarily. Still, as demonstrated, a mere breach of these requirements does not necessarily render the statements inadmissible.

There appears to be an overlapping concept between voluntariness and the reliability of the statements. The law, as discussed, clearly indicates that officers are not to make any form of inducements, threats, or promises to accused persons when obtaining their statements. The fundamental missing element is whether the officers 'created' that statement during interrogations. This was identified previously as a coerced-internalised false confession in Chapter III. The reliability of statements will only improve when such gaps are filled. This paper attempts to bridge this gap with the upcoming chapter.

VI MANDATE THE RECORDING OF CUSTODIAL INTERROGATIONS

A *Current Reforms in Singapore*

The Ministry of Law ('Ministry') tabled 52 proposed changes to the criminal justice system in the Criminal Justice Reform Bill and Evidence (Amendment) Bill in 2018.[576] These diverse reforms target an array of areas within the justice system, from investigation processes to sentencing powers of the courts.[577] One of the most significant changes was the requirement of video-recording of interviews ('VRIs') when accused persons provide their statements in relation to a criminal charge.[578] This amendment gives accused persons the option to provide their statements via video recording.[579]

The purpose of the VRIs was to help the courts 'try cases more effectively when investigation statements are sought to be admitted'.[580] The courts would be able to assess the accused person's demeanour in deciding allegations about the involuntariness of statements because the VRIs would provide an objective account of the interview.[581] Specifically, it was pointed out that the VRIs will aid with admissibility issues - 'allegations of oppression, inducement, threat or promise… the evidence-gathering process would hence become more transparent'.[582]

The Parliament has made it evident that the VRIs would only be introduced in staggered stages as this required a 'significant investment of infrastructure and training'.[583] Specific sexual offences are the first type of offences where VRIs are currently required.[584] Presently, the modified CPC stipulates that any statement, pursuant to Section 22 of the *CPC*, made by a person who is reasonably suspected of committing an offence specified in the Third Schedule

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[576] Criminal Justice Reform Bill (Bill 14 of 2018) ('*Criminal Justice Reform Bill*'); Evidence (Amendment) Bill (Bill 15 of 2018).

[577] *Criminal Justice Reform Bill* (n 576) cl 6.

[578] Ibid.

[579] Ibid.

[580] *Singapore, Parliamentary Debates, Official Report* (19 March 2018) [vol 94] (Indranee Rajah, Senior Minister of State for Finance and Law) ('*Ms Rajah's Report*').

[581] Ibid.

[582] *Singapore, Parliamentary Debates, Official Report* (19 March 2018) [vol 94] (Christopher de Souza, Member of Parliament for Holland-Bukit Timah GRC).

[583] *Ms Rajah's Report* (n 580).

[584] *CPC* (n 125) s 22, 23.

must be recorded in the form of an audio-visual recording unless any exigencies apply.[585] Offences in the Third Schedule include outrages of modesty, sexual assault by penetration, sexual penetration of minors, sexual grooming, and rape.[586] The same amendments apply to cautioned statements under Section 23 of the *CPC*.[587]

B *The Inadequacy of the Reforms*

On first consideration, the introduction of VRIs appears to be a good development towards reducing false confessions, specifically coerced ones, in Singapore. However, the VRIs at this stage are undoubtedly insufficient just from a plain reading of the modified Section 22 and 23.[588] The phrase 'statement made by the person' in Sections 22 and 23 of the *CPC* makes it apparent that the VRIs will not include preliminary interrogations.[589] This gives investigating officers the discretion to decide when to record the statements audio-visually.[590] Therefore, there exists the possibility that officers may only record the accused's final confessional statements but nothing prior to it. Thus, the amended provisions do not provide any form of protection to ensure the reliability and voluntariness of the statements. Apropos of the same, a Member of Parliament ('MP') for Nee Soon GRC, Mr Louis Ng, queried if pre-interrogation exchanges will be recorded.[591] He further suggested that there should be safeguards to ensure that the entire police interview, including pre-interrogation exchanges, are recorded.[592]

This was espoused by Nominated MP, Mr Kok Heng Leun ('Mr Kok'),[593] who stated that the newly introduced VRIs would be pointless if inducement, promises or threats of any kind were

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[585] *CPC* (n 125) s 22(5); *Criminal Justice Reform Bill* (n 549) cl 6.

[586] *Penal Code* (Singapore, cap 224, 2008 rev ed) s 375, 376, 377B.

[587] *Criminal Justice Reform Bill* (n 576) cl 6.

[588] *CPC* (n 125) s 22, 23.

[589] Ibid.

[590] Siau Ming En, 'Video interviews for suspects among changes to criminal code passed by Parliament', *Today* (online, 19 March 2018) <https://www.todayonline.com/singapore/video-interviews-suspects-among-changes-criminal-code-passed-parliament>.

[591] Ibid.

[592] Ibid.

[593] Ibid.

made to the accused person before the beginning of the recording.[594] He also further opined that the recording could be manipulated to the prosecution's advantage before even being made available to parties.[595] Senior Minister of State for Finance and Law, Ms Indranee Thurai Rajah ('Ms Rajah') responded that it would be infeasible to 'record every single exchange that the officers have with the accused person' and that the primary intent of the interview is to take the person's statement'.[596]

This paper posits that the issues of false confessions and wrongful confessions will still exist, even with the VRIs, because: (i) suspects may have been subjected to threats even before the commencement of recordings; and (ii) the amendments do not indicate when the recording should begin; thus, one cannot guarantee that officers have complied with the statutory requirements. In totality, the recordings stipulated under the present legislation will not be sufficient or beneficial as it fails to capture the interactions between accused persons and investigating officers before accused persons provide their statements. These interactions preceding the provided statements can make or break a case for conviction, hence their significance.

C *The Solution*

Ensuring that accused persons have swift access to counsel during interrogations may safeguard the voluntariness of their confessions. However, as discussed, this right to counsel is already limited in Singapore.

How can a court determine if accused persons provided their statements voluntarily without the influence of inducement, promises or threats? The best way to safeguard the voluntariness of statements provided by accused persons is to record the entire police interview. This includes all pre-interrogations exchanges, including statements under Sections 22 and 23 of the *CPC*.[597] The current legislation should be broadened to cover the issues mentioned above.

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[594] *Singapore Parliamentary Debates, Official Report* (19 March 2018) [vol 94] (Kok Heng Leun, Nominated Member of Parliament).

[595] Ibid.

[596] *Ms Rajah's Report* (n 580).

[597] *CPC* (n 125) s 22, 23.

1 *Previous Debates about Recording of Interrogations in Singapore*

The topic of recording interrogations is not entirely novel in Singapore. There has been a multitude of debates surrounding this plausible solution. In 1994, Mr Ho Peng Kee, the then Secretary for Home Affairs, opined that recording of statements might be considered. Yet, it is not a 'cure-all' solution as threats, inducements, or promises could be made to accused persons before the start of recording.[598] His opinion differed from the opinions of Ms Sylvia Lim ('Ms Lim'), a Member of Parliament for Aljunied GRC, and Mr Hri Kumar Nair ('Mr Kumar'), a former Member of Parliament for Bishan-Toa Payoh GRC.[599] They were of the view that the video recording rule ought to be introduced.[600] Ms Lim stated that these recordings would prevent any type of mistreatment of the accused persons and would offer 'significant protection to law enforcement officers against groundless allegations'.[601] Mr Kumar opined that this rule would save the courts' time in determining whether the statements were accurately recorded.[602]

The Ministry, in reviewing the *CPC* in 2017, stated that 'video recording would not be effective in ensuring that statements were voluntarily given'.[603] Additionally, the Ministry was also of the opinion that such recordings would not 'prevent allegations that the statements were given under some form of coercion'.[604]

The suicide of one Benjamin Lim ('Benjamin') in January 2016 sparked a debate on this issue. The 14-year-old teenager jumped to his death hours after being interrogated by police officers about an allegation involving an outrage of modesty.[605] Both the public and Members of Parliament questioned the current protocols of officers during interrogations, specifically interrogations involving young people. Many espoused the opinions that the police interview led to Benjamin's death. Some assertions were that investigating officers coerced Benjamin

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[598] Kelly Ng, 'Video-recorded statements among key changes mooted for fairer legal system', *Today* (online, 24 July 2017) <https://www.todayonline.com/singapore/video-recording-interviews-during-police-investigations-being-considered>.

[599] Ibid.

[600] Ibid.

[601] Ibid.

[602] Ibid.

[603] Ibid.

[604] Ibid.

[605] Seow Bei Yi, 'The Benjamin Lim case: A timeline of what happened', *The Straits Times* (online, 3 March 2016) <https://www.straitstimes.com/singapore/the-benjamin-lim-case-a-timeline-of-what-happened>.

into confessing to an offence he did not commit.[606] Had the police interview been recorded, there would be a clear conclusion as to whether there was a link between the officers' conduct and Benjamin's suicide.

Mr Thio Shen Yi ('Mr Yi'), the then President of the Law Society of Singapore, stated that the investigating officers should have acted in a less intimidating manner.[607] Mr Shanmugam released a Ministerial Statement clarifying various issues.[608] Mr Shanmugam noted that Mr Yi's statements 'implied that Benjamin killed himself because of police intimidation'.[609] He said that Benjamin was not handcuffed at any point in time. In fact, the officers had offered Benjamin food and drink during the interview, which he refused.[610] In this regard, Mr Shanmugam stated that there was no evidence to suggest that the investigating officers mistreated Benjamin and that the police interview was the specific reason for his death.[611]

It was further disclosed that the retrieved CCTV footage proved that the allegations against Benjamin were true.[612] Mr Shanmugam added that Benjamin is more likely to have received a warning, given that the nature of the alleged molestation appeared to be in the less severe range.[613]

Benjamin's case is an example of why Singapore should adopt the practice of recording interrogations. False criticisms of the police officers would not have been eventuated had the interrogations been recorded. The solution proposed in this paper is in tandem with MP Mr Kok's suggestion to record the entire interrogation process.[614]

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[606] Ibid.

[607] Lee Min Kok, 'Shanmugam slams inaccurate statements on death of teen Benjamin Lim; MHA to look into how to respond to falsehoods', *The Straits Times* (online, 3 March 2016) <https://www.straitstimes.com/singapore/shanmugam-slams-inaccurate-statements-on-death-of-teen-benjamin-lim-mha-to-look-into-how>. See also K Shanmugam, 'Ministerial Statement on Death of Student' (Speech, Singapore, 1 March 2016).

[608] Ibid.

[609] Ibid.

[610] Ibid.

[611] Ibid.

[612] Ibid.

[613] Ibid.

[614] Ibid.

2 *History of Recording Interrogations in Other Jurisdictions*

In 1985, Alaska was one of the first states in the United States to mandate electronic recording of interrogations.[615] This arose due to *Stephan v. Alaska*.[616] The case concerned two petitioners, Donald Stephan ('Stephan') and Malcolm Scott Harris ('Harris'), who were arrested and interrogated by police officers in relation to various unrelated charges.[617] A video recorder was placed in the room during both their interrogations to record part of the interrogations.[618] Both Stephan and Harris provided inculpatory statements.[619] There were various conflicting testimonies in relation to what occurred during the interrogations.[620] Stephen alleged that he only provided inculpatory statements upon the police officers' promises of leniency. The statements were obtained in the absence of a counsel, though he had requested for one.[621]

In a similar vein, Harris claimed that the officers made promises and threats during the unrecorded interrogations.[622] Harris further alleged that he was not informed of his *Miranda* rights, and the officers continued interrogating him even after he had asserted his right to silence.[623] The testimonies of the officers were contrary to Stephan and Harris' allegations.[624] The Supreme Court acknowledged the difficulty of resolving the conflict without a complete recording of the interrogations.[625] Without the recording, the Court had to rely on the credibility of Stephan, Harris and the officers and decide on whose version of events to believe.[626] Ultimately, the Court accepted the officers' accounts over Stephan and Harris', finding that Stephen and Harris provided their statements voluntarily.[627] The Court that it is necessary and reasonable to record the entire interrogation process because the recordings would ensure that

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[615] *Stephan v Alaska*, 711 P 2d 1156 (Alaska, 1985).

[616] Ibid 1159.

[617] Ibid 1160.

[618] Ibid.

[619] Ibid.

[620] Ibid.

[621] Ibid 1159.

[622] Ibid 1161.

[623] Ibid 1164.

[624] Ibid 1165.

[625] Ibid.

[626] Ibid 1161.

[627] Ibid.

the rights of the accused persons are adequately protected.[628] Further, in its ruling, the Court opined that the recording would provide an accurate record of the interrogations and thus reduce the need for disputes concerning the voluntariness of confessions.[629]

This ruling was followed by the Supreme Court of Minnesota, which reasoned that an electronic record would allow an accused person to 'challenge false testimony' and would further 'protect the state against meritless claims'.[630] In 2004, Illinois became the first state in the United States to enact laws requiring custodial interrogations to be electronically recorded.[631] Any interrogations that were not recorded were presumed to be inadmissible, particularly statements recorded for homicide offences.[632]

Many states in the United States require investigating officers to record the interrogation process.[633] The strength of having a visual record of the entire interrogation process may be likened to the strength of DNA evidence. A police officer from the San Diego Police Department stated that not having an audio-visual record of interrogations equates to 'not using a state-of-the-art fingerprint analysis equipment'.[634]

D *Benefits of Recording Custodial Interrogations*

There have been various debates that the 'greatest beneficiaries' of a mandatory recording rule of interrogations are not 'criminal suspects' and defence counsel, but 'police officers and prosecutors'.[635] A National Institute of Justice Survey revealed that almost every police department that videotaped the interrogation process found it helpful to record the process instead of refreshing their memories as to what occurred during the interrogation.[636] The paper

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[628] Ibid

[629] Ibid

[630] *State of Minnesota v Michael Jerome Scales,* 518 N W 2d 587 (Minnesota, 1994).

[631] *Criminal Procedure Code,* 725 §§ 5/103-2.1 (2014).

[632] Ibid. Following this, the District of Columbia, Maine and New Mexico have since enacted similar legislation.

[633] States include Alaska, Illinois, New Mexico, and Texas amongst many others.

[634] W A Geller, 'Police videotaping of suspect interrogations and confessions: A preliminary examination of issues and practices' (1993) 3 *National Institute of Justice Research* 1, 153.

[635] Matthew D Thurlow, 'Lights, Camera, Action: Video Cameras as Tools of Justice' (2005) 23(4) *Journal of Computer and Information Law* 771, 777 ('*Tools of Justice*').

[636] Ibid. See also *The Psychology of Confession Evidence* (n 180) 61.

begs to differ, as everyone involved in the criminal justice process will benefit equally. The benefits are explained below.

1 *The Accused*

Electronic records of the entire interrogation process would reduce wrongful convictions stemming from false confessions for various reasons. Firstly, the recordings would accurately assess if the statements provided by accused persons are voluntary. They would demonstrate if accused persons were suffering from any vulnerabilities that may render them susceptible to providing false confessions. Secondly, the recordings would protect an accused person's interests during the entire interrogation, including the pre-interrogation exchanges leading up to providing an official statement under Sections 22 and 23 of the *CPC*.[637] This would ensure that investigating officers comply with the requisite procedures when obtaining a statement. Furthermore, the recordings provide a deterrent against investigating officers who might otherwise be tempted to deploy any coercive techniques during interrogations.

2 *Investigating Officers*

As discussed above, investigating officers play a vital role in a criminal justice system. Having a mandatory recording of the entire interrogation process, including the accused person's statements, would accord several benefits for investigating officers. Firstly, there will be little to no allegations of misconduct against investigating officers. A record will show how investigating officers conduct themselves during pre-interrogation exchanges. This would undoubtedly make it difficult for any accused person to make false allegations against investigating officers – they will not be able to change their account of events as to what originally occurred in the interrogation room. Naturally, investigating officers would think twice about using specific interrogation techniques, knowing they are being recorded. Therefore, the electronic record would double up by deterring investigating officers from improper conduct.

Secondly, investigating officers will be discharged from the additional responsibility of accurately taking notes and copiously noting statements from the accused person. Instead,

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[637] *CPC* (n 125) s 22, 23.

investigating officers can solely focus on the interview and observe the demeanour of the accused person. They will be able to have a two-way conversation while always making eye contact with the accused person. In addition to this, the record can serve as a teaching tool to educate investigating officers about the proper interrogation techniques. An officer from Louisiana, United States, stated that 'younger officers review recordings of more experienced officers to improve their own techniques'.[638]

3 *The Prosecution and Defence Counsel*

Having a record of the interrogations would allow the prosecution to seek a realistic evaluation of whether they have a real success at trial. In a similar vein, defence counsel may be persuaded to enter a plea bargain upon seeing their clients' confessions during interrogations.[639]

4 *The Trier of Facts – The Courts*

Recording the entire interrogation process accords various benefits to the system in its entirety by increasing efficiency and reliability.[640] It has been explained that these recordings enhanced the 'quantity and quality of incriminating evidence at trial'.[641] The courts can review the electronic records to observe what transpired during the interrogation process, including the questions from the investigating officers and responses from the accused persons. This would help the courts assess the voluntariness of the provided statements. Essentially, the courts will have recourse to the demeanour and credibility of both the accused persons and officers who obtained the statements.

Furthermore, the visuals of the recordings will capture nuances that written statements cannot possibly replicate. This may provide the Court insights into the suspects' state of mind, eliminating any doubt of false confessions as described above.

The electronic record of interrogations would reduce the necessity and duration for any hearings required in relation to the admissibility of statements. Therefore, the court's time and

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[638] Thomas P Sullivan, Andrew W Vail and Howard W Anderson, 'The Case for Recording Police Interrogations' (2008) 34(3) *American Bar Association* 1, 5 ('*The Case for Recording Interrogations*').

[639] *Tools of Justice* (n 635) 807.

[640] The Justice Project, *Electronic Recording of Custodial Interrogations* (Policy Review, 2008) 8.

[641] Ibid 19.

resources would be significantly saved. In totality, recording the interrogation process promotes due process as it ensures equality for all parties.

5 *The Public*

The recordings serve an essential purpose in convicting accused persons who are factually guilty by placing on record the 'solid confessions' that are 'beyond reproach'.[642] This increases public safety as perpetrators are not left out on the streets. Similarly, the recordings ensure that innocent suspects are not wrongly convicted. More importantly, the recordings should improve public trust and confidence in investigating officers because they show that 'the police have nothing to hide'.[643] By virtue of this recording, the rate of wrongful convictions may reduce and thus, increase public confidence in the criminal justice system. With reference to the Central Park Indictment discussed in Chapter III, it was expressed that 'ensuring that prosecutors bring the right person to trial not only saves taxpayers' time and money, in some instances, but it may also even save lives'.[644]

E *Potential Drawbacks of Recording Custodial Interrogations*

While various benefits are associated with recording custodial interrogations, it is prudent to consider the related concerns.

1 *Camera Bias leading to a Prejudicial Effect*

In 2006, a psychology professor at Ohio University, Daniel Lassiter and his colleagues reasoned that a camera placement would affect the outcome of interrogations.[645] They opined that video-recorded interrogations are often recorded with the camera solely focused on the

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[642] Ibid 8.

[643] *The Case for Recording Interrogations* (n 638) 5.

[644] *Tools of Justice* (n 635) 812.

[645] G Daniel Lassiter, Jennifer J Ratcliff, Lezlee J Ware and Clinton R Irvin, 'Videotaped confessions: Panacea or Pandora's box?' (2006) 28 *Law and Policy* 192, 210 ('*Videotaped Confessions*').

accused person and may lead the courts to assess that the accused provided his statements voluntarily, thus determining that he is more likely to be guilty.[646]

This theory is known as the 'illusory causation'.[647] Illusory causation occurs when an unwarranted causality is ascribed to a stimulus 'simply because it is more salient than other available stimuli'.[648] For instance, when observers had a vantage point of two people having a conversation, greater causality would be attributed to the person the observers were facing.[649] Scholars have opined that a camera perspective, when focused on a single party, may have an 'unintended prejudicial effect' on evaluating the voluntariness of confessions given by accused persons.[650] Specifically, observers may deem a confession voluntary when the camera is focused on the accused person instead of a different camera angle.[651] Lassiter further stated that observers would have impartial views when the camera is focused on both the interrogator and the accused person.[652] This led to the suggestion that legislation requiring interrogations to be videotaped should state that an 'equal-focus camera perspective' be used.[653] Incidentally, Ms Rajah noted that there would be two cameras in the VRI room – one will focus on the accused, while the other will capture an overview of the room.[654]

2 *High Costs associated with Recording*

Indeed, high costs may be associated with recording interrogations. The significant costs involved would be purchasing and maintaining the recording equipment and possibly preserving the electronic records.[655] Other associated costs may include training investigating officers to operate the recording equipment.[656] Nevertheless, these costs are only incurred at the

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[646] Ibid.

[647] G Daniel Lassiter, R David Slaw, Michael A Briggs and Carla R Scanlan, 'The Potential for Bias in Videotaped Confessions' (1992) 22 *Journal of Applied Social Psychology* 1838, 1841 ('*The Potential for Bias*').

[648] Ibid. See also Leslie McArthur, 'Illusory Causation and Illusory Correlation: Two Epistemological Accounts' (1980) 6 *Personality and Social Psychology Bulletin* 507–519, 510.

[649] Ibid.

[650] *The Potential for Bias* (n 647) 1842.

[651] Ibid.

[652] *Videotaped Confessions* (n 645) 200.

[653] *Videotaped Confessions* (n 645) 200.

[654] *Ms Rajah's Report* (n 580).

[655] *Videotaped Confessions* (n 645) 211.

[656] Ibid 212.

initial stage and would most likely reduce once the process is underway. In contrast to these associated costs, the costs arising from wrongful convictions are far more significant, mainly because wrongful convictions can lead to civil lawsuits.[657] As demonstrated in Chapter III, the juveniles involved in the Central Park indictment received $41 million in compensation.[658] Furthermore, compared to the long-term benefits of such recordings, these costs should be of minimal concern because of the increased accuracy and reliability of the criminal justice system. In this regard, a former Attorney from the United States opined 'savings that result from recording custodial interrogations far outweigh the costs' of recording interrogations.[659]

F *Concluding Remarks*

The Parliament should consider several factors to develop a comprehensive rule for the mandatory recording of interrogations. Perhaps the most fundamental criteria to consider is whether this recording should be audio, video, or both. This paper has postulated that video recording is the more beneficial option given their visuals. The best way to mandate the recording of interrogations is via legislation while ensuring that potential concerns are addressed, such as when to start recording. As discussed, this concern is not adequately addressed in the present legislation, thus leaving the possibility of coercion before the recording begins.

The modern era today has undoubtedly made it easier to store digital records. Therefore, the legislation should be amended further to include a mandatory role to record interrogations. In totality, recording interrogations will protect officers from baseless accusations of abuse, suspects from making false confessions, and, more significantly, the integrity of the evidence. Therefore, such reform would provide a win-win situation for all parties and reduce the likelihood of injustice. As stated by Thomas Sullivan, the practice of recording interrogations

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[657] Ibid.

[658] See above Chapter III.

[659] Thomas P. Sullivan, Taping Interrogations Benefits Police and Suspects, 18 Subject to Debate: A Newsletter of the Police Exec. Research Forum 1, 5 (2004)

will ‘benefit suspects, law enforcement, prosecutors, juries, trial and reviewing court judges, and the search for truth in our justice system’.[660]

[660] Thomas P Sullivan, ‘Police experiences with recording custodial interrogations’ (2004) 21 *Northwestern University School of Law* 1, 28.

VII CONCLUSION

As stated above, 'intuition holds that the innocent do not make false confessions'.[661] This paper has demonstrated otherwise. The issue of false confessions cannot be eradicated in its entirety. The interrogation process appears to be transparent, yet it is not and indeed invites scrutiny. There are flaws rooted within which simply cannot be disregarded.

Confessions in Singapore are extracted within four walls with only the presence of suspects and interrogating officers. This presents a challenge for the courts on whose account of events to believe in relation to allegations against officers or circumstances in which the statements were obtained. The lack of data on wrongful convictions in Singapore must not blind us to the reality that such convictions still exist. Singapore's preference for the crime control model does, in some way, create a lack of balance between protecting the rights of suspects and suppressing crimes for the betterment of the community.[662] This tension is continual and will exist between the interests in seeking the truth and the necessity to protect accused persons. There ought to be a balance between both, and as the paper suggests, the way forward to striking this balance is to record interrogations.

The recording of interrogations is the solution to a host of problems. Having an indisputable record of interrogations would ensure that there are due process rights in place for accused persons without having to impede the investigating efforts of the authorities. The benefits are aplenty, and the drawbacks are few. The recordings collectively benefit the criminal justice system – the rightful convictions increase while the wrongful convictions decrease.

As a final note, it is to be acknowledged that confessions are a double-edged sword. While they facilitate to convict factually guilty persons, they can also put the jobs of investigating officers in jeopardy. Ultimately, the proposed recordings should act as a shield for accused persons and investigating officers, as they would mirror the reality, in an unfiltered way, of what occurs in interrogation rooms.

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[661] David K Shipler, 'Why Do Innocent People Confess?', *The New York Times* (online, 23 February 2012) [6] <https://www.nytimes.com/2012/02/26/opinion/sunday/why-do-innocent-people-confess.html>.

[662] Hock Lai Ho, 'On the Obtaining and Admissibility of Incriminating Statements' (2016) *Singapore Journal of Legal Studies* 256.

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