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九十一年度檢察官赴新加坡研習報告

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目錄

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壹、前言

在新加坡總檢察署（Attorney-General's Chambers）的安排下，我們一行四人在新加坡展開了為期二週的研習（91.9.2~，91.9.13），參訪活動及課程相當緊湊充實，除了了解新加坡總檢察署之運作及檢察制度之外，法院之審判程序，亦是我們想了解之重點。

新加坡之司法審判程序，在銀行家楊邦孝（Yong Pung How）於一九九0年九月二十八日正式接掌新加坡最高法院大法官（Chief Justice相當於我國最高法院院長）後，自一九九二年起進行一連串的司法制度改革，將原本嚴重的長年積案問題，進行有效率的清理，並確實執行直接審理、速審速結、立即執行之司法審判程序，成果斐然。

在1993年新加坡司法年的刑庭儀式上，楊邦孝大法官即曾提到：「在當前的環境裡，法庭的地位和表現都必須面對大眾輿論的評價。大眾輿論雖然無法對法庭在執行其司法職責時產生任何影響，但是作為一個國家機關，法庭卻有責任為公眾提供一個有效率的法律體系。」（新加坡最高法院—九十年代的重組。新加坡最高法院1994年9月9日出版）

相對於台灣目前司法改革之現狀，法官、檢察官在投入相當大的人力、物力，備極辛勞之情形下，積案問題仍趨嚴重，未能有效的解決，即使於判決確定後，被告抗拒執行之情形亦時有所見。甚至在倡言司法改革的今日，相關司法機關，在面對外界要求積極之審判，以求得即時之正義的呼聲時，仍動輒以審判獨立及無罪推定來推託，以此回拒人民要求法庭提供一個有效率的法律體系之訴求，更遑論如楊邦孝大法官前所述「法庭的地位和表現都必須面對大眾輿論的評價」。故司法改革於新加坡，首重效率的做法，確實值得我們學習。

事實上，在迅速有效地將案件審理、裁判，減少積案負擔之後，新加坡法

院在往後的幾年，接續地規劃每年工作重點，亦逐步地實現其他改革計劃，如：科技法庭等均有亮麗的成績，故能在亞洲、甚至在世界司法制度、肅貪成效的評比上，獨占鰲頭。

新加坡法院，在楊邦孝大法官之帶領下，以現代化企業經營管理之理念與模式，將新加坡之司法制度邁入一個新的境界，甚至在國際間，就其司法評比的調查上，亦不遜色。

雖然新加坡的司法現制，對被告或當事人之權利保護，是否符合人權潮流，有待辯證；然而，新加坡政府，就其國情，兼具人民對司法改革之需求及接受度，在其十年來之司法改革、尤其是刑事政策上，藉由案件之迅速有效審理，重拾人民對司法之信心與尊重，間接亦影響到新加坡政府確立一個吏治清明、治安良好的形象及人民優質的生活環境，使得在整體經濟環境評估上，亦促使了國外投資者信心穩定、意願強烈，發揮了城市國家最大的治理效能。

此次研習承蒙法務部陳部長等各級長官之支持與勉勵，在新加坡研習期間，又承蒙新加坡總檢察署洪處長文光先生、李主任檢察官興立先生、邱主任檢察官恩賜先生、檢察官李立貞女士及其他多位總檢察署之主任檢察官、檢察官之熱忱接待及多方協助，在此深表感謝。尤其，法務部檢察司之洪副司長光煊在九十年五月二十日至六月二日，率法務部之考察團首次赴新加坡訪問，其當時優異的表現及慷慨的將其於新加坡考察之經驗傳承，爲我們此行奠下良好的基礎，藉此表達我們最誠摯的謝意。

貳、新加坡法院運作概況

一、 初級法院之概況

㈠法院組織：

設院長一人，下設地方法庭法官、治安法官，及行政官長 。法官數人，專司審判業務；行政官長相當於我國法院之書記官長，負責法庭事務、行政事務等。初級法院之法庭事務部門，有通譯處、法律處（下分民事、刑事、家事及少年三組）、研究資訊中心、小額訴訟法庭事務處；行政事務部門下有行政事務處及資料統計研究單位，行政事務處下設初級法院之財務室、發展規畫室、公共事務室、人力資源室、人事室 、打字室。

值得一提的是，新加坡係多種族國家，華人雖佔百分之七十，但印度人、馬來人到處可見，且華人之各種方言（如福建話、廣東話、潮州話）亦存在於各不同移民地區之族群中，雖近年以英語爲其國語，但民間交流上，如市場、小吃街，仍常以各自不同方言爲表達工具，故仍有爲數不少之華人或馬來人無法在法庭中以良好英語完整表達。故法庭中之通譯扮演相當吃重之角色，法院通譯處常設有華語、福建方言、潮州方言、廣東方言、馬來語、坦米爾語（Tamil）等多名通譯員，以供法庭當事人之溝通、傳達。若須上開提及之其他語言通譯，則須事前以書面向法院聲請。

㈡法庭結構配置：

1、地方法庭（District Court）：負責審理訴訟標的新幣十萬元（折合新臺幣約二百萬元）、不動產價值新幣三百萬元（折合新臺幣約六千萬元）以下之民事事件；及最重本刑十年以下有期徒刑或專科罰金之刑事案件。

2、治安法庭（Magistrate Court）：負責審理訴訟標的新幣三萬元（折合新臺幣約六十萬元）以下之民事事件；及最重本刑三年以下有期徒刑或專科罰金之刑事案件。

3、專業法庭（Special Court）：

(1)刑事過堂法庭（The Criminal Mentions Courts）：

被告經起訴後，須先被帶至本庭經法官審訊（目前初級法院之二十六法庭、二十三法庭即是專供刑事過堂法庭使用），旨在確認被告是否認罪，並裁定具保金額或羈押；若被告否認起訴罪名，將另排庭期進行審判程序；若被告係逮捕到案者，須於四十八小時內帶至本庭。

(2)驗屍法庭（The Coroner's Court）：

新加坡初級法院設驗屍法庭，就死於突然或非自然死亡、受暴力死亡或不明死因之案件，由法官在司法警察及法醫之協助下，進行死因之調查及認定，必要時得指示法醫師進行解剖，以確認死因。若檢察官到庭，亦僅是以協助確認死因之身分到庭，且法官就是否解剖、死因爲何之決定均爲最終決定，死者家屬不得異議或抗告；與我國相驗之工作由檢察官負責調查之現狀，有很大不同。

(3)少年法庭（The Juvenile Court）：

審理未滿十六歲少年之非行及犯罪事件，亦處理兒童保護事件。且父母亦可請求法庭對其認無法管教之子女進行輔導。法院對少年事件處理之方式不限於非行或犯罪事實之認定，更著重於輔導、解決少年問題，故會由法官召集「家庭會議」（Family Conference），與少年家庭、被害人、老師、專業人士共同研究如何防範該少年再犯；召集家庭關懷會議（Family Care Conference），協助父母如何管教子女；另有輔導計劃、諮商計劃、審前諮詢等，使法庭之功能不僅僅是冰冷之法律處罰，更能深入地給予少年協助、輔導，預防少年再次犯罪。

(4)家事法庭（The Family Court）：

審理離婚、夫妻贍養、子女監護、認養子女、夫妻財產等事件。法庭亦配置心理學、社會學專長之工作人員、義務律師提供諮詢。初級法院並設托兒室，提供遊戲空間及設備，便利當事人偕幼年子女到庭時

有專人可照顧幼童，設想相當體貼，免去須出庭之人子女托管之憂慮。

⑸小額訴訟法庭（The Small Claims Tribunals, "SCT"）：

審理新幣一萬元以下有關貨物買賣、勞務契約、損害賠償之訴訟事件，若雙方有書面同意，本庭亦可審理訴訟標的達新幣二萬元之案件，惟須在請求原因事實發生後一年內提出。小額訴訟之仲裁人（Referee）通常由初級法院之地方法庭法官或治安法庭法官擔任，且案件進入小額訴訟法庭之前，先以協商會議（Consultation）調解，如不能解決，再另訂聽審程序，在聽審程序前若雙方達成協議解決，只要以書面或傳眞通知小額訴訟法庭仲裁人，即毋庸出庭，所爲請求會被駁回。此外，小額訴訟之協商會議或聽審程序，除親自到場外，亦允許以電話或視訊會議（Video-Link）方式爲之。整個小額訴訟之程序，協商會議在起訴後七至十四日內即須決定，爭議若未能解決，聽審程序即須另於七至十日內作出判決。仲裁人之判決是終局的，有法律上理由才能經小額訴訟法庭向高等法庭提出上訴，且須於判決命令起一個月內提出。

4. 功能化法庭—夜間法庭（Night Court）：

夜間法庭之構想起於一九九二年，主要是審理政府部門移送之案件（類似我國的行政罰案件，但在新加坡仍屬刑罰案件），如交通裁罰事件及其他違規事件，法庭審理時間係星期一至星期五之下午六時至九時，以使此類案件之當事人不會因出庭影響白天工作時間。夜間法庭性質上屬刑事過堂法庭（Criminal Mentions Courts），移送案件之警察官(police officer)、政府相關部門之官員亦會到庭，被起訴之當事人可以選任律師，但一定須親自到庭，若代表法人或公司到庭者，須附委任狀。在陳述起訴要旨後，當事人如認罪，法庭即當庭宣判，若當事人提出請求減刑事由（如家庭背景、教育程度、病史、就業情形等），法庭可立即考

量減輕刑度，通常在夜間法庭審理之案件係處以罰金，當事人於宣判後即須立即繳納（或聲請分期繳納，如被駁回，仍須立即繳納），一些交通違規案件，可利用法院內之自動繳款機（Automated Traffic Offence Management System, ATOMS）繳納，若不能立時繳納，就會因不履行罰金而被帶至拘留所執行監禁；惟如當事人否認犯罪，亦可要求法庭另行安排審判程序，此時即須另外分案安排在日間法庭先行審前會議，以確認該案是否已準備好可進入審判程序；當事人亦可當庭請求具保延期審理，通常是以聲請聘僱律師爲其辯護準備審判程序爲由，法庭可當庭批准具保釋放。

二、最高法院之概況

㈠法院組織

⑴大法官（Chief Justice）：總理向總統推荐委任。

⑵法官（Judge）：擔任律師十年以上或擔任新加坡法律官員十年以上（包括擔任地方法庭法官，檢控官）。

⑶司法委員（Judicial Commissioner）：有資格擔任最高法院法官之人士。法官與司法委員均由總理推荐，再由總統斟酌加以委任，總理向總統推荐委任除大法官外的任何法官及司法委員之前，必先和大法官商議。

⑷主簿、副主簿、助理主簿：符合律師法第二條定義之合格人士，負責司法與行政職能，由總統根據大法官的推荐。

⑸法律秘書：合格的年青律師，直接由大法官管轄，協助法官和司法委員進行法律研究工作。

⑹監誓員、通譯員、書記、傳票送達員。

㈡法庭結構配置

1、上訴庭（Court of Appeal）：

屬法律審，負責審理不服高等法庭所提之上訴案件。由三名法官合議審

訊，由大法官（Chief Justice）主持該庭之審訊。

2、高等法庭（High Court）：

除審理地方法庭及治安法庭之上訴案件外，所審理之初審刑事案件須死刑、無期徒刑或十年以上有期徒刑之重罪案件，民事案件之訴訟標的須逾新幣二十五萬元。高等法庭由一名法官或司法委員負責審理。

3、憲法法庭（Constitutional Reference Tribunal）：

總統遇憲法爭議時，得交由三名以上最高法院法官組成憲法法庭，以多數解釋憲法，其所爲之解釋具有絕對之拘束力。

三、法院、法庭科技化（Court Technology）：

新加坡法院爲促進審判效率，不惜以鉅資設置現代化科技設備，運用於審判程序。如

㈠錄音機械化

於一九九二年十月，所有法庭已裝置機械錄音設備，這項服務代替逐字紀錄員紀錄證詞的另一個方法。民事庭案件也可要求使用這項服務，不過要支付規費。通過這種證詞錄音方式，可加快聽審速度，縮短使用法庭時間，使法庭所作的證詞提供完整的紀錄。儘管有這項機械錄音與謄寫制度，法官和司法委員依舊要自行作筆記。

㈡視訊會議（Video Conference）

由檢控官起訴之案件，先由資深法官透過視訊與檢控官、律師決定對該案證人及被告之開庭期日及審訊時間，除非被告認罪的案件，否則每一案件都須經審前會議。

㈢視訊法庭（Video Court）：

視訊法庭通常在下列情況下聲請法官裁定許可。

1、性侵害案件

性侵害之被害人進入法庭內單獨隔間之訊問室，由法官、檢控官、律

師、被告等透過視訊而爲訊問或質問被害人，以此保護被害人。

2、案件中之證人在他地

特別是證人遠在國外，而須就該案至高等法庭應訊，如證人所在地也有視訊設備，即可透過雙方之視訊，而進行法庭審訊，而證人不必親自至高等法庭應訊，此可節省大筆往來應訊費用及時間。一般使用視訊每次須支付新幣一七００元。

㈣顯像器（Visualiser）

證據之提示時，扣案之兇刀、物品、文件及圖片等均可藉視訊顯像器之使用，無論是平面證物或立體證物均猶如眞物呈現，讓證人或當事人指認或確認或指界。

另外還有電子入稟系統（Electronic Filing System）、電子法庭（e@dr）、案卷登錄系統（Singapore Case Recording and Information Management System, SCRIMS）、數位筆錄系統(Digital Recording System)[1]，以及檔案跟蹤系統、判決庫存系統、法庭文件處理系統等。檢控官、律師均可利用法庭上的電腦或Internet查詢資料，且律師亦可申請視訊護照帳號作爲交保或繳費之收費系統（Billing Component），以折抵律師應支付之相關訴訟費用。新加坡初級法院自一九八二年起即已著手司法業務電腦化之規劃，利用電子告示版（Electronic Bulletin Board）減少例行行政事務之公文巡迴。且利用電腦流程系統進行案件管理，最高法院判決及初級法院之判決理由均透過電腦儲存系統處理，視訊設備亦運用於交保金之處理、證人之出庭提證。電腦自動化系統可處理法庭聽審日期表、審判日期等，一些交通違規案件，可利用各地點自動繳款機（Automated Traffic Offence Management System, ATOMS）自銀行帳户轉帳繳款。

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[1] 台灣高等法院檢察署調法務部辦事檢察官洪光 等人於九十年五月二十日至六月二日亦曾考察新加坡檢察制度及肅貪實務，所撰「法務部九十年度檢察官赴新加坡考察報告」中，就新加坡科技法庭之介紹於文中第三十頁至第三十二頁，敘述甚詳，茲不贅敘。

實地親身參訪科技法庭，令人驚異其設備之先進，且不論是新加坡法院之行政業務、司法案件之管理，或在審判程序中視訊會議、電子法庭等之運用，均肯定是確實予以有效操作，並非徒具設備形式，高科技與司法審判結合之成效，顯然遠遠超過我國在法院、檢察署之設備、管理系統之上。

四、法庭禮儀

法庭服飾：

1、最高法院

依一九九三年一月九日所發出的一九九三年行政指示第一號規定，最高法院法官之法袍爲黑色、戴領圍兜、翼式領口、肩膀至胸部部位有褶邊。法官男士服裝爲一件白色翻領的長袖襯衫、一條領帶、一件黑色外套，外加法袍，褲子顏色必須與外套相同，不能穿彩色或有條紋的襯衫，領帶的顏色也必須爲素色；法官女士則爲一件領口高及脖子的白色長袖上衣和一黑色短上衣加長袍，裙子顏色必須和短上衣相同。無論是先生或女士，鞋子都必須是黑色或純色，不可穿戴過於惹人注目的珠寶首飾。

檢控官、律師出庭亦穿著相同顏色及式樣之法袍。

2、初級法院

初級法院之法官不著法袍。法官男士服裝爲一件白色翻領的長袖襯衫、一條領帶、一件黑色外套，褲子顏色必須與外套相同，不能穿彩色或有條紋的襯衫，領帶的顏色也必須爲素色；法官女士則爲一件領口高及脖子的白色長袖上衣和一黑色短上衣，裙子顏色必須和短上衣相同。無論是先生或女士，鞋子都必須是黑色或純色。

㈡法庭稱呼：

無論在法庭上或法官內庭審訊中，都應遵稱大法官、法官及司法委員爲Your Honour（法官閣下）。在社交或司法之外的場合中，則分別稱爲Chief Jus-

tice（大法官）或 Judge（法官）。

在所有案件的表、庭令、來往文件中，都應分別稱呼大法官、法官及司法委員爲 Chief Justice（大法官）、Judge（法官）和 Judicial Commissioner（司法委員），無須附加性別稱呼。

五、刑事訴訟審理程序：

㈠司法警察機關負責偵查，於調查事證完畢後，擬具調查報告書（Investigation Paper,簡稱 IP），內含被告供述筆錄、證人證述筆錄、調查日誌（Investigation Diary）、證物及相關鑑定報告等，將案件移送總檢察署內勤檢察官（Duty Officer）審查。若檢察官認查證不足，則指示查證事項，退回司法警察重新調查，補足事證。警察製作之上開筆錄，若文字上有不合文法、錯用文字之情形，檢察官可予修改，再交由警察修正後重送。檢察官只負責刑事案件之起訴及蒞庭論告，不負責案件之調查及判決確定後之執行，是僅須就案件之起訴是否有足夠之證據支持法庭上之論告，指示司法警察就不足之事項查證。檢察官不論在偵查或訴訟過程，僅能約談證人，並不與被告接觸，直至法庭活動時，才會見到被告[2]。

㈡檢察官審查後認罪證明確者，即向法院提起公訴。檢察官起訴被告後，必須先將被告帶至刑事過堂法庭審訊，如被告係逮捕到案者，須於四十八小時內帶至過堂法庭。部分輕微案件（如持有毒品、竊盜等）之起訴蒞庭工作，即授權由高階之司法警察官（Police Prosecutor）擔任，減輕檢察官蒞庭之案件負荷；而在過堂法庭之審訊中，確認被告是否認罪，並裁定具保金額或羈押，如被告認罪即行宣判，如被告不認罪，則移請審前會議[3]（Pretrial Conference）審訊。

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2 新加坡法院之法庭之席位安排，被告是坐在法庭中後方之被告席，有獨立之區隔空間及防護門欄，與法官席在法庭正中之前上方，遙遙相隔，另檢察官與辯方律師亦在法庭前方席位，於二側面對法官席，但與被告席亦有一段距離，不會與被告面對面之接觸，是法庭之硬體設備及席位配置，顯然考量到法官、檢察官與被告席位之距離設計及對被告之區隔限制，不僅在刑事審判時增強了法庭之莊嚴感，就執行職務之法官與檢察官而言，相較於我國法庭席位之配置上，亦較具安全性。

㈢審前會議中，被告還有認罪協商之機會，如被告於審前會議中認罪者，主持會議之法官（通常係庭長）即當場宣判；如不認罪者，法官即依證據調查所需時間，將案件分配給承審法官，並當場與檢察官、辯方律師預訂審理之法庭及庭期期間。等待審訊期間，自一九九四年九月十五日以後，避免案件拖延年餘，法院規定須以週數計算，各種案件都有限定之等待審訊期間[4]，刑事審判庭期規定須自前次過堂訊問或審前會議後，檢、辯（被告）雙方表示已準備好審訊時起算，地方法庭案件約二至四星期，治安法庭案件約一至四星期，就可進入聽審程序。

㈣承審法官經指派案件後，即按審前會議所訂庭期進行審判程序。審判期間由法官指揮進行訴訟，由檢辯雙方對證人、被告爲交互詰問或質問，並接續進行，證人傳訊、證據提示均在所訂庭期期限內完成至案件終結，聽審完畢即行宣判。

㈤法官爲有罪之宣告後，如被告不上訴，案件即告確定，並即簽發執行令（Execution Order），交由監獄負責刑罰之執行。如被告上訴，案件雖未確定，除鞭刑（Caning）之外，仍即時執行所宣判之刑度或須繳納罰金，但可另請求具保，於限定期間內接受執行。如上訴撤銷原判，罰金再退還被告。目的應是確立法院判決之有效執行，讓被告無法漠視法院判決之權威性及公權力之執行。但與現今被告人權思潮似有悖離，惟衡以新加坡國情，此種公權力之強勢亦有效顯現在治安良好、犯罪率低之生活環境上。

令人印象深刻的是，所有地方法庭或推事庭之上訴案，自一九九二年七月

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3 新加坡初級法院之刑事案件審訊，會在進入實體審理之前，先有審前會議程序，由法官與檢控官、辯方律師預訂審理之法庭及庭期期間。審前會議不限於在法庭內，亦可在檢察總署內使用視訊設備，與初級法院連線，進行視訊審前會議（Video Conference），使用頻率相當高，有效利用科技設備減少案卷證物攜來往返之不便。

4 審判（Trials）或聽審（Hearings）期日之等待期間，民事審判約二至四星期，小額訴訟法庭無對造之訴訟約二星期、有對造請求者自請求日起十日內，對象是外國旅客者則在請求起訴之當天審理。交通庭案件約一至二星期、驗屍法庭一般案件二至四星期，醫療糾紛案件一至三個月，少年事件約四至六星期、

起，至今爲止，皆由楊邦孝大法官審理，其目的在判刑方面更爲一致，使觸犯類似罪行而被判罪者，獲得程度接近的刑罰，這也爲地方法官、推事、及刑事司法界人士提供判刑準則。楊大法官現年七十六歲，每星期開庭三次，大部分當庭宣判，極少數改期宣判。其對新加坡司法改革，不辭辛勞，所貢獻之心力確實令人感佩。

另外，對地方法庭或推事庭之上訴案，高等法庭可諭知較重於原判決之刑度，此與我國刑事訴訟法第二百七十條「由被告上訴或爲被告之利益而上訴者，第二審法院不得諭知較重於原審判決之刑。但因原審判決適用法條不當而撤銷之者不在此限。」之規定截然不同。

六、 新加坡法院之管制：

不論是初級法院或最高法院，除了法院建築宏偉，法庭設計莊嚴，令人望之生畏，進入後即心生肅然之感外，法院之管理及人民對法庭之尊重，亦顯現在各種細節中。如任何人進入法庭或離庭，不管是被告、證人、旁聽者，均要鞠躬行禮；在法庭審訊過程中，一定要將手機關機[5]，且經多次觀察各個法庭開庭過程發現，人民在法庭中均知保持安靜，無人喧嘩；遇性侵害案件，法庭通常決定審訊不予公開；在進入高等法庭之重大案件初審前之預行詢問調查證據程序（Preliminary Inquiry，簡稱 PI），雖非實質傳訊調查，證人仍會應傳到庭簽名，以示確實可爲證人之證據後，隨即可離庭[6]。若進入實體審訊，因新加坡司法審訊程序，採直接接續審理，證人須在預定之庭期內接受訊問，所有之證人證物提出皆以配合法庭之審訊爲優先，爲免有因證人未及到庭而延誤法庭審訊進行之情形，除了有特殊原因經准許外，所有證人均會在預定庭期當天到庭外等候，隨時出庭應訊；但若檢控官或辯方律師對證人所需之證言時間未估算正確，證人枯等一天無

5 在一次旁聽初級法院過堂法庭（Criminal Mention Court）審訊過程中，有一名被告之來自香港親友，因不諳新加坡法院之規定，忘記將手機關機，法警立即過來沒收其手機，並要求扣其身分證件，執行法庭秩序相當嚴格。據悉，被沒收之手機可於庭訊後辦理手續交還。

法在當天庭期出庭證述之情形亦屬有之，然此不利益就由檢控官或辯方律師、證人自行承擔，即若逾正常開庭時間仍無法完全聽訊完畢，則證人就須延次日再到庭侯訊[7]，法庭通常是不會爲此拖延至半夜仍在開庭。此外，不僅在法庭內不得攝影、拍照，一旦進入法院建築物內，就禁止攝影、拍照，但法庭內有記者專席，記者可以在法庭內就聽訊過程做記錄，相當重視法院秩序之管制，故未見有記者爲爭取鏡頭爭先恐後、甚至阻擋住應訊人行路之景象。由此可知新加坡人民對其司法制度、法院秩序是相當尊重的，也許是新加坡政府強勢領導下之不得然所致，但也難以抹煞其多年來爲建立司法制度威信之努力。

6Preliminary Inquiry 程序源於英國殖民時期，主要是因進入高等法庭之案件有二類：重大案件之初審及對初級法院判決不服之上訴案件，希望藉此程序，審視是否有足夠之證據可支持進入高等法庭進行審理，以示慎重，若發現有事證不足之處，負責 Preliminary Inquiry 程序之法官（通常是初級法院調最高法院辦事之資淺法官）可駁回案件進入高等法庭審訊，命檢控官或上訴之一方補足事證再行進入高等法庭審訊。但此程序，因係形式上之審核，不僅證人之到庭，僅止於簽名而已，證物之提示也只是列出清單供法庭參考，實行至目前有程序浪費之評價，故實務界亦有研擬廢除此程序之意見。此程序與審前會議（Pre-trial Conference）不同，請參前文。

7 法官與檢控官、辯方律師在審前會議中預訂審理之法庭及庭期期間後，因法庭與法官之配置是固定的，故案件分派至何法庭，也就知係何法官審理，故庭期之預定就會有期間限制。通常法院視案情是否重大及複雜程度，參酌檢、辯雙方意見，訂定審訊期間，在重視效率之刑事政策主導下，一般案件若被告自白認罪，可能一天就結案；若被告否認，仍須進行證人、證據傳訊提示者，則庭期大約是二至三天，特殊重大案件通常法官會給予一週之期間聽訊，檢、辯雙方，必須在法院所予之期間內安排證人出庭，若在所限之庭期期間無法完成證人之調查訊問，則須再等法庭另訂庭期，則可能案件就得再拖延一、二個月後才能有庭期繼續案件之審理，故法官、檢、辯三方都會盡可能在預定之審訊期間內完成審訊，以免影響本案及其他待進行案件之審理。

參、新加坡檢察制度

一、 新加坡檢察組織

㈠總檢察署（Attorney General Chamber 簡稱 AGC）之組織：

設總檢察長（Attorney General）一人，副檢察總長（Solicitor General）一人，下設五個處，分別由一位處長（Head）及一位副處長（Deputy Head）領導，各處之下又分若干組，由組長（Director，Senior）督導。

1、刑事處（Criminal Justice Division）

設一般犯罪組、重大犯罪組、貪污及特別犯罪組、經濟犯罪組等，負責刑事案件之起訴及上訴，並提供司法警察法律諮詢。

2、民事組（Civil Division）

設法律支援組、國家律師組及部會法律諮詢官等，負責政府各部門採購契約之法律諮詢及代表政府提起民事訴訟，甚至指派法律諮詢官至業務量龐大之部門常駐服務。

3、立法處（Legal Division）

負責審查各部會所研擬之法律草案，使該草案符合法律用語，並切合實際需要。

4、國際事務處（International Affairs Division）

於 1995 年 7 月 1 日成立，提供雙邊或多邊國際條約之諮詢評估意見，並協助新加坡政府所簽署之國際條約轉化爲國內法律。

5、立法改革及修法處（Law Reform and Revision）

於 2000 年 4 月 1 日始成立，通常須修訂之法律案均由檢察總長與內閣相關部會討論後直接交辦，再由本處進行法律修正案之研擬。

㈡檢察人事

1、檢察總長之任免：

具有最高法院法官任用資格者，由總理選擇其一向總統推薦，經總統任

命，總統於任命時得同時宣布其任期，否則得擔任該項職務至年滿六十歲。

檢察總長一旦經任命，非依憲法 35 條列舉之規定（如健康因素或行爲不檢等），且經最高法院大法官及二名法官組成之特別調查庭同意，總統不得予解職。藉以確保其獨立超然地位。

2、檢控官（Deputy Public Prosecutor）、服務於政府部門之律師及法律諮詢官之任免：

凡新加坡國立大學法律系畢業或經新加坡政府認可之十五所外國大學法學院畢業者而其畢業成績爲一等及二等上之畢業生，均可參加總檢察署之面試，經錄取之人員，於經任命後，須經三個月職前實務訓練始能執行職務。又其在職期間，另有在職訓練，每年約有一百小時之在職訓練。

一般檢控官或服務於政府部門之律師或法律諮詢官，不會被免職，但表現不好則無法升遷。目前在刑事處之檢控官有八十名。

3、助理檢控官（Assistant Public Prosecutor）：

凡新加坡國立大學法律系畢業或經新加坡政府認可之十五所外國大學法學院畢業而其成績爲二等下經總檢察署面試錄用。

助理檢控官係協助檢控官處理刑事案件，但對案件不能作決定。

目前助理檢控官有二十人。

4、行政人員：

一般檢控官均未配置書記官或祕書，所有案卷整理及影印均由檢控官自行爲之，僅於公文繁雜時，始由行政人員支援。

㈢總檢察署設備

1、諮商室

係供檢控官於個案需要時與證人或被害人諮商討論交換意見之處所，因

刑事案件之檢控官於案件起訴前毋庸開庭，故無偵查法庭之設置。

2、電腦設備

每位檢控官均以電腦制作起訴書或其他相關文件，且遇有開庭所得之法律訊息，返回辦公室後即以E—Mail傳眞給其他檢控官相互研討，作爲類似案件辦案之參考。

3、視訊會議室

爲配合法院經由視訊系統進行審前會議，以決定被告或證人開庭之日期及時間，總檢察署內設置兩間視訊會議室，以供檢控官使用。

4、圖書館

收集本國或各國之法律及判例及相關之書刊、雜誌，以供各檢控官作爲辦案之參考資料。

二、檢控官職權及實務運作

㈠檢控官不做調查工作（Investigation），所有調查工作均由貪污調查局（Corruption Practice Investigation Bureau簡稱CPIB）、商業事務局（Commercial Affairs Department簡稱CAD）、中央緝毒局（Central Narcotics Bureau簡稱CNB）、刑事警察局（Criminal Investigation Department簡稱CID）負責。

㈡一般較輕微之刑事案件，由資淺之檢控官處理，較複雜之刑事案件則由資深之檢控官負責。向初級法院起訴之案件通常由一位檢控官負責蒞庭，較複雜之案件則由二位檢控官負責蒞庭。至於在高等法庭審理之案件，均由二位檢控官負責蒞庭。至於檢控官在高等法院蒞庭時須穿黑色法袍蒞庭。

㈢檢控官在案件起訴前不與被告接觸，故毋庸開庭，亦無書記官之設置，僅於案情需要時會聯絡證人或被害人在諮商室諮商或交換意見，直至審前會議時始知被告爲何人。

㈣檢控官須值勤（Duty Office），受理CID、CAD、CNB及CPIB等司法警

察攜帶就案件相關資料前來請示及諮商。且警方對證人或被害人所作之筆錄在證人或被害人未簽名之前，遇有問題會事先傳眞該筆錄請示那些部分須要補強，如有，則俟補強後，再由證人或被害人簽名。

㈤爲確保案件之認定無誤，通常檢控官於一般案件終結時，會將所做之決定送資深檢控官核定，如遇重大案件則需送由更資深檢控官作最後決定。至檢控官認該案件無起訴之必要，則僅須於簽呈中說明無起訴認定之理由即可，毋需另作不起訴處分書送達案件之當事人。

㈥對起訴之案件，檢控官所撰寫之起訴書僅記載犯罪事實及所犯法條，一般僅需繕打一張 A4 之列印紙即可。惟檢控官對被告或辯護人之答辯所提出之結辯書，則需對該答辯一一提出反擊，其所需撰寫之內容則視開庭次數及傳喚證人次數之多寡而定。

㈦ 檢控官於第一次 mention 時，須將相關證物及證人出示於法庭，證人並須出庭宣誓所耗時間甚多，且如時間控制不當證人往往要花更多時間在法庭外等候入庭宣誓。

㈧檢控官於莊庭時遇該案當事人雙方成立和解，是否要撤回訴該案件，此時該莊庭檢控官應向法官請求暫時停止訴訟之進行，返回辦公室將此事報告資深檢控官，由該資深檢控官決定是否撤該案件，再至法庭請求法官繼續進行訴訟，而後當庭撤回該案件。

肆、新加坡在司法改革後建立之法院核心價值：

著眼於有效解決嚴重之積案問題，大法官楊邦孝認爲必須改良初級法院之核心權能。一九九三年，即強調修正法院組織架構及訴訟程序，促進法院整體績效及考核。近幾年其實行成果，已使法院之核心價值具體形成，亦爲初級法院不斷進步之骨幹：

五個核心價值（five core values）：

一、親民（Accessibility）：

即法院之工作業務應是開放的，不應有任何經濟或程序上之障礙，法院之設備應是安全且方便使用、易於接觸的。讓人民須要使用法院時，能感到是可接近的。

二、迅速及時（Expedition and Timeliness）：

法院的業務及審判程序必須迅速及時。即法院的功能須即時迅速實行，案件須快速地解決。

三、平等公正廉直（Equality, Fairness and Integrity）：

來到法院尋求法律補償、賠償的人民，必須不論背景，平等公正地對待。

四、獨立性、負責任（Independence and Accountability）：

具有獨立性、負責任的法院才能依據法律、公平公正地及時解決爭議。

五、公眾之信賴和信心（Public Trust and Confidence）：

法院之價值建立在公眾之信賴和信心，必須具獨立性、負責地依法運作，進入司法，平等公正廉直地及時解決爭端，才能讓人民對司法產生信賴和信心。

伍、新加坡貪污調查局簡介

（譯自 Booklet of Corrupt Practices Investigation Bureau）

新加坡係世上少數貪污現象得以控制的國家之一，這主要肇因於執政者肅貪之旺盛企圖心，且無視偵辦對象身份、地位、背景而與其對抗之堅定行動意志，以及社會大眾不接受將貪污視爲生活的一種方式。

一、初期

新加坡貪污調查局（Corrupt Practices Investigation Bureau，簡稱 CPIB）係於西元一九五二年成爲一獨立之單位，負責新加坡貪污之調查及預防工作。在一九四０年代及一九五０年代初期，貪污現象或多或少成爲一種方活方式。一九五二年之前，所有的貪污案件係由在新加坡警察部隊（Singapore Police Force）轄下一稱爲反貪小組（Anti-Corruption Branch）之小單位負責調查工作。此小組並無任何成效，特別是在警察人員涉及貪污案時。新加坡政府因此成立貪污調查局，成爲一不同於警察之獨立單位，專責調查所有之貪污案件。成立初期，貪污調查局面臨極多困境，例如：相關肅貪的法律並不完備，阻礙了證據的蒐集；無法取得民眾之支持，公眾不願與貪污調查局合作，因爲民眾對該局執行肅貪之成效仍存疑慮，恐懼因此遭到報負。此窘境直至一九五九年人民行動黨（People's Action Party）執政後有所改變，對貪污之官員採取堅定之行動意志，將渠等撤職查辦，其餘未被發現犯行之官員，則爲免遭調查而自動離職。在民眾明瞭政府肅貪之決心後，貪污調查局之公信力乃與日漸增。

二、立法

一九六０年，一部較有效率之肅貪法律產生，稱爲防止貪污法（Prevention of Corruption）。該法賦予了貪污調查局對肅貪工作極大之調查權限，並加重貪污罪之刑責。一九八九年，貪污賄贓沒收法（Confiscation of Benefits）通過，該法賦予法院凍結及沒收貪污罪被告所取得之贓款。一九九九年，

貪污賄賕沒收法被貪污、販毒及重大犯罪賕款沒收法(Corruption ,Drug Trafficking and Other Serious Crimes Confiscation of Benefits)所取代，該法除訂有洗錢罪外，亦賦予法院前開相同凍結及沒收贓款之權限。

三、職掌

貪污調查局之職掌包括：

㈠告發貪污案件之受理及調查。

㈡調查公務員隱藏貪污之失職(malpractices)與不檢點行爲(misconduct)。

㈢對公共事務予以程序上之監控，以降低貪污之機會，藉此防貪。

四、組織

貪污調查局直屬於總理公署(the Prime Minister' Office)，內部分爲執行處(the Operation Division) 及行政與專業人力支援處 (the Administration & Specialist support division) 兩部門。

㈠執行處：執行防止貪污法主要賦予貪污調查局之調查犯罪工作。其內再分爲四組，其中一組係由優秀之特別調查團隊(Special Investigation Team 簡稱 SIT)組成，負責調查較複雜及重大之案件。該局根據足夠的證據，完成調查報告後必需呈交檢察官處理。因依防止貪污法第三十三條之規定，依該法之起訴非經總檢察長或其同意，不得爲之。但證據倘不足以起訴時，則經由總檢察長之同意，將該公務員之事證交由其所屬部門首長依其職權送懲戒處分。另在本處下，另設有情報搜集小組(Intelligence Department)，專責線索情報之收集及整理，並擔任本處調查所需之研究工作。

㈡行政與專業人力支援處：

1、行政組。(Administration Unit)

2、預防及審查組。(The Prevention & Review Unit)

3、電腦資訊系統組。(The Computer Information System Unit)

4、計劃及提案組。(Planning &Projects Unit)

五、不實告發

明知爲不知之事實而爲告發或提供任何書面資料，係犯防止貪污法第二十八條之罪，處有期徒刑一年以下或科或併科一萬元以下罰金。貪污調查局極爲重視此問題，將竭盡所能查出寫黑函者，並予以追訴。

六、公機構貪污

貪污調查局集中全力於公機構肅貪，特別專注於執法或其工作性質較易於受犯罪引誘之公務員。政府肅貪之立場是極明確的，無視對象之身份、地位，均將毫無猶豫地將其送進法院接受審判。

七、私機構貪污

縱使貪污調查局優先就公機構部門執行肅貪，惟防止貪污法仍賦予該局就私機構執行肅貪之調查權限。私機構之貪污行爲通常涉及支付對價或收受非法之傭金、回扣。許多從商之人，總將支付非法傭金視爲可接受之商業慣例。非法傭金係檯面下的回扣，雇主不允許其受僱人收受，此與受僱人在其僱用條件下經雇主明示同意其有權收受之傭金，並不相同。例如，負責公司採購之人自供應商處收受非法傭金，惟採購者之責任係爲公司以最低廉之價格購得最佳品質之商品，若其自供應商處收受傭金，將以其個人之利得取代公司之利益。最終，其公司以高價格購得劣質品，因該供應商必需提高價格以回補其所交付之傭金。如此，終至增加公司成本，並降低其競爭力；銀行經理因收受回扣或傭金而未經初步查核申請者之債信即同意超貸或其他銀行業務，此將導至該銀行處於無必要之風險中。

收受非法傭金導至增加了成本、降低了效率及晦暗了公司的願景。更重要的是，如此非法的傭金將對新加坡成爲投資者心中主要的商業及財政中心，有著負面之影響。所以，公司應明定其指導規範，使其受僱者有明確之傭金政策可供遵循，以保障公平、誠實之交易，並且藉此保護公司之利益。

八、處罰

任何人行求、收受或取得賄賂，處有期徒刑五年以下或科或併科十萬元以下罰金。此外，法院得另科處與其所收受賄賂同額之罰金。任何人代表他人收受或取得賄賂，與其本身收受賄賂般地犯罪，應負相同之刑責，此亦適用於代表他人行求賄賂之任何人。

九、預防措施

貪污調查局已採取了若干措施，以降低貪污之機會，特別是在公共服務方面。

㈠工作方法之改善：改善繁瑣的工作方法及程序，以避免在取得許可及證照過程中，公務員藉故拖延發照而從中貪污。

㈡未負債之申報：每位公務員必須一年申報一次，表明其並未處於經濟困境中。一位處於負債狀態下之公務員，極易被強迫及被利用而屈從貪污。

㈢資產及投資之申報：任何公務員必須於其任職期間內每年申報其本人、配偶、扶養之子女等之資產及投資，若其所得與其薪資收入並不相當時，將被質問如何能有此資力取得該所得。若其分得私人公司之股利，亦會被要求退去其股份，以避免利益上之衝突。

㈣不得接受饋贈：公務員不得自與其有公務往來關係之人處收受任何禮品，亦不得接受任何招待。若有該情事，應拒絕之。若僅係單純之紀念品，公務員得收受該禮物後，向其首長報告，經會計估算其價值，照價購買後，得取得該物。

㈤社會教育：除了政府部門之努力防貪，亦應對公務員，特別是那些執法單位及其工作內容較有機會貪污之人員予以教育。

十、小結

貪污行爲，在新加坡並非一種生活方式，且爲新加坡人民普遍地遣責。在執政者及貪污調查局之努力下，再經由大眾媒體對貪污者予以負面之報導，新加坡人民視其爲可憎之犯罪而羞與爲伍。貪污調查局將持續警戒，並採

取強勢之作爲對抗貪污行爲，以確保貪污行爲不會有機會在新加坡惡化與孳生。

陸、新加坡防止貪污法(Prevention of Corruption Act)之簡介

西元一九五二年之前，新加坡所有的貪污案件均由在新加坡警察部隊(Singapore Police Force)轄下一稱爲反貪小組(Anti-Corruption Branch)之單位負責調查工作。惟該小組並無何成效，特別是在警察人員涉及貪污案時。一九六０年，防止貪污法(Prevention of Corruption)制定。此法賦予了貪污調查局(Corrupt Practices Investigation Bureau 簡稱 CPIB)對肅貪工作極大之調查權限，並加重貪污罪之刑責，新加坡肅貪及防貪工作自此立下奠基。

一、 立法目的

此法係爲更有成效地防止貪污而規範。

二、 賄賂之定義

賄賂(gratification)包括：

㈠金錢、禮品、貸款、費用、報酬、傭金、有價證券或其他任何種類財產所孳生之動產或不動產形式之財產及利息。

㈡工作職位、受僱機會或訂定契約之機會。

㈢全部或一部支付、延緩、解除或清償任何貸款、義務、或其他任何形態之責任。

㈣其他服務、喜好及任何形態之利益，包括防免開啓刑罰、失權或懲戒等程序及任何公權力或作爲、不作爲之義務。

三、 貪污調查局局長、副局長、助理局長及特別調查員之任命

總統有權任用貪污調查局局長。若總統與總理或部長在總理通常權限下之建議或推薦相佐，總統有權拒絕任命或撤銷其任用。總統有權任用貪污調查局副局長(Deputy Director)及若干助理局長(assistant director)、特別調查員(special investigator)。此法所規定局長之權責，局長得命令或指示由副局長或助理局長負責或執行。副局長或助理局長得指揮特別調查員執行此法所賦予之權力。總統另得創設不同等級之助理局長及特別調查員。而局

長、副局長、助理局長及特別調查員係刑法(Penal Code)所定義之公務員。

四、貪污罪之構成要件與處罰

任何人自行或藉由他人或與他人共同

㈠爲自己或他人要求、收受或期約賄賂。

㈡對他人交付、期約或行求賄賂。

作爲引誘(inducement)或報酬(reward)或其他利益，而使自己或他人

㈠作爲(doing)或不作爲(forbearing to do)

㈡公共機構內之委員在其業務範圍內作爲或不作爲處有期徒刑五年以下或科或併科十萬元以下罰金。

五、代理人貪污罪之構成要件與處罰

㈠

1、代理人(agent)在受任範圍內，爲自己或第三人向他人收受、取得、期約或取得賄賂未遂，而從事無論作爲或不作爲、完成或不完成、表現或不表現等行爲。

2、代理人爲前開交付、期約及行求賄賂之行爲。

3、明知所交付代理人或代理人明知所使用之單據、帳户或其他文件係詐騙、錯誤或不實的，竟意圖誤導其委任人而交付或使用之。

處有期徒刑五年以下或科或併科十萬元以下罰金。

㈡審理代理人前開第一款之罪時，只要有理由相信(having reason to believe)或嫌疑(suspect)已就其職務或業務範圍內之行爲，無論作爲或不作爲、完成或不完成、表現或不表現其職務或業務上利弊等引誘或報酬爲行求時，則可認定該代理人已收受、取得、期約或意圖取得賄賂而成立該犯罪，縱使該人無此權力、權利或機會爲之或其收受賄賂時無意爲該行爲或並未著手實施。

㈢在審理前開第二款之罪時，有理由相信或嫌疑(have reason to believe or sus-

pect)該代理人有可乘之權力、權利或機會，且該行爲、利弊與其職務或業務有關，則可認定該人已交付、期約或行求賄賂而成立該犯罪，縱使該代理人無此權力、權利或機會爲之或該行爲、利弊與其職務或業務無關。

六、與公共工程有關之加重貪污罪

㈠犯前開貪污罪及代理人貪污罪，而其事務或交易係與政府或各部門或公共機構間(public body)有契約或計劃案者，或執行前開契約之次契約(subcontract)者，處有期徒刑七年以下或科或併科十萬元以下罰金。在審理前開兩罪之訴訟程序中，政府或各部門或公共機構之受僱者，自與政府或各部門或公共機構間有業務接洽之人處，向該人或透過代理人支付、交付或收受饋贈者，該饋贈視爲賄賂，並已支付、交付或收受，除非另有反證(unless the contrary is proved)。

㈡任何人

1、意圖取得政府、公共機構關於工程施作、勞務提供、任何工作或供應文件、材物料等合約，而對已投標者行求賄賂，作爲取銷投標之引誘或報酬者。

2、要求或收受前項賄賂之人。

處有期徒刑七年以下或科或併科十萬元以下罰金。

七、與國會議員有關之加重賄賂罪

任何人

㈠向國會議員就其職務範圍內之行爲行求賄賂。

㈡要求或收受前項賄賂之人。

處有期徒刑七年以下或科或併科十萬元以下罰金。

八、與公共機構委員（member of public body）有關之加重賄賂罪任何人

㈠向公共機構委員爲下述行爲時，行求賄賂作爲引誘或報酬

1、關於公共機構之利益或對抗該公共機構之投票或棄權。

2、委員出席與否或在取得、加速、延緩、隱藏或避免執行公務行爲時施以助力。

3、是否通過投票、簽訂契約。

㈡公共機構之委員要求或收受前項之賄賂。

處有期徒刑七年以下或科或併科十萬元以下罰金。

九、以罰金之執行方式交出賄款

犯此法所規定之相關收受賄賂罪，若該賄款總額或賄賂可估計其價值者，法院應命令該人在指定之期間內支付同額或等值之金錢，該處罰比照罰金之執行方式處理。

十、逮捕與具保之權限

局長或特別調查員得無令狀逮捕與本法所規定各罪有關係(concern)或遭合理懷疑的告發(reasonable complaint)或獲得可信之資料(credible information)或有合理懷疑存在(reasonable suspicion exist)之人。局長或特別調查員依前項規定執行逮捕時，得搜索該人並扣押在其身上所發現有理由相信(reason to believe)係犯罪所得或犯罪證據(fruits or other evidence of the crime)之所有物品，但該人若爲女性，非女性不得執行搜索。前開遭逮捕之人應解送至貪污調查局或警察局。前開遭逮捕之人得經局長或特別調查員之批准(grant)，予以交保(release on bail)。

十一、調查之權限

㈠案件涉及

1、刑法第一百六十五條、第二百十三條至二百十五條之罪，或其共犯、未遂犯、幫助犯。

2、本法所規定之罪。

3、可逮捕之罪(sizable offence)。

局長或特別調查員縱使無總檢察長(the Public Prosecutor，此與 Deputy

Public Prosecutor 即副檢察司、Police Prosecutor 不同)之命令，得執行所有或任何刑事訴訟法所賦予警察之調查權限。

㈡總檢察長若有合理懷疑之確信(reasonable grounds of suspecting)，認有犯本法所規定各罪之情事，得以命令授權局長或該命令上載明助理警察局長以上階級之警察或特定之特別調查員從事調查，該調查之範圍、方法得在前開命令上予以特定。該命令得授權對銀行帳户、共同帳户、買賣帳户、支出帳户或其他帳户，或銀行保管箱進行調查，且有充分之權力取得或製作所有必要之資料、帳户、文件。拒絕提供前開資料或帳户、文件等予前開經授權之人，處有期徒刑一年以下或科或併科二千元以下罰金。

㈢總檢察長得以命令授權局長或特別調查員於所有成文法所規定之犯罪中，執行全部或任何刑事訴訟法所賦予警察之調查權限。

㈣總檢察長若認爲關於本法或刑法第一百六十一條至一百六十五條或二百十三條至二百十五條之罪或其共犯、未遂犯、幫助犯之行爲人係服務於政府或各部門或公共機構，其證據可能(is likely to be found)在其本人、妻、子女或有合理懷疑(reasonably believe)係該人之被信託人或代理人之銀行帳簿內發現時，得以命令授權局長或該命令上載明助理警察局長以上階級之警察或特定之特別調查員檢查任何帳簿，且前開獲得授權之人得在所有合理之時間，進入命令上所載明之銀行內檢查帳簿，並得拷貝該帳簿之任何相關資料來源。

㈤在調查關於本法或刑法第一百六十一條至一百六十五條或二百十三條至二百十五條之罪或其共犯、未遂犯、幫助犯之程序中，縱使其他法律有相反規定，總檢察長得以宣誓書(notice)之方式

1.命令該人提供宣誓陳述，載明其本人、配偶、子女之全部所有或持有之動產或不動產，並特定出每項財產係以購買、禮品、遺贈、繼承或其他之何種方式取得。

2、命令該人提供宣誓陳述，載明其本人、配偶、子女在特定期間內轉移出新加坡之金錢及其他財產。

3、命令該人提供宣誓陳述，載明其所有或持有之動產或不動產，只要總檢察長有合理之理由相信該資料係有助於案件之調查。

4、命令所得稅主計長(the Comptroller of Income Tax)提供宣誓書上所特定之人，其本人、配偶及子女之所有報稅資料或其影本。

5、命令各政府部門或公共機構之首長提供宣誓書上所載明該單位所掌握之所有資料或影本。

6、命令銀行交付特定人、其配偶、子女之銀行帳户資料影本。

任何人收受總檢察長依前項規定所簽發之宣誓書時，縱使成文法有相反規定，仍應在該宣誓書所定之時間內依該命令爲之，違反該規定，處有期徒刑一年以下或科或併科一萬元以下罰金。

十二、搜索及扣押之權限

法官(Magistrate)或貪污調查局局長在訊問被告後或在任何時間，只要認爲有合理懷疑相信(reasonable cause to believe)在任何地方有任何資料可證明或有相當關連，關於

㈠本法所規定之犯罪或刑法第一百六十五條、第二百十三條至二百十五條之罪之傭金。

㈡前開犯罪之共犯、未遂犯或幫助犯。

法官或貪污調查局局長得直接發搜索票予偵查員以上階級之警察或特定之特別調查員，賦予其於必要時，得強制進入該處搜索、扣押或取得任何資料、文件或物品之權限。偵查員以上階級之警察或特定之特別調查員在任何時間，只要認爲有合理懷疑相信在任何地方透漏或存有任何資料可爲前開犯罪之證明或有相當關連者，且該司法警察有合理之理由相信，取得搜索票的遲延時間內，將導致該搜索標的物可能滅失時，得逕行執行前項之

權限。

十三、有關資產來源之證據力及證明力

㈠本法或刑法第一百六十一條至一百六十五條二百十三條至二百十五條之罪或其共犯、未遂犯、幫助犯之審理程序中，被告無法對其所有做完全之解釋(satisfactorily account)或其財產與其收入並不相當(disproportionate)，或在其被訴之犯行時間，無法對其所有或孳息做完全之解釋時，得做爲被告已收受、取得、期約賄賂之證明或當成強化(corroborating)法官對證詞證明力之考量。被告財產或孳息自與其有親戚之人取得或有理由相信係被告信託、代表被告取得或被告所贈與者，視爲前項之被告所有或取得之孳息。

㈡縱使法律原理或成文法有相反之情事，在前項所定之審理程序中，證人不因該案除其交付賄賂之證據外，別無其他佐證，即被推定其證詞係不值信賴。

十四、拒絕搜索罪

㈠拒絕局長或任何經授權之官員進入、搜索或接近該處。

㈡攻擊、妨礙、隱匿或遲延本法所賦予有權執行任務之人進入或執行。

㈢拒絕遵守局長或任何經授權之官員，執行本法所賦予其之法定事項。

㈣拒絕或忽略交付合理命其交付之資料者。

處有期徒刑一年以下或科或併科一萬元以下罰金。

十五、交付資料之義務

任何人收受本法賦予局長或任何官員其職權內可命交付資料之命令時，有交付之義務。

十六、提供虛偽資料罪

任何人明知而

㈠主動或被動交付任何詐騙或誤導關於本法或刑法第一百六十一條至一百六十五條二百十三條至二百十五條之罪之傭金資料。

㈡主動或被動交付任何詐騙或誤導資料予局長或特別調查員。

處有期徒刑一年以下或科或併科一萬元以下罰金。

十七、可逮捕之罪

本法之罪，係刑事訴訟法所規定之可逮捕之罪。

十八、公務員逮捕之義務

被交付或期約賄賂之公務員應逮捕交付或期約賄賂之人，並將該人解送最近之警察局，公務員若無合理之事由而違反者，處有期徒刑六月以下或科或併科五千元以下罰金。

十九、檢察官起訴獨佔

本法之起訴非經總檢察長或其同意(consent)，不得爲之。

二十、證人之保障

二人以上被訴本法或刑法第一百六十一條至一百六十五條二百十三條至二百十五條之罪或其共犯、未遂犯、幫助犯，法院得命令其中一人或數人爲證人。拒絕前項之宣誓或拒絕回答合法之訊問者，以拒絕證詞處理。依前開規定爲證詞，對本案之眞象有全盤之發現，並經合法之交互詰問後，有權要求法院交付證明，作爲有關於其本人訴訟程序之保障。

二十一、告發人之保護

關於本法犯罪之告發不應被當成民刑事訴訟程序之證據，且證人不得揭漏告發人之姓名及住址，或陳述可能導致其被發現之事項。在民、刑事訴訟程序中，當成證據之書籍、資料或報告，若含有告發人之年籍或或陳述，可能導致其被發現，法院在保護告發人曝光之必要下，應在該訴訟程序進行前應將其所有相關之資料隱藏或塗去。

(參考資料：Prevention of Corruption Act)

柒、結語

日前法務部陳定南部長公開呼籲司法院督促所屬各級法院對賄選案件速審速結，引發是否爲干涉審判之爭執，審檢之間甚且相互指責。但陳部長之言反引起社會大眾之共鳴。事實上「審判獨立」不等同於「司法獨立」，司法院高舉「司法獨立」之大旗，作爲迴避輿論對法庭效率及法院判決品質等無涉審判獨立之情事的檢驗，與新加坡楊邦孝大法官於1993年即提出之「法庭的地位和表現都必須面對大眾輿論的評價」理念大相逕庭。

新加坡在金字塔型之司法結構下，能至最高法院服務者，鳳毛鱗角，大部分案件都在初級法院確定，並立即執行，審判、執行之效率非常高。雖然初級法院法官、總檢察署檢察官多數均相當年輕，但在新加坡最高法院、初級法院及總檢察署內，觀察法官開庭、或檢察官約詢證人、蒞庭論告之實際狀況，對新加坡人民進入司法程序後，對法庭之尊重有相當深刻感受，如進入法庭均鞠躬行禮如儀，法庭聽審中決不會有人大聲喧嘩，法官進入法庭前，檢察官、律師、司法警察、當事人、證人、庭務員、法警、通譯等相關工作人員，均提前到庭準備，準備就緒妥當後，法官會自法庭後辦公室敲門進入，全體在場人員起立行禮，即開始進行審判程序，毫不浪費訴訟程序。審判程序中，筆錄由法官當庭自行製作，裁判之被告供述、證人證言，完全以法官筆錄爲準，例外始輔以庭訊之錄音，顯示人民對司法之信任。此種信賴，肇因於其法庭之效率，讓社會可實現即時之正義。相較於我國在各項民意調查中，司法公信往往敬陪末座之情景，實不可相提併論。

著眼於有效解決嚴重之積案問題，並進而實現社會公理，求得即時之正義，新加坡從事司法改革所建立之法院核心價值，即「親民」、「迅速即時」、「平等公正廉直」、「獨立性、負責性」、「公眾的信賴和信心」實有值得借鏡之處。我國司法改革至今，所謂「法院聽命於執政黨」之時代已經過去，各級法院、檢察署亦將爲民服務之親民視爲重點工作，所亟待加強者，當屬「迅速即

時」及「公眾的信賴和信心」，只有法院的業務及審判程序迅速即時，則司法的功能始能彰顯，也惟有有司法具獨立性、負責地依法運作，進入司法，平等公正廉直地及時解決爭端，才能讓人民對司法產生信賴和信心。

新加坡此行，收獲頗豐，在此民意強烈期待司法能實現即時正義之際，尤覺感受深刻。我國司法改革，如能重拾人民之信心，則不僅改革可竟全功，建立具「世界級」競爭力之法院，亦指日可待。

附　　件

ATTACHMENT OF PROSECUTORS FROM THE MINISTRY OF JUSTICE, TAIWAN

TWO-WEEK PROGRAMME
2 – 13 SEPTEMBER 2002

Monday (2 September)

Braddell Room, 10th level Adelphi

9.00 – 9.15am	Welcome Address by Principal Senior State Counsel of the Criminal Justice Division, AGC *Mr Lawrence Ang*
9.15 – 9.30am	Screening of Corporate Video (Mandarin)
9.30 – 9.45am	Presentation by Civil Division *Tan Hee Joek*
9.45 – 10.00am	Presentation by International Affairs Division *Mark Jayaratnam*
10.00 – 10.15am	Presentation by Legislation Division *Lee Chuan Huei*
10.15 – 10.30pm	Presentation by Law Reform & Revision Division *Julie Huan*
10.30 – 11.00am	Tea break
11.00am – 12.00pm	Briefing on the Role of the Public Prosecutor in Criminal Proceedings and the Trial Process *Mr Lee Sing Lit*
12.00 – 12.30pm	Q & A
12.45 – 2.00 pm	***Lunch hosted by CJD SSCs at the Singapore Academy of Law***
2.30 – 5.00pm	Preparing for Magistrates' Appeals in the office

Tuesday (3 September)

9.00am – 1.00pm	**Observing Magistrates' Appeals in the High Court** *(Ivan Chua & Tai Wei Shyong)*
2.30pm – 5.00pm	Preparing for Preliminary Inquiry in the office

Wednesday (4 September)

9.00am – 1.00pm	**Observe Subordinate Courts Trials and Mentions**
	Trial in Court No.6
	Outrage of modesty
	(*Wong Kok Weng*)
	with
	Chen Yuh-Jane
	Huang Mou-Hsin
	Trial in Court No.15
	Outrage of modesty
	(*Christopher Ong Siu Jin*)
	with
	Hsu Mei-Niu
	Wang Nan-Jiun
2:00pm –5.00pm	**Visit to the Subordinate Courts**
	(*Desmond Lee*)

Thursday (5 September)

9.00 – 10. 30 am	**Observing Preliminary Inquiry in the High Court**
	PP v Wanari Bin Kamri
	Rape case
	(*Eugene Lee & Francis Ng*)
10.30am – 1pm	**Observing Duty Officer (DO) in AGC**
2.30 – 5pm	**Visit to the Supreme Court**

Friday (6 September)

9.00am – 1.00pm	**Observing Subordinate Courts Trials & Mentions**
	Mentions in Court No. 2
	Special Sentencing Court
	(*Kalidass, Jayarajan, Lalitha*)
2.30 – 4.30pm	**Visit to the Corrupt Practices Investigation Bureau**
	(*Ho Su-Lyn, Chng Hwee Chin*)
6.00 – 10.00 pm	***Social event: Visit to the Night Safari & dinner***
	(*Mr Lee Sing Lit, Wong Sook Ping*)

Monday (9 September)

9.00am – 1.00pm	**Observing Video Pre-trial Conferences in AGC**
2.30pm – 4.30pm	**Visit to the Commercial Affairs Department**
	(*Desmond Lee, Lum Wai Ling, Khong Pui Pui, Hon Yi*)

Tuesday (10 September)

10am – 12pm **Visit to the Central Narcotics Bureau**
(*Desmond Lee, Jeyashankar Sivalingam*)

2.30 – 5.30pm **Observing Coroner's Inquiry in the Subordinate Court No. 22**

Wednesday (11 September)

9.00am – 5.30pm **Observing Subordinate Courts Trials & Mentions**

Court No. 18	**Court No.37**
Conspiracy to rob	**Fatal accident**
(Lee Jwee Nguan)	*(Eugene Teo)*
with	*with*
Chen Yuh-Jane	Hsu Mei-Niu
Huang Mou-Hsin	Wang Nan-Jiun

Thursday (12 September)

9.00am – 10.30pm **Observing Preliminary Inquiry in the High Court**
PP v K Sasidahran
Rape case (*Eddy Tham & Francis Ng*)

2.30 – 5.30pm **Visit to Tanglin Police Division HQ**
(*Desmond Lee, Hon Yi*)

Friday (13 September)

10.00am – 4.00pm **Observing trials in the High Court**

PP v Mohd Noorel Azman Bin Jaafar	***PP v Mohd Shaddat B Md Kamarudin***
Rape	**Unnatural offence**
(*DPPs Christopher Ong Siu Jin & Wong Sook Ping*)	(*DPPs Eddy Tham & Jason Tan*)
with	*with*
Chen Yuh-Jane	Hsu Mei-Niu
Huang Mou-Hsin	Wang Nan-Jiun

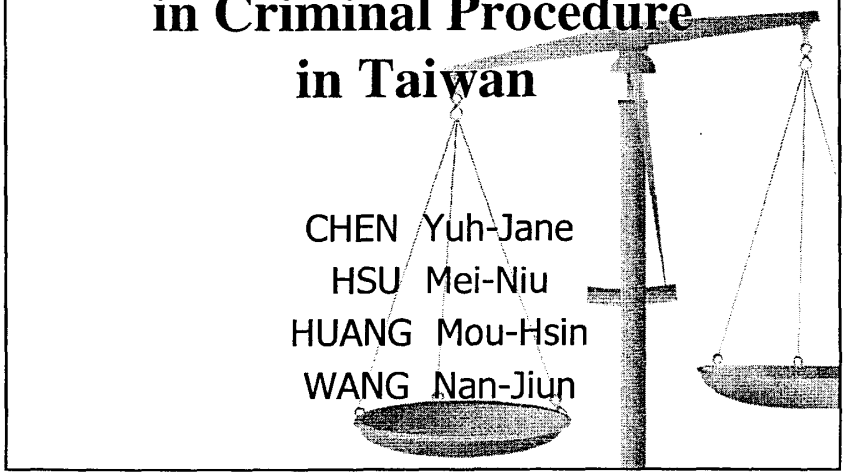
Whitley Room, 9th level Adelphi

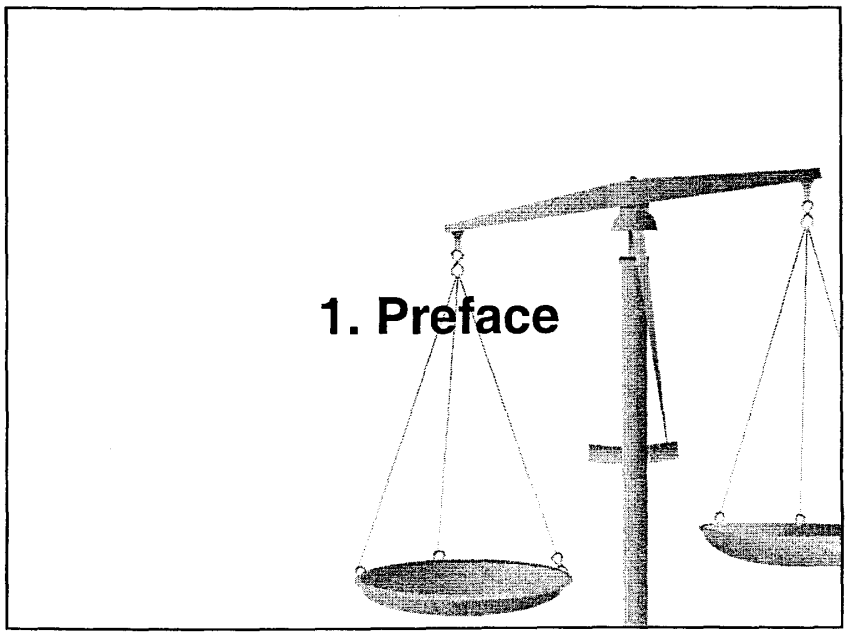
4:00- 5:30pm **Presentation by Taiwanese Prosecutors on 'Current Reforms in Criminal Procedure in Taiwan'**

Presentation of tokens & tea reception

The current reform in Criminal Procedure in Taiwan

CHEN Yuh-Jane
HSU Mei-Niu
HUANG Mou-Hsin
WANG Nan-Jiun



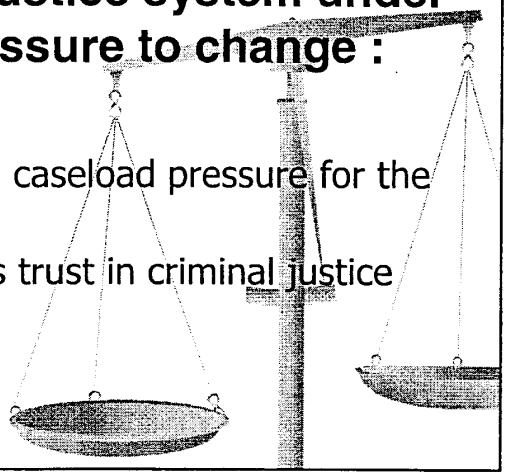


1. Preface

A. Criminal justice system under heavy pressure to change :

a. the suffocating caseload pressure for the judges

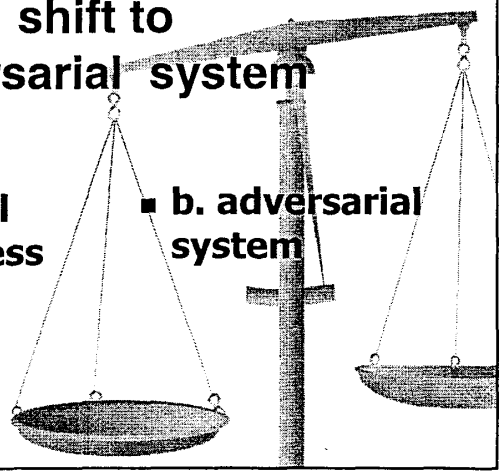
b. re-win people's trust in criminal justice administration



B. National Conference on Judicial Reform in July 1999.

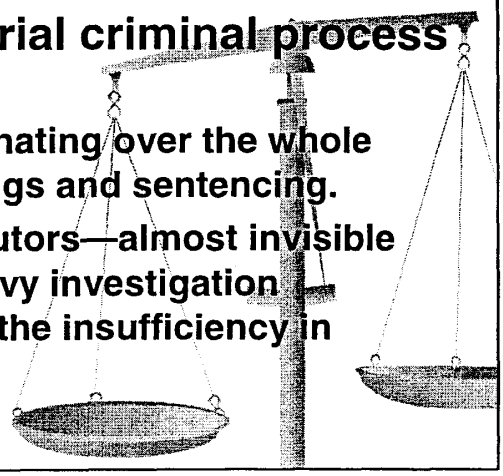
C. Accusatorial Criminal Process shift to Adversarial system

- a. accusatorial criminal process
- b. adversarial system



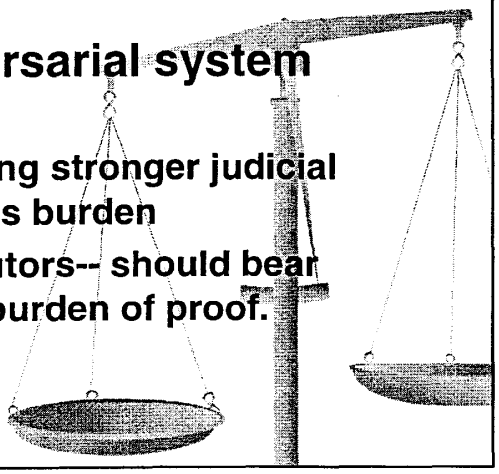
a. accusatorial criminal process

- judges—dominating over the whole trial proceedings and sentencing.
- public prosecutors—almost invisible due to the heavy investigation workload and the insufficiency in manpower.



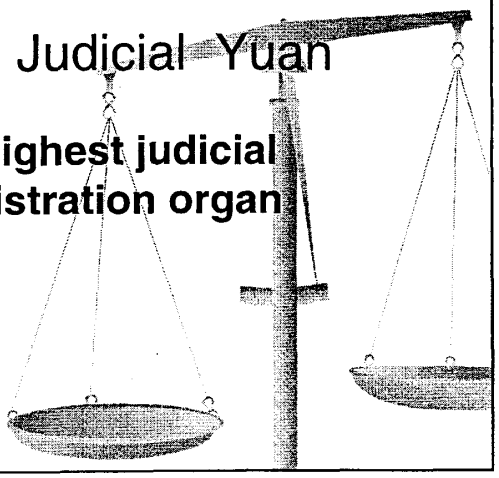
b. adversarial system

- judge--becoming stronger judicial officer with less burden
- public prosecutors-- should bear "substantial" burden of proof.



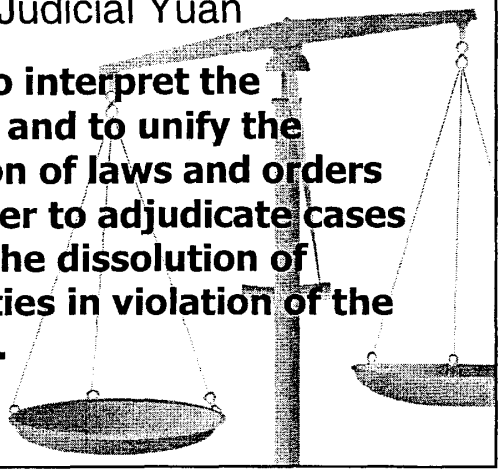
2. The Judicial Yuan

--the highest judicial administration organ



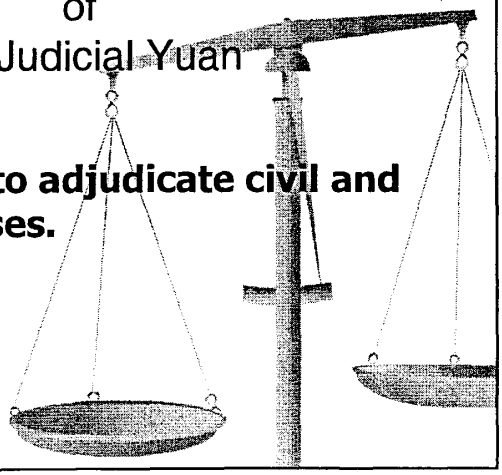
A. the major powers
of
the Judicial Yuan

- **The power to interpret the Constitution and to unify the interpretation of laws and orders and the power to adjudicate cases concerning the dissolution of political parties in violation of the Constitution.**



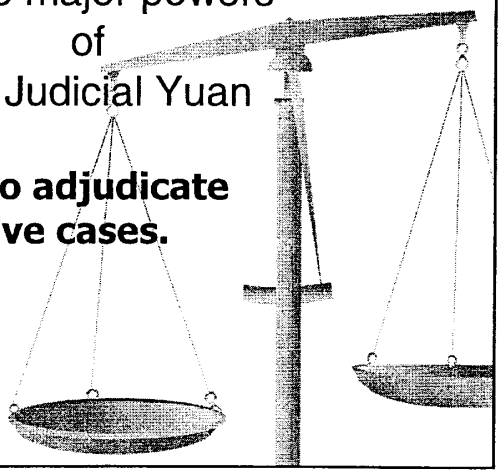
B. the major powers
of
the Judicial Yuan

- **The power to adjudicate civil and criminal cases.**



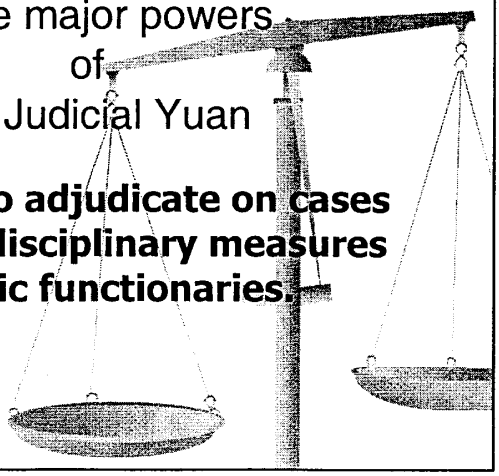
C. the major powers
of
the Judicial Yuan

- **The power to adjudicate administrative cases.**

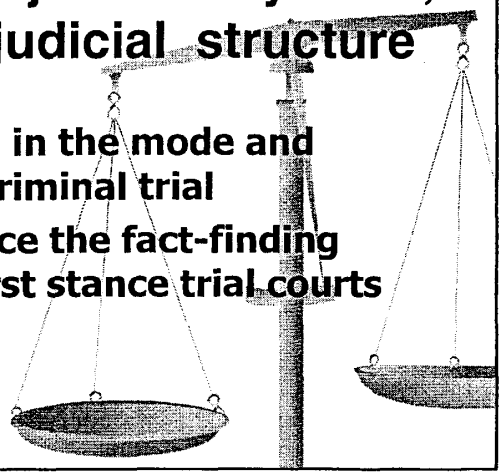


D. the major powers
of
the Judicial Yuan

- **The power to adjudicate on cases concerning disciplinary measures against public functionaries.**

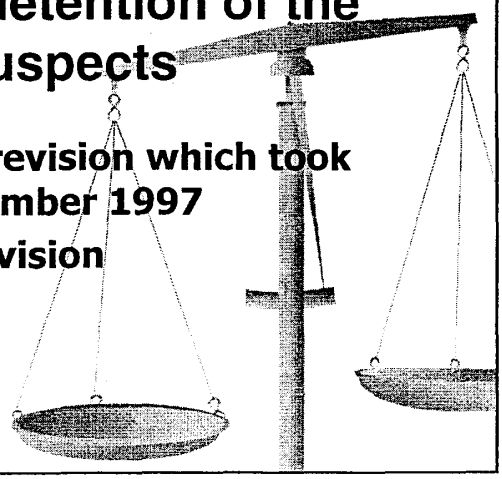


3. Pyramid judicial system , Pyramid judicial structure



- A. the change in the mode and structure of criminal trial
- B. to re-enforce the fact-finding function of first stance trial courts

4. The detention of the suspects

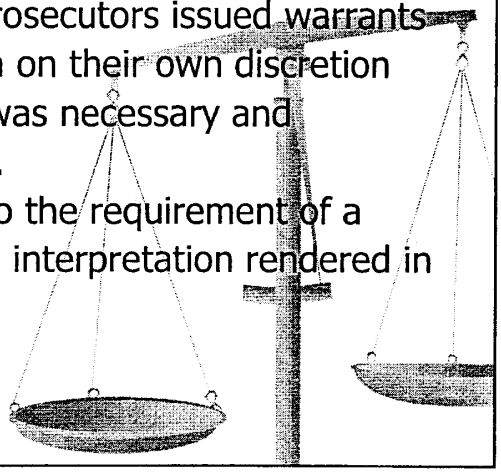


A. Before the revision which took place in December 1997

B. After the revision

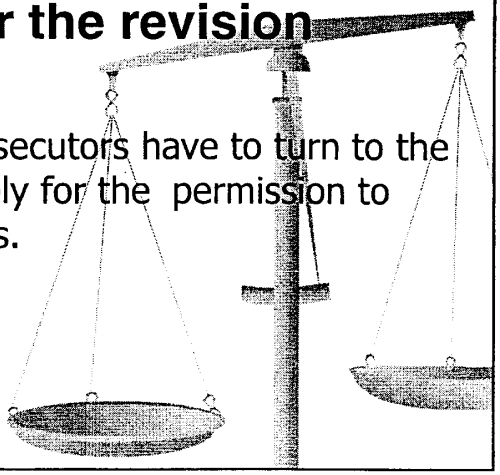
A. Before the revision which took place in December 1997

- a. The public prosecutors issued warrants of detention on their own discretion whether it was necessary and appropriate.
- b. responding to the requirement of a constitutional interpretation rendered in 1995



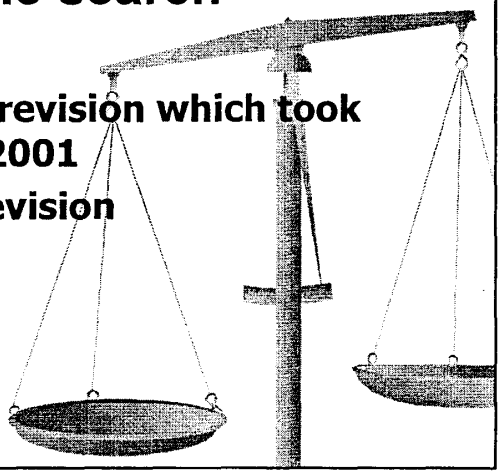
B. After the revision

- The public prosecutors have to turn to the courts and apply for the permission to detain suspects.



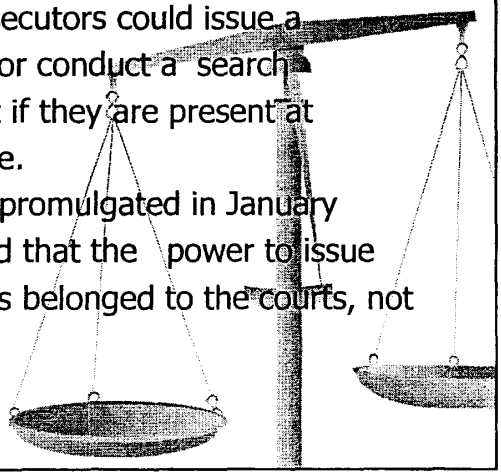
5. The search

- **A. Before the revision which took place in July 2001**
- **B. After the revision**



A. Before the revision which took place in July 2001

- a. The public prosecutors could issue a search warrant or conduct a search without warrant if they are present at the search scene.
- b. The legislation promulgated in January 2001 prescribed that the power to issue search warrants belonged to the courts, not prosecutors.



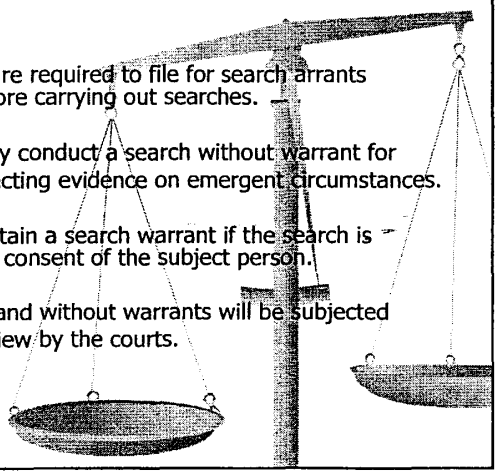
B. After the revision

a. Prosecutors and police are required to file for search warrants with the courts before carrying out searches.

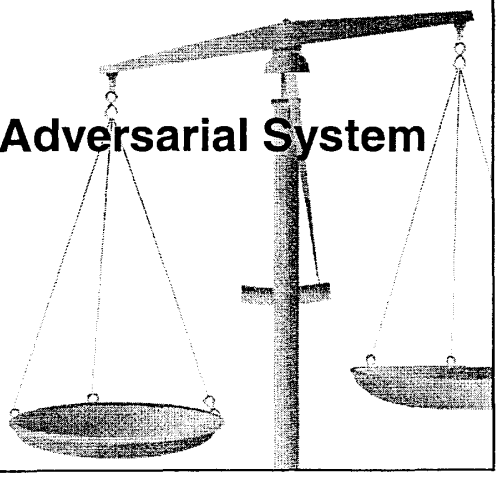
b. The prosecutors can only conduct a search without warrant for the purpose of collecting evidence on emergent circumstances.

c. It is not necessary to obtain a search warrant if the search is conducted with the consent of the subject person.

d. Both the searches with and without warrants will be subjected to a post-search review by the courts.

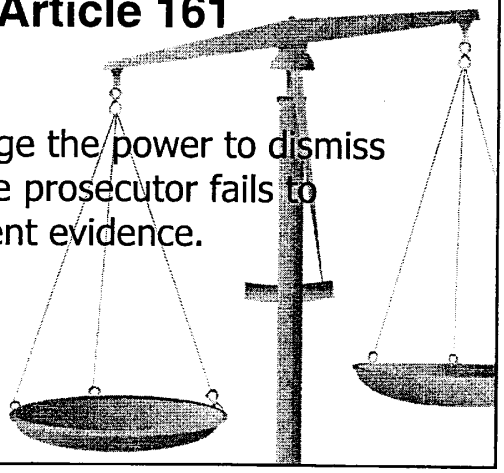


6. Improved Adversarial System



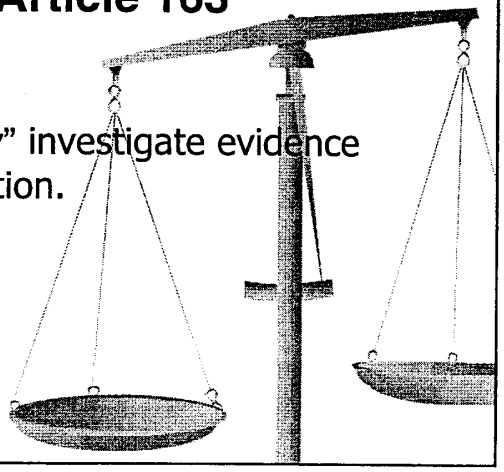
A. Article 161

- To give the judge the power to dismiss cases where the prosecutor fails to produce sufficient evidence.



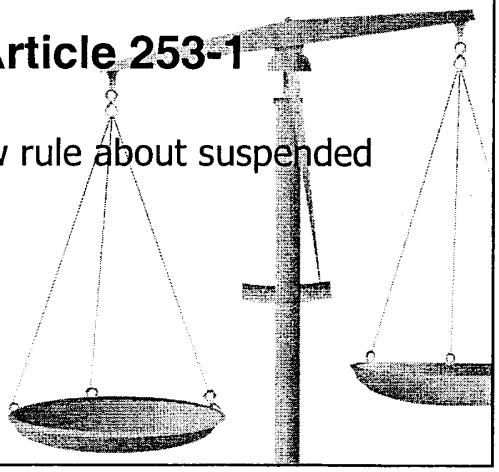
B. Article 163

- The judge "may" investigate evidence upon his discretion.

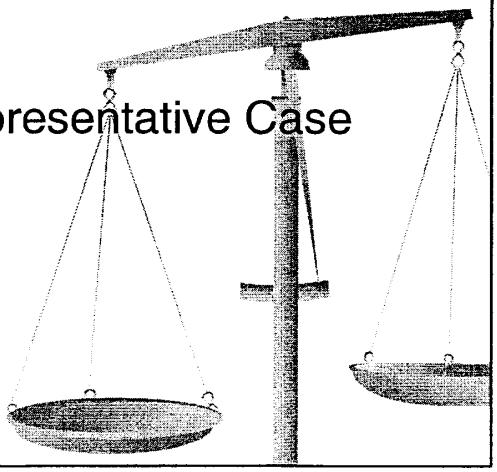


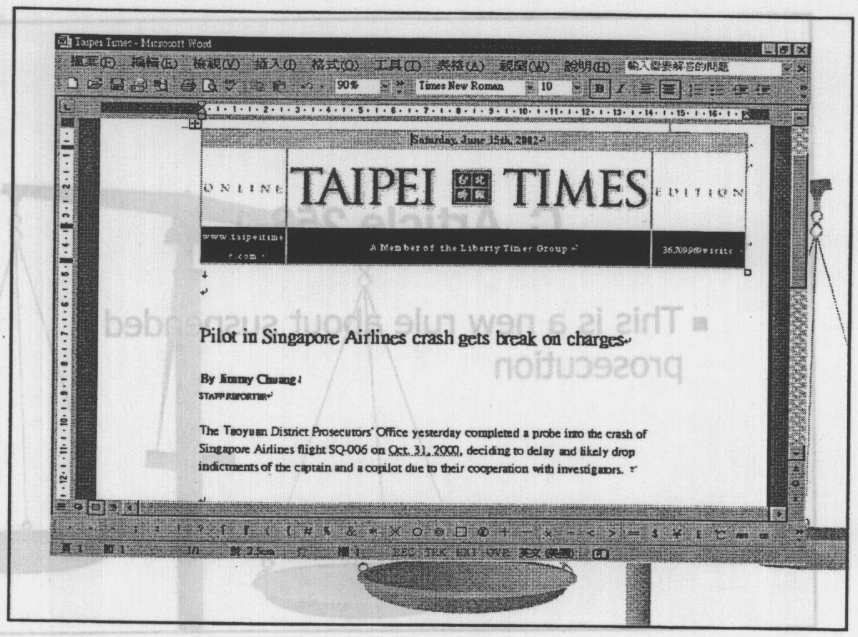
C. Article 253-1

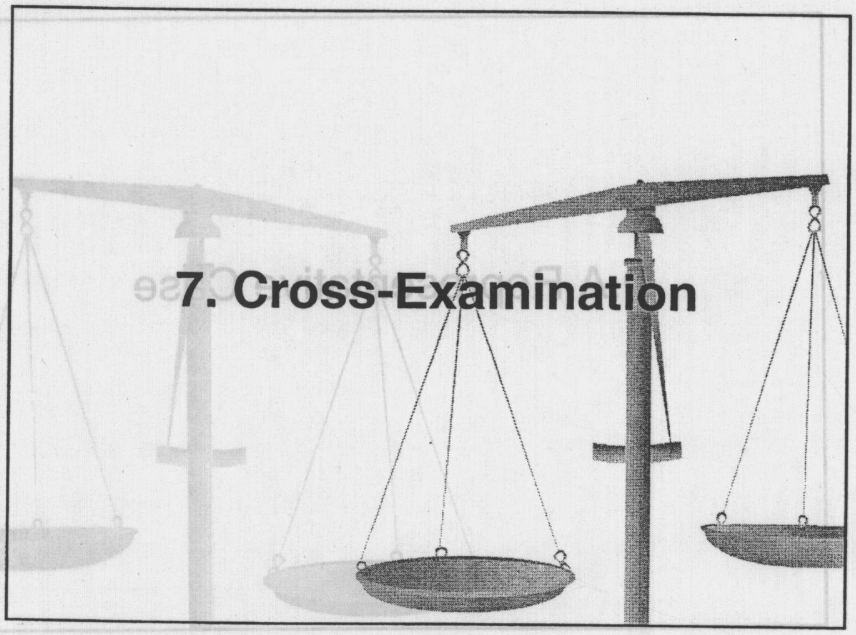
- This is a new rule about suspended prosecution



D.A Representative Case



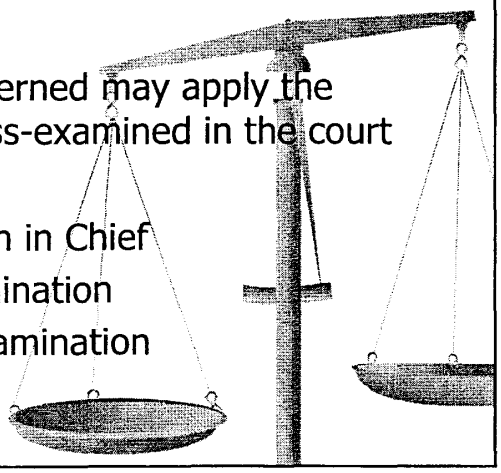

Taipei Times - Microsoft Word
Times New Roman
Saturday, June 15th, 2002
ONLINE
TAIPEI TIMES
EDITION
A Member of the Liberty Times Group
Pilot in Singapore Airlines crash gets break on charges
By Jimmy Chuang
STAFF REPORTER
The Taoyuan District Prosecutors' Office yesterday completed a probe into the crash of Singapore Airlines flight SQ-006 on Oct. 31, 2000, deciding to delay and likely drop indictments of the captain and a copilot due to their cooperation with investigators.


7. Cross-Examination

A. Article 166

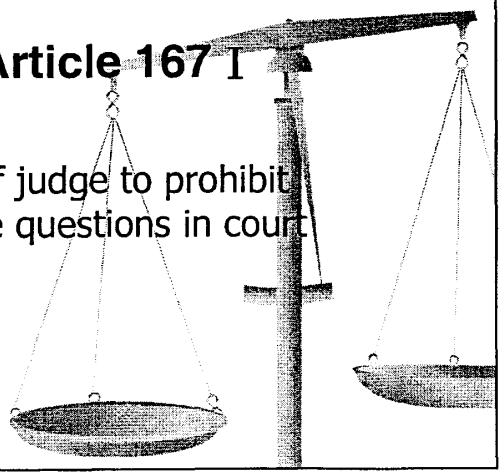
- The party concerned may apply the witness be cross-examined in the court

  Examination in Chief
  Cross Examination
  Recross Examination



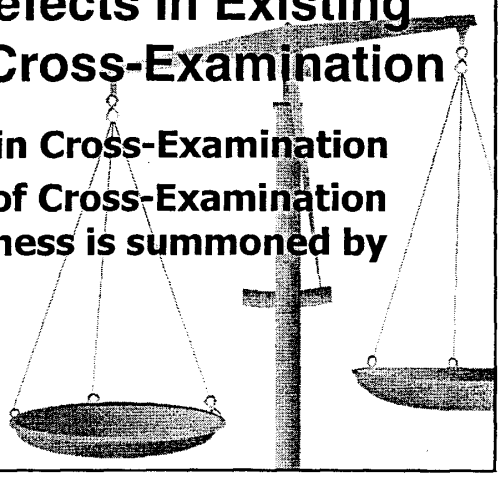
B. Article 167 I

- The power of judge to prohibit inappropriate questions in court



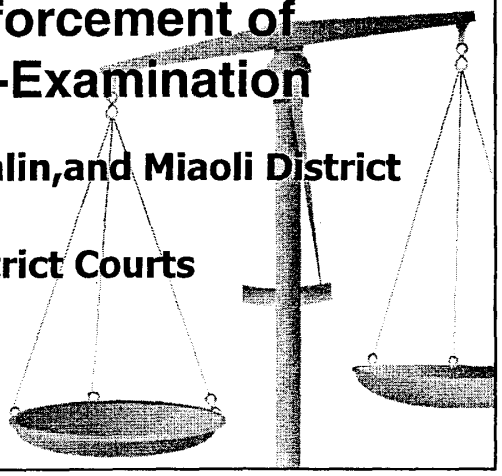
8. Major Defects in Existing Law about Cross-Examination

- A. Limitation in Cross-Examination
- B. The Order of Cross-Examination when the witness is summoned by the court



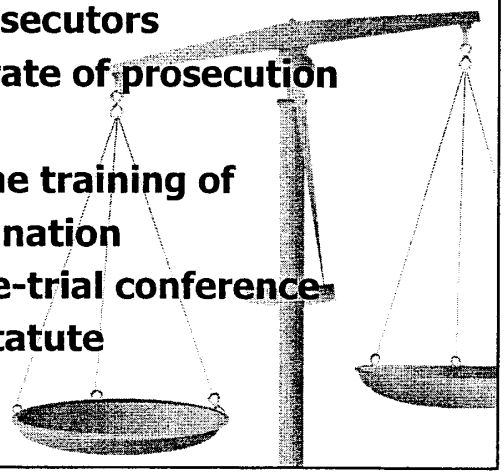
9. Enforcement of Cross-Examination

- A. Taipei,Shihlin,and Miaoli District Courts
- B. Other District Courts

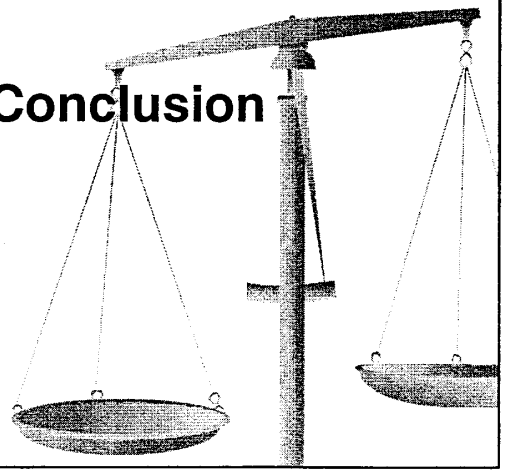


10.Future Development

A. Increase prosecutors
B. Reduce the rate of prosecution charge
C. Enhancing the training of Cross-Examination
D. Fulfilling pre-trial conference
E. Amending statute



11. Conclusion



IN THE SUBORDINATE COURTS OF THE REPUBLIC OF SINGAPORE

Magistrate's Appeal No.114 of 2002
DAC No. 38006 of 2001

(10 January; 15 March; 1 April; 6 May; 19 June 2002)

Between

SARJIT SINGH S/O MEHAR SINGH

... Appellant

And

PUBLIC PROSECUTOR

... Respondent

Coram: Audrey Lim, District Judge

Mr Tai Wei Shyong for the Public Prosecutor (Respondent)
Accused in person (Appellant)

GROUNDS OF DECISION

1 The accused was an advocate and solicitor and a sole proprietor of M/s Sarjit Singh & Co. He claimed trial to a charge of committing criminal breach of trust under s 409 of the Penal Code (Cap 224) in that, being entrusted with dominion over his clients' funds held in the clients' account, he had dishonestly misappropriated a sum of $4,815.24 in that account belonging to his client Latiff.

2 At the close of the trial, I was satisfied that the prosecution had proved the case beyond a reasonable doubt, and I convicted the accused and sentenced him to seven months' imprisonment. The accused has appealed against my decision.

The prosecution's case

Testimony of PW3 - Muhammed Bin Abdul Latiff ('Latiff')

3 In early November 1998 Latiff approached the accused, Sarjit, then an advocate and solicitor. At that time Latiff had left the employ of Eurofibre Engineering Pte Ltd ('Eurofibre') to start his own business, and wanted to claim unpaid emoluments from Eurofibre amounting to $4,815.24. Sarjit agreed to act as his lawyer on this matter, and at the second meeting on 9 November, he asked for a fee of $200 to write a letter of demand to Eurofibre. Latiff paid him $200 by cheque *(exhibit P16)*. Subsequently Latiff called Sarjit and was told that Eurofibre had not paid up on the letter of demand. On 17 November, they met again, and Sarjit said that he would issue a writ against Eurofibre. He asked for another $500 in fees and Latiff issued him a cheque *(exhibit P17)*. Although Sarjit claimed to have issued him with receipts for the payments *(exhibits D1 and D2)*, Latiff never received them.

4 A few days later, Latiff called Sarjit at his office and on the handphone to enquire on the progress of his case, but was unable to contact him. He also went to Sarjit's office but it was closed. He did not have Sarjit's home phone number. Suspecting that Sarjit was avoiding him, Latiff went to his office in December 1998 and waited for him. When Sarjit arrived, Latiff asked him about the case and for a copy of the writ. Sarjit said that the writ was at home and he would fax a copy to Latiff. At that time, Sarjit had Latiff's fax, home, office and handphone numbers.

5 Latiff received a faxed copy of the writ sometime in January 1999 *(exhibit P18)* and he tried to contact Sarjit but to no avail. As he did not know the status of his claim against Eurofibre, he sought the help of a friend who was a lawyer, who wrote a letter to Eurofibre in October 2000 to demand the outstanding payment of $4,815.24. Subsequently his friend informed him that Eurofibre had paid his claim by a cheque dated 16 November 1998. Latiff then tried to contact Sarjit repeatedly but was unsuccessful. He thus lodged a police report in December 2000.

6 In mid-2001 Sarjit called Latiff at his home and asked to meet him. They met at McDonald's where Sarjit revealed for the first time that he had received $4,815.24 from Eurofibre and apologised for not paying Latiff as he had been a victim of a cheating scam. Latiff demanded the $4,815.24 and the legal fees of $700 which he had paid Sarjit, as he felt cheated by Sarjit. Sarjit asked Latiff to help him for the sake of his family and Latiff agreed provided Sarjit repaid him. Sarjit said that he would return the money and meet Latiff again with regard to some other matters. In helping Sarjit, Latiff would inform the court that Sarjit had repaid him and that he did not bear any grudges against Sarjit. He felt sorry for Sarjit and did not wish for him to go to jail. However Latiff was not prepared to fabricate evidence and lie to the authorities to assist Sarjit, nor consented to Sarjit's unauthorised use of the $4,815.24 in the first place.

7 Sarjit contacted Latiff again and they met at Peninsula Plaza on 18 September 2001. He handed Latiff a cheque for $5,515.24 *(exhibit P19)*, which comprised the sum of $4,815.24 and $700 and asked Latiff to assist him by signing and endorsing a copy of a bill of costs *(exhibit P20)* which he had prepared. Latiff refused as he had never agreed on the costs or the work which was supposedly done and reflected in P20, and had never seen P20 until then. He was also not informed by Sarjit that the total costs of prosecuting the claim against Eurofibre would be $2,500 excluding disbursements.

8 Attached to P20 was a letter dated 28 December 1998 *(P20, 2nd page)*. Sarjit wanted Latiff to sign this to show that he had disputed P20, in order for Sarjit to explain his position to the court subsequently. Sarjit also offered Latiff an additional sum of money for his help, but Latiff declined. Unbeknown to Sarjit, Latiff had recorded this conversation *(exhibits P21 and P22A)* to protect himself, as he did not know in what way Sarjit wanted his help when they met at Peninsula Plaza.

9 Latiff also denied that he had instructed Sarjit to act for one Junaidei in another matter. Junaidei and Latiff had left Eurofibre together to set up a business. Eurofibre sued Junaidei for sums owing to them, and Latiff had forwarded to Sarjit

documents pertaining to Junaidei's case as background information for the purposes of Latiff's claim against Eurofibre. He wanted to appraise Sarjit of the events in totality, because Latiff thought that Eurofibre might have stopped payment to him and pursued a claim against Junaidei as they had set up another business together. Junaidei's matter with Eurofibre was resolved eventually when he paid Eurofibre.

Testimony of PW1 – Mdm Tan Poh Hong ('Mdm Tan')

10 Mdm Tan was employed by Eurofibre and confirmed that Latiff had left Eurofibre's employ on 30 October 1998. At that time, Eurofibre owed a sum of $4,815.24 to Latiff. M/s Sarjit Singh & Co had issued a letter of demand *(exhibit P7)* and Eurofibre sent a cheque dated 16 November 1998 *(exhibit P9)* to M/s Sarjit Singh & Co. This cheque was cleared on 23 November 1998, as evidenced by Eurofibre's bank statement *(exhibit P12)*. When Eurofibre received another letter of demand from another lawyer, she informed that lawyer that payment had been made to M/s Sarjit Singh & Co.

Testimony of PW5 (Tan Hock Yuen) and PW2 (Insp. Mohd Shahri)

11 Tan was the former investigating officer of this case and tendered Sarjit's s 122(6) statement *(exhibit P23)*. Sarjit had informed him that he had issued two receipts to Latiff for $200 and $500 respectively *(exhibits D1 and D2)*, as revealed in his long statement *(exhibit P25)*. Both P23 and P25 were not challenged by Sarjit. When asked for the receipts, Sarjit told Tan that he was closing his practice and did not have them with him then. Sarjit subsequently enclosed D1 and D2 with his second representation to the Attorney-General's Chambers ('AGC') and this was confirmed by Insp. Shahri, the current investigating officer. Latiff confirmed with Tan that he had never seen D1 and D2.

The close of the prosecution's case

12 At the close of the prosecution's case, the accused submitted that there was no case to answer as s 409 of the Penal Code did not apply to an advocate and solicitor, and he was merely entrusted with a job to claim money on behalf of his client. In addition, he claimed that he was entitled to offset the costs of his legal fees against the $4,815.24 and hence there was no dishonest misappropriation.

13 In reply, prosecution submitted that s 409 clearly included an advocate and solicitor, a person who held himself out as an agent for another. The accused was also entrusted with dominion over clients' money in his firm, of which he held on the clients' behalf in the clients' account. There was prima facie evidence of dishonest misappropriation as the accused had not even informed Latiff that he had received $4,815.24 from Eurofibre, until after Latiff had lodged a police report. I held that a prima facie case had been established against the accused according to the *Haw Tua Tau* test. Accordingly, I called on the accused for his defence and he elected to testify on oath.

The case for the defence

Testimony of DW1 – Sarjit Singh s/o Mehar Singh ('Sarjit')

14 I would like to mention at the outset that Sarjit's testimony was contradictory and inconsistent in many material aspects. Hence I have set out in gist his version of events and left the inconsistencies to be dealt with in my findings.

15 Sarjit was an advocate and solicitor since 1996, running a sole proprietorship, M/s Sarjit Singh & Co. He wound up his practice around 1999. His wife, Geetha, helped him in the administrative tasks. Sarjit was introduced to Latiff through Geetha, who knew Latiff's wife. In October 1997, Latiff sought his professional advice on whether there was any legal impediment in setting up a business in competition with Eurofibre. Sarjit advised him at length on this and said that he would inform Latiff of

the costs of his advice later. Instead of informing Latiff, he told Latiff's wife that the costs would be around $1,000 to $1,500.

16 Around October or November 1998 Geetha received a call from Latiff's wife who said that Latiff wanted to see Sarjit on a legal matter. A meeting was arranged and Latiff briefed Sarjit on the Eurofibre claim. Sarjit informed him that he would send a letter of demand for $200, and if the matter proceeded up to summary judgment in court, his total fees would be $2,500 excluding disbursements. Latiff issued him a cheque for $200 and Sarjit sent the letter of demand. When Eurofibre did not respond, he called Latiff and told him that they would need to proceed to summary judgment and asked for $500 to raise a writ. Latiff issued another cheque for $500. In return, Sarjit issued two receipts, D1 and D2, and gave them to Latiff.

17 Sarjit did some getting up to prepare the writ, but before he could file the writ which was prepared on 24 November, Eurofibre sent him a cheque dated 16 November 1998 for $4,815.24. He banked the cheque into his clients' account on or before 23 November 1998 *(exhibit P15)*. At the same time, he asked Geetha to prepare a bill of costs *(exhibit P20)* and thereafter an amended bill of costs *(exhibit D7)*. Both were typed on and dated 23 November 1998. In December 1998 Sarjit faxed a copy of the writ to Latiff upon his request, but did not tell him that Eurofibre had paid the $4,815.24. However Sarjit later claimed that he had informed Latiff around 23 November, that Eurofibre "had conceded the matter", and that he would fax him a copy of the writ which he "was about to file".

18 When Latiff approached Sarjit on his claim against Eurofibre, he also told Sarjit to advice on Eurofibre's claim against Junaidei for breach of employment contract. At that time, Eurofibre had issued a writ against Junaidei and Latiff asked Sarjit on how this claim could be defended. By this, Sarjit assumed that Latiff was instructing him to act on Junaidei's behalf and that Latiff would bear full responsibility for Junaidei's case. Sarjit advised Latiff to file a memorandum of appearance, but Latiff wanted to wait and instructed Sarjit to study the possible defences for the case. As Latiff could not make up his mind on whether to enter an

appearance and time was running out, Sarjit filed a memorandum of appearance *(exhibit D5)* on 8 January 1999, out of concern for and to protect Junaidei's position. However, the filing was unsuccessful as he was out of time.

19 Sarjit had also instructed Geetha to send the amended bill of costs, D7, to Latiff, but she forgot. Around November 1998, they were beset with problems as Geetha had complications in her pregnancy, and Sarjit's sister, Madam Pritam, had suffered a stroke. Thinking that Geetha had sent D7 to Latiff, Sarjit withdrew the $4,815.24 from the clients' account, in stages, between 26 November 1998 to early January 1999. Under the Law Society's Rules, he was entitled to offset his legal fees against the $4,815.24, two days after sending D7 to his client. At the end of December 1998, Sarjit discovered that Geetha had not sent D7 to Latiff. He decided to compensate Latiff by returning the money to him, as it was unfair and wrong to withdraw the money from the clients' account since Latiff had not signed D7 and he had failed to inform Latiff that he had offset his costs against the $4,815.24.

20 Sarjit attempted to contact Latiff in January 1999 but was unsuccessful. He called Latiff on his handphone, but did not have Latiff's home number although Geetha did. He was also busy with his personal and family problems and thus completely forgot about Latiff's matter until he was called up for investigations in July 2001. Thereafter he asked Geetha to contact Latiff's wife to explain what had happened. Geetha arranged a meeting between Sarjit and Latiff at McDonald's in July or August 2001.

21 At this meeting, Sarjit apologised and told Latiff that he would return the money and make amends in other ways for the delay. Sarjit described it as a "mistake of sorts" and wanted Latiff to record that it was a mistake so that he could get the investigating authorities to withdraw the matter against him. Latiff was angry but was willing to give a statement to say that there was a mutual mistake, provided Sarjit paid him $4,815.24 as well as a refund of his $700. Sarjit was surprised that Latiff demanded the return of the $700, but agreed to this as Latiff would not help him otherwise. They then parted.

22 That afternoon, Sarjit called Latiff and told him that he had the money and arranged a meeting at Peninsula Plaza. At this meeting Sarjit gave Latiff a cheque for $5,515.24 and asked Latiff to sign P20. This was the first time that Latiff saw P20 and he asked Sarjit about the items in P20. Sarjit replied that P20 was for all intents and purposes an academic bill as Latiff had never seen it and proceeded to explain the first three items to him. He also informed Latiff that he was not making any claims in P20 as the items were academic although he believed that he had a legitimate claim, that it was a "mistake of sorts" and he was mentally tired. He did not explain the fourth item in P20 to Latiff as it was very brief and he was not charging Latiff for that. However he never showed Latiff D7.

23 Latiff agreed to endorse P20 on page 2, but he wanted to consult his lawyer first. Sarjit told him to explain the matter to his lawyer thoroughly to say that there was no dishonest intent in the transaction, lest his lawyer thought that Sarjit was bribing Latiff to compound the charge. He also offered to compensate Latiff with $10,000 by way of a gift or loan, to placate Latiff who was angry with him, and to help Latiff who was then in financial difficulties.

24 Sarjit admitted that the tape recording and transcript of the conversation of this meeting were accurate *(exhibits P21 and P22A)*. However, he did not know at that time that Latiff had taped their conversation. Subsequently Sarjit contacted Latiff numerous times but Latiff refused to sign P20 as he had informed the investigating authorities that he did not owe Sarjit anything and would thus be in danger of lying. Sarjit explained that he was merely asking Latiff to endorse P20 to explain that there was a mistake and this would not affect Latiff adversely. However Latiff did not trust Sarjit and suspected Sarjit of trying to get him into trouble as Sarjit had given him a cheque for $5,515.24.

Testimony of DW3 – Geetha d/o Nirmal Tejsingh ('Geetha')

25 Geetha had prepared the writ for Latiff's claim before 23 November, and a memorandum of appearance for Junaidei's case around November or December 1998.

She also typed P20 and D7 on or before 23 November 1998, the contents of which were based on a draft by Sarjit. However the attachment to P20, dated 28 December 1998, was prepared in 2001 after Sarjit had been charged in court.

26 Sarjit had asked her to call Latiff to acknowledge D7. She tried to contact Latiff once or twice, on his handphone or office number, but was unsuccessful. She did not have his home number. Thereafter, she did not pursue this matter due to her personal and family problems. She was expecting her second child, her mother was very ill and Madam Pritam had suffered a stroke. In addition, her maid had run away and Sarjit had been cheated in a scam of a very large sum of money.

27 It was only in January 1999 that Geetha remembered that she had not obtained Latiff's signature on D7 and tried to call him again but was unsuccessful. She also informed Sarjit of this. After January 1999 they did not discuss this issue again and it was only when Sarjit was under investigations that she contacted Latiff's wife in July 2001 to explain that it was a genuine mistake and arranged a meeting between Latiff and Sarjit. All throughout, Geetha acted on Sarjit's instructions and had never dealt with Latiff or Junaidei personally. Geetha claimed that she could manage financially as she came from a well-to-do family. She had arranged for Sarjit's $30,000 bail in this case, and would have been able to help Sarjit repay Latiff.

Testimony of DW2 – Junaidei

28 Junaidei and Latiff resigned from Eurofibre together to join Latiff's business. Eurofibre sued him for breach of contract, in that he had resigned one month before his contract expired, and not because he had joined Latiff's business in competition. He forwarded the court documents to Latiff for Latiff to assist him but did not ask Latiff to defend the claim or to engage a lawyer, as he conceded that Eurofibre had a legitimate claim against him and he intended to pay Eurofibre. Latiff subsequently paid Eurofibre on Junaidei's behalf, in January or February 1999. Junaidei had never met Sarjit until this trial commenced.

The close of the defence's case

29 The defence basically reiterated its submissions as in the close of the prosecution's case and it bears no repeating.

My decision

The undisputed facts

30 The undisputed facts are as follows. Latiff had engaged Sarjit to act on his behalf to claim moneys from Eurofibre. Pursuant to Sarjit's letter of demand of 10 November 1998, Eurofibre sent a cheque, dated 16 November, for $4,815.24 to Sarjit's firm. Sarjit banked this into the clients' account on or before 23 November, and withdrew this amount in stages from 25 November to end December 1998 or early January 1999. Latiff paid Sarjit $700 in legal fees to prepare a letter of demand and issue a writ. Sarjit never informed Latiff that Eurofibre had paid the $4,815.24 until sometime in July 2001, after investigations had commenced. Thereafter, there were two meetings, one at McDonald's and the other at Peninsula Plaza and consequently Sarjit paid Latiff a sum of $5,515.24 comprising the $4,815.24 and $700.

Was there a dishonest misappropriation?

31 Sarjit's defence was that there was no dishonest misappropriation as he was entitled to withdraw the $4,815.24 from the clients' account to offset his legal costs, as he assumed that Latiff had notice of his legal costs through D7. Having examined the testimonies of the witnesses and the evidence before me, I found that Sarjit had the dishonest intent and misappropriated the $4,815.24 for his own use, well knowing that he had no basis to do so. In fact, based on Sarjit's own testimony, I found that he had systematically set about to cover his tracks, first to conceal Eurofibre's payment from Latiff and subsequently to evade criminal liability.

Eurofibre's payment and the writ

32 When Eurofibre did not reply to Sarjit's letter of demand, he informed Latiff that he would issue a writ. The writ was prepared but before it was filed in court, Sarjit received Eurofibre's cheque which he banked into the clients' account on or before 23 November 1998. According to Sarjit, the writ was prepared on 24 November 1998, *very shortly after* he had banked the cheque into the clients' account, which was strange. His unconvincing explanation was that he had banked in Eurofibre's cheque, but did not realise the moneys had come in, thus he continued to type out the writ after he had obtained the cheque.

33 In fact, he went further and wrote on the writ the name "Foo Chee Hock", then deputy registrar of the Subordinate Courts, even though the writ was not filed. Sarjit gave a ridiculous explanation that he had written Foo Chee Hock's name so that Latiff would know that Foo Chee Hock was the deputy registrar of the Subordinate Courts, and that Foo Chee Hock would have signed the writ if it had been filed. Yet he did not inform Latiff expressly as such. He then said that he had written Foo Chee Hock's name "instinctively" not realising that the writ had not been filed, which again I failed to comprehend.

34 When Latiff requested for the writ in December 1998, Sarjit admitted that he did not inform Latiff that Eurofibre had paid the $4,815.24, as he tried to call Latiff but unsuccessfully, had personal problems and forgot that he had banked the cheque into his clients' account. I rejected his excuses. He could not have forgotten that he had banked $4,815.24 into his clients' account, as it was barely a month before Latiff requested for the writ, and he was utilising the $4,815.24 in stages throughout November and December 1998. He could also have easily faxed a note, when he faxed the writ, to inform Latiff that Eurofibre had paid the $4,815.24 but he did not.

35 At a later part of Sarjit's testimony, he claimed that he had spoken to Latiff around 23 November 1998 (as opposed to December 1998) to say that "Eurofibre had conceded the matter" and that he would fax Latiff a copy of the writ which he was

"about to file". Yet he did not inform Latiff what he meant when he said that Eurofibre had "conceded the matter" and claimed that Latiif would have understood what he meant. In particular he did not tell Latiff that Eurofibre had paid his firm and claimed that it was due to his "forgetfulness". As stated earlier, I could not believe that he could forget as he was withdrawing the $4,815.24 from the clients' account in November and December 1998. He then explained, unconvincingly, that he could not contact Latiff and could not fax a note together with the writ to inform Latiff that Eurofibre had paid, because he did not have clerical support. Strangely, although he did not have clerical support, he could fax the writ but not an accompanying note.

36 When asked again, Sarjit then said that he had informed Latiff that Eurofibre had "conceded the matter" and asked Latiff to come to his office to "settle the accounts". It seemed to me that Sarjit was continually expanding his story. At no time in Latiff's cross-examination was it put to him that he was informed that Eurofibre had conceded the matter and to settle the accounts. It should also be noted that in Geetha's examination in chief, she testified that the writ was prepared *before* 23 November 1998, which was in contradiction to Sarjit's testimony.

37 I accepted Latiff's testimony that after he had paid Sarjit $500 to issue a writ, he could not contact him until December 1998 when he deliberately set out to wait for him at his office. When he spotted Sarjit and asked about the progress of the writ, I accepted that Sarjit had informed him that he did not have the writ with him and that he would fax a copy to Latiff later. I found that Latiff did not know that Eurofibre had paid the $4,815.24 when he asked Sarjit about the writ, as Sarjit had not told him anything, not even that Eurofibre had conceded the matter.

38 On the other hand, I found that Sarjit was telling a pack of lies. I could not but conclude that when Latiff asked Sarjit about the writ in December 1998, there was none in existence and Sarjit subsequently prepared, backdated, and signed the name "Foo Chee Hock" on it, in order to deceive Latiff into thinking that the writ had been filed in court and a claim had been commenced against Eurofibre. It was apparent

that Sarjit did not want Latiff to know that Eurofibre had paid him $4,815.24, because he was using the money for his own purposes.

Was Sarjit instructed to act for Junaidei?

39 I rejected Sarjit's testimony that Latiff had asked him to advice on Eurofibre's claim against Junaidei. Sarjit claimed that Latiff had told him to look into Junaidei's matter. By this, he assumed that Latiff had instructed him to defend Junaidei. I am puzzled as to how he, an advocate and solicitor, could have come to this assumption. Latiff had never expressly informed him to act for Junaidei, nor informed him that Junaidei had authorised Latiff to instruct him. Junaidei confirmed that he did not give any authority, actual or ostensible, to Sarjit to act for him. This was not disputed by Sarjit, who had never met Junaidei nor spoken to him.

40 I accepted Junaidei's testimony that he never intended to defend Eurofibre's claim but wanted to repay Eurofibre as he had breached his contract of employment. In fact, Junaidei subsequently paid Eurofibre on Junaidei's behalf. When Sarjit was asked whether he would have recovered his legal costs from Junaidei if Latiff was not able to pay, Sarjit's said that he did not know. If Junaidei had instructed Sarjit through Latiff, as Sarjit claimed, then surely he had a right to recover his legal fees from Junaidei. Sarjit then added that Latiff said that he would pay for Junaidei's legal costs, which again I rejected.

41 In order to bolster his claim, Sarjit produced a copy of a memorandum of appearance which had been prepared allegedly to protect Junaidei's position. Sarjit said that he advised Latiff to file a memorandum of appearance to prevent Eurofibre from entering a judgment in default. However as Latiff could not decide on whether to defend the claim or to pay Eurofibre, Sarjit "took it to mean" that Latiff wanted him to defend Junaidei, and thus he prepared the memorandum of appearance and filed it in court. Again, I did not know how he came to this assumption. Strangely, Sarjit did not inform Latiff that he had prepared a memorandum of appearance which

he was filing and there was no evidence that Latiff knew about this memorandum of appearance, nor did Sarjit query Latiff about this is court.

42 Sarjit then claimed that the filing was unsuccessful as Eurofibre took out a certificate of non-appearance. However he had paid the filing fee and alleged that he did not receive a refund. When asked by the court, he admitted that he did not even ask the Subordinate Courts to refund his filing fee, and believed that the policy of the courts was not to refund filing fees when a document had not been filed. Again, this was merely another one of his unsubstantiated assertions.

43 I was of the view that once again, Sarjit was lying when he claimed to have been instructed to act for Junaidei, and had concocted a memorandum of appearance which he did not attempt to file, to bolster his claim. It was done in order that he could thereafter justify that item (2) in P20 for $1,000 was for work done pertaining to Junaidei's case. This would enable him to claim that he was entitled to offset his legal fees against the $4,815.24. It is significant that when he was asked what item (2) in P20 encompassed, Sarjit stated that it was for discussion and advice, looking into the subject matter of Junaidei's case and working out the possible defences, but did not include, strangely, the preparation of the memorandum of appearance.

The bills of costs (P20 and D7)

44 I will now proceed to deal with P20 and D7. Sarjit claimed that he had instructed Geetha to send D7 to Latiff but unbeknown to Sarjit, Geetha had forgotten. As he assumed that everything was in order, he proceeded to withdraw the $4,815.24 from the clients' account, as he was entitled to offset this against his legal fees in D7. I was not convinced that he had any basis for so doing.

45 He did not produce the Law Society Rules to show when moneys in the clients' account could be used to offset legal fees, and claimed that it was merely based on his "understanding". Next he claimed that Rules stipulated that a lawyer can offset sums owing by the client two days after the bill of costs had been sent to the

client. However he did not inform Latiff that he had to object within two days failing which the lawyer could withdraw the moneys from the clients' account to offset his legal fees. When asked how the client would know of such a rule if he was not told, so that he had an opportunity to object within the grace period, Sarjit offered no reply. I was not inclined to believe that there was such a rule which entitled him to withdraw moneys from the clients' account to offset his legal fees without notifying the client as such.

46 In fact, I did not believe that P20 and D7 reflected genuine work done by Sarjit. Sarjit sought to explain, unconvincingly, why there were two bills of costs. According to him, item (4) in P20 for $750 was work done for Latiff which was "too short to justify this payment" and Latiff had informed him that this "case" (whatever it was) was being handled by another law firm. Hence he omitted this item and redrafted the bill as D7. I could not understand why he arbitrarily omitted to charge on this item and why Latiff would consult two lawyers on the same matter. Moreover, Sarjit's reasoning did not accord with the fact that both P20 and D7 were typed on the same day, 23 November 1998. If so, when, in between preparing P20 and D7, did he discover that the "case" was being handled by another firm, since there was no evidence that Sarjit spoke to Latiff, on that day, about item (4) in P20?

47 Sarjit admitted that D7, and not P20, should have been sent to Latiff. Yet it was P20 which was shown to Latiff subsequently in 2001. Sarjit explained that he could not show Latiff D7 due to his "confusion" and Geetha's inability to retrieve it from the computer, although he did not elaborate on what he meant by that. However it was curious that he was able to obtain P20 but not D7 from the computer to show Latiff around September 2001, but he was subsequently able to retrieve D7 sometime at the end of 2001 after he had made his first representation to AGC.

48 When Sarjit discovered in December 1998 that Geetha had not sent D7 to Latiff, he felt that it was "wrong" to have withdrawn the $4,815.24 to offset his legal fees without getting D7 signed. Hence he wanted to "compensate" Latiff and tried to contact him on his handphone in January 1999, but to no avail. Yet he did not call

Latiff at his home, and explained that he did not have his home number, although Geetha did. If so, why did Sarjit not obtain the number from Geetha to call Latiff, especially when he felt that he had been "wrong" to withdraw the $4,815.24? To this, he merely replied that he forgot and was completely consumed in his own problems. Again, I disbelieved him. If he could remember to call Latiff on his handphone, there was no reason why he could forget to call him on his home number especially since he felt that he had done something wrong and wanted to compensate Latiff.

49 Sarjit claimed that he completely forgot about this matter until July 2001 when he was being investigated. He then asked Geetha to call Latiff's wife to arrange a meeting between Latiff and Sarjit to explain the mistake. It should be noted that this time, over a year later, Geetha had no problems getting in touch with Latiff's wife (and hence Latiff). I was of the view that Sarjit did not attempt to call Latiff from end December 1998 to July 2001. It was Latiff who had been trying to call him all the while, to find out about his claim against Eurofibre, and subsequently about the $4,815.24 when he found out that Eurofibre had paid Sarjit's firm. It was only when Sarjit realised that Latiff had complained to the authorities that he decided to call Latiff to make amends.

50 This led to Sarjit concocting P20 and D7 to justify the set-off and he wanted Latiff to acknowledge P20 so that he could explain to the investigating authorities that there was no ill-intent or dishonesty on his part when he withdrew $4,815.24 from the clients' account without informing Latiff. The subsequent meetings at McDonald's and Peninsula Plaza would further show that the bills were concocted and not legitimate claims.

The meetings at McDonald's and Peninsula Plaza

51 Sarjit testified that at McDonald's, he asked for Latiff's help to give a statement to the authorities to say that there was a "mistake" or "mistake of sorts", so that the investigations against him could be withdrawn. He agreed to pay Latiff $4,815.24 as well as refund the $700 in legal fees.

52 At Peninsula Plaza, Sarjit gave Latiff a cheque for $5,515.24 and asked Latiff to sign P20 and the attachment dated 28 December 1998. The purport of getting Latiff's signature on the backdated attachment was clear. Sarjit wanted to show the investigating authorities that Latiff had accepted P20 when it was prepared, which would thus entitle Sarjit to withdraw $4,815.24 to offset his legal costs. Sarjit also wanted to show that Latiff subsequently changed his mind and disputed P20, hence Sarjit returned him $4,815.24 and $700. In this way, the "mistake" could be explained. The transcript of conversation in which Sarjit admitted that P20 was a "mock bill" *(exhibit P22A, pgs 2-3)* supported this.

53 When Latiff refused to sign P20 and demanded an explanation on how the amounts in P20 were derived, I found Sarjit's response unsatisfactory. First, he said that P20 was for all intents and purposes "academic" since Latiff had never seen it until then. Second he claimed that since he had failed to present P20 to Latiff in November 1998, he was not going to claim any of the items in P20 although he believed that he had a legitimate basis to do so. Third, he did not want to explain and justify how each item and the corresponding amount were derived, as he was not claiming the costs in P20, that it was a "mistake of sorts" although in his mind there was no mistake, and at best the whole matter was "very convoluted" and an "intolerable confusion". He was also "mentally tired" and in a "very poor frame of mind" then. Fourth, he told Latiff that although there was no justification for claiming the amounts in P20, yet there was some justification for so doing. Fifth, he did not even explain item (4) in P20 to Latiff because that item was "very brief" and he had decided not to charge him for that.

54 I could not but conclude that Sarjit was not making a claim for P20, precisely because he had not done the work as reflected in P20. After all, there was no reason why he should now waive all his costs, which amounted to some $5,750, as reflected in P20, and to refund the $700 for work which he had done. The fact that he did not wish to explain in detail the items in P20, as the whole matter was "very convoluted", was because he had fabricated the items in P20 in the first place. His excuses, that he

was in a very poor frame of mind and mentally tired, were merely to camouflage his inability to credibly explain the items in P20.

55 A perusal of the items in P20 (and similarly D7) would show that they were fabricated. Sarjit said that item (1) for $2,500 was meant for costs up to summary judgment, excluding disbursements. However the matter had ended at the stage of preparation of a writ. Item (2) for $1,000 was for Sarjit's advice to Latiff pertaining to his ex-employer. Sarjit did not elaborate on this, and I assumed that he was referring to the occasion when Latiff had asked him about setting up a business in competition with Eurofibre. According to Sarjit he did not inform Latiff of the costs of this item, but said that he told Latiff's wife that it would be around $1,000 to $1,500. I disbelieved that he had informed Latiff's wife of this, but not Latiff directly. Item (3) for $1,500 was for Junaidei's matter, which I had dealt with earlier and rejected Sarjit's version.

56 Next, I found that Sarjit readily offered to pay Latiff $5,515.24 only in 2001 because he wanted Latiff's help to get the authorities to withdraw the investigations. In fact, Sarjit went further by offering Latiff $10,000 to "compensate him for his trouble". When pressed to explain whether it was a gift or loan, Sarjit reluctantly said that it was a loan that need not be repaid. This was despite the fact that Sarjit did not have the means to give Latiff $10,000 then as he was in financial difficulties.

57 His eagerness to settle the matter and get the authorities to withdraw investigations could be further seen when Latiff said that he had to consult his lawyers before signing P20. Sarjit told him to explain the situation "very clearly" to his lawyers, in that there was no dishonest intent on Sarjit's part and the attachment to P20 was evidence of compensation to Latiff and not a "bribe to compound the matter". It was obvious that when Sarjit asked Latiff to sign P20 and the attachment thereto, he knew that this arrangement would look suspect, hence his advice to Latiff to explain to his lawyers "very clearly" that it was not so. In fact, by offering $10,000 to Latiff, it was clear that Sarjit was inducing Latiff to help him.

58 Sarjit was very anxious to close this matter as he called Latiff the very next day to ask if he had signed P20 and called him a few more times thereafter to remind Latiff to sign P20. Unlike in 1999 when Sarjit claimed that it was difficult to get in touch with Latiff when he wanted to reimburse him $4,815.24, it now seemed that there were no problems at all in contacting Latiff after the investigations had commenced. All in all, it was very apparent that Sarjit's course of conduct during the two meetings showed that he was attempting to cover up for his wrongdoing in 1998 by explaining the whole affair as a "mistake of sorts" and was now seeking Latiff's help to make a statement to the authorities to that effect by signing P20.

Credibility and veracity of the accused

59 The accused's testimony left much to be desired. I found him to be a totally dishonest and evasive witness. He spun a wonderful tale of how he had assisted not only Latiff but also Junaidei, had done a lot of work for both of them, had carefully set out his fees in D7 and had withdrawn the $4,815.24 thinking that he was entitled to. In effect when he converted the $4,815.24 for his own use, he did not inform Latiff that Eurofibre had paid up. Along the way, he tried to cover his tracks by concocting a writ of summons (and signed off for an officer of the Subordinate Courts), a fake memorandum of appearance and subsequently P20 and D7. Whenever he could not offer a satisfactory explanation for his conduct, he would use a vague or fanciful expression by saying that P20 was "academic", that there was a "mistake of sorts" and "intolerable confusion", that he was forgetful and in a poor frame of mind.

60 Sarjit also made baseless allegations of prosecution counsel and the court. After the close of the prosecution's case, Sarjit claimed that the court had not allowed him to cross-examine Tan and Insp. Shahri, and that prosecution counsel had informed him that he could cross-examine Tan during the defence case. This was patently wrong, as the notes of evidence would reflect that when these two witnesses were called during the prosecution's case, Sarjit had cross-examined them. I also note that Sarjit had been recording his own notes of evidence during the trial. In any event, I allowed him to recall the witnesses during his defence to avoid any allegations

subsequently that he was not given a fair trial. At the close of the defence case, Sarjit apologised to the court and prosecution for his accusations.

Tape recording of conversation at Peninsula Plaza

61 However, Sarjit did not seem sincere about his apology and the way he conducted his defence. In his closing submissions, he alleged that the transcript of the conversation at Peninsula Plaza, P22A, was "sprung" on him minutes before the trial commenced and there was insufficient time to study P22A as he was only given about twenty minutes to verify the tape and transcript. Hence, he could not cross-examine Latiff on P22A as he was not given enough time (see *"Accused's Reply to Submission made by Prosecution" at pg 5*). Again, he was making unfounded allegations.

62 At the end of his re-examination, Sarjit admitted that the prosecution had faxed over a copy of P22A to him before the trial commenced. Thus it could not be said that P22A was "sprung" on him minutes before the trial commenced. In fact, prosecution was not even obliged to give any pre-trial disclosure. When the tape was adduced in Latiff's examination-in-chief, Sarjit did not raise any objection or issue and confirmed that he had already listened to the tape earlier as prosecution had produced it to him. Sarjit then cross-examined Latiff before the lunch break.

63 After lunch, one Nora Pijjay was called to formally admit P22A and again Sarjit confirmed that the prosecution had shown him a copy of P22A earlier on. Thereafter Latiff was recalled for his cross-examination to be continued. All throughout, Sarjit had never raised any concerns to the court that he was not given an opportunity to look through P21 and P22A in order to cross-examine Latiff on them. It was only in Sarjit's examination-in-chief that he suddenly asked to cross-examine Latiff on P21 and in fact the court allowed him to do so, but he did not. Hence, it does not behove on him to now allege in closing submissions that he was deprived in any way from cross-examining Latiff on P21 and P22A.

64 In any event, I could not understand why Sarjit was making such a fuss. Throughout, he did not dispute the contents in P21 and P22A, which he admitted to be accurate, although he claimed that some of the words in P22A were "strange" to him. When asked by the court which words were "strange", Sarjit replied that he did not wish to dwell into this or make an issue of it. However, I pressed him for an explanation so that he would not later allege that the court deprived him of an opportunity to explain. He then mentioned that there was only one "strange" thing, namely a minor grammatical error in one of the sentences. It was clear to me, that throughout the trial his testimony coupled with his conduct left much to be desired. He was not truthful, made unfounded allegations and was prone to great exaggeration.

Credibility and veracity of the witnesses

65 I will deal briefly with the two other main witnesses, Latiff and Geetha. I accepted Latiff to be an honest and truthful witness in his recount of events. I believed that Sarjit had never informed him that Eurofibre had paid the $4,815.24 and that he had discovered this from another lawyer subsequently. I believed that Latiff was persistently trying to call Sarjit but could not get hold of him, and it was not Sarjit who could not get in touch with Latiff. After all, it was Latiff who was anxious about his claim against Eurofibre and not Sarjit, who had already obtained the moneys and was withdrawing them for his own purposes.

66 I accepted Latiff's testimony that he had never agreed on the work or the costs as reflected in P20 and was never given D1 and D2 when he paid the $200 and $500 to Sarjit. I found that Sarjit had manufactured the receipts, in particular D2, so that he could justify item (1) in P20, namely that there was a prior agreement that Latiff would pay him $2,500. Latiff was truthful as he admitted that Sarjit had offered him money for his assistance and admitted that he had demanded all his money back, namely the $4,815.24 as well as the $700. There was no reason for Latiff to testify unfavourably against Sarjit. Latiff admitted to this court that he wanted to assist Sarjit if he could, as he did not wish to see him go to jail, but he would not cross the line by

lying. He also did not receive more than what he thought was due to him, and had not taken any inducements or bribes from Sarjit.

67 As for Geetha, I treated her testimony with great caution as she was Sarjit's wife. First, her evidence was elicited in the main by a series of leading questions. Second, it seemed to me that she was protecting Sarjit. When she was asked why the attachment to P20 was backdated to 28 December 1998, she merely replied that she trusted Sarjit's judgment and that what he was doing was right. She also said that all the items in P20 were "definitely" genuine as she had personal knowledge that the works were legitimately done. Her testimony here was flawed as she had never dealt with Latiff or even Junaidei and it was Sarjit who had drafted P20 for her to type. Although she claimed that she never had Latiff's home phone number whereas Sarjit said that she did, yet she could get in touch with Latiff's wife in 2001.

68 Geetha also claimed that her father was an established businessman and that there would be no problems in helping Sarjit financially if he had needed money. Sarjit was currently indebted to a third party as a result of being cheated of a sum of money in a scam. Yet this debt has not been paid off even though Geetha claimed that she could help Sarjit financially.

Were the elements of the charge satisfied?

69 It was clear from the evidence that Sarjit had dishonestly misappropriated the sum of $4,815.24 held in the clients' account for Latiff. I rejected Sarjit's defence of set-off. To show that he did not have the appropriate mens rea, Sarjit explained that after he discovered that he was not entitled to offset because D7 had not been sent to Latiff, he tried to contact Latiff but was unsuccessful and he subsequently forgot about the matter due to his family and personal problems. Similarly, I rejected this defence and found that his personal problems were brought up merely as an excuse to hide his true intent, that he knew all along that he was not entitled to convert the $4,815.24 for his own use but had done so.

70 In fact Sarjit kept changing his defence. In Latiff's cross-examination, Sarjit seemed to suggest that his defence was that he did not refund the $4,815.24 to Latiff on time due to his personal problems. In Sarjit's own testimony, he said that he was entitled to a set-off, although he did not inform Latiff as such. In his long statement (P25) he stated that he had withdrawn the $4,815.24 from the clients' account for his own expenses with the intention of replenishing the account. Why did Sarjit have to replenish the clients' account if he was entitled to a set-off? In fact Sarjit did not mention in his long statement that he had withdrawn the $4,815.24 to offset his fees. In the last moments of his case, he suddenly claimed that he had informed Latiff that he was offsetting his legal fees against the moneys received from Eurofibre. When the court asked him to clarify whether his defence was that he *had* informed Latiff of the offset or that he *had not*, he said that he was "very confused".

71 It was also clear that an advocate and solicitor was an attorney or agent within the meaning of s 409 of the Penal Code. An "attorney" as defined in *Ratanlal and Dhirajlal's Law of Crimes (24th Ed.)* is "one who is appointed by another to do something in his absence, and who has authority to act in the place and turn of him by whom he is delegated". Moreover, contrary to Sarjit's submission, an agent under s 409 need not be a *professional* agent, that is, a person who carried on the profession of agency - see *Tay Choo Wah v PP* [1975-1977] 1 SLR 470.

72 Sarjit, as an advocate and solicitor, was not merely an attorney or agent entrusted with a task to claim payments on behalf of his client but also to hold that money on the client's behalf in a clients' account once that money had been obtained. As such, he was entrusted with the moneys in the clients' account in the course of his duties as an advocate and solicitor. In *Wong Kai Chuen Philip v PP* [1990] 1 SLR 1011, the High Court accepted the s 409 charges against an advocate and solicitor as being appropriate, albeit this point was not specifically raised.

73 In conclusion I found that the prosecution had proved its case beyond a reasonable doubt and that the accused had failed to raise a reasonable doubt in his defence. Accordingly, I convicted the accused on the charge.

Sentence

74 I note that the amount misappropriated was not very large. However, in sentencing the accused to a term of seven months' imprisonment, I took into account the following factors. He had claimed trial to the charge. He was an advocate and solicitor and in a position of trust vis-à-vis his client. He had set up a systematic way of concealing the misappropriation, by preparing a writ of summons to mislead Latiff into thinking that his claim was still being pursued and to conceal the receipt of the money from Latiff. To bolster his defence he concocted other documents such as the memorandum of appearance, two receipts (D1 and D2) and two bills of costs. He then tried to get Latiff to sign P20 and even offered Latiff an inducement of $10,000, to help him get the charge withdrawn by the authorities.

75 In the course of trial, he made certain allegations against the prosecution and the court, signed "Foo Chee Hock" on a writ which had not been filed and even stated that the Subordinate Courts did not refund filing fees when documents were not filed. Although he apologised for his conduct in court, in his submissions, he again alleged that he was not given sufficient time to deal with the tape recording and transcript. He was not even remorseful after he was convicted as he submitted in mitigation that his act was a result of forgetfulness and negligence on his part. Although he had made restitution, this was of little mitigating value, as it was done with the view to get Latiff to assist him to withdraw the charge against him by submitting false documents to the investigating authorities.

76 In addition, I looked at some precedents as a guide. In *Gopalakrishnan Vanitha v PP* [1999] 4 SLR 307, the accused claimed trial to three charges under s 408 for misappropriating around $11,400, $12,400 and $30,100 respectively. The High Court held that for such amounts, the tariff would be between nine to 15 months' imprisonment. In *Soong Hee Sin v PP* [2001] 2 SLR 253, the accused was sentenced to 15 months' imprisonment for misappropriating $10,500 under s 408. The High Court reduced the sentence to nine months imprisonment, and placed significance on the fact that the accused had pleaded guilty as some difficulty would have been encountered by the prosecution in establishing its case had the accused

claimed trial. In *Abdul Aziz bin Mohd Noor v PP* (MA 163 of 1995), the accused, a police officer, claimed trial to a charge under s 409 for misappropriating $7,300 and to two other charges under s 468. The High Court reduced the sentence from 18 months' to 12 months' imprisonment per charge with two terms to run consecutively.

77 As such, I did not think that the term of seven months' imprisonment imposed in this case was manifestly excessive.

Dated the 19th day of June 2002

AUDREY LIM
DISTRICT JUDGE
SUBORDINATE COURTS

Singapore's justice system ranked 4th in the world

Up from previous 9th position

By Brendan Pereira

SINGAPORE has been ranked number four in the world in the administration of justice, up from its previous ninth position.

The ranking underlines confidence in the ability of the country to mete out justice in [illegible], said the International Institute for Management Development (IMD), which put together the World Competitiveness Yearbook 1996.

With a score of 8.[illegible] out of 10, the Republic was placed higher than many developed countries such as the United States, Switzerland, Australia and Japan.

Singapore was also ranked the top Asian country for the third year running.

The IMD and another Swiss-based organisation, the World Economic Forum, used to produce jointly the world competitiveness ranking since 1981.

The two parted company last year and now produce their individual annual reports.

The report makes use of hard economic data as well as surveys sent to 13,000 business executives worldwide to rank the competitiveness of 46 selected developed and developing economies.

The administration of justice is one of the many criteria of good government. Others include the bureaucracy and the political system.

It is understood that factors such as the accountability of the judiciary to the public, access to justice and the efficient manner in which the system is run were taken into account.

This year's report shows that Singapore improved its world ranking from ninth to fourth.

The points it garnered increased from 7.91 in 1995 to [illegible] this year.

Israel, Norway and New Zealand maintained their top three positions with scores of 8.71, 8.65 and 8.[illegible] respectively. The other countries in the top 10 were Singapore, Denmark, Finland, Austria, Canada, Sweden and Switzerland. There were five Asian countries in the top 25 — Singapore, Hongkong, Japan, India and Malaysia.

The report said that the country which elicited the lowest level of confidence in the justice system was Venezuela, with a score of 4.94 out of 10.

Apart from the world ranking, the World Competitiveness Yearbook also rated countries according to their continental and regional grouping.

Singapore maintained its position as having the best justice system in Asia, followed by Hongkong, Japan, India and Malaysia. The lowest-ranked country in the region was the Philippines.

摘自 "SINGAPORE SUBORDINATE COURTS"

與新加坡總檢察署刑事處洪處長文光（右三）及李主任檢察官興立（左一）攝於該署簡報室

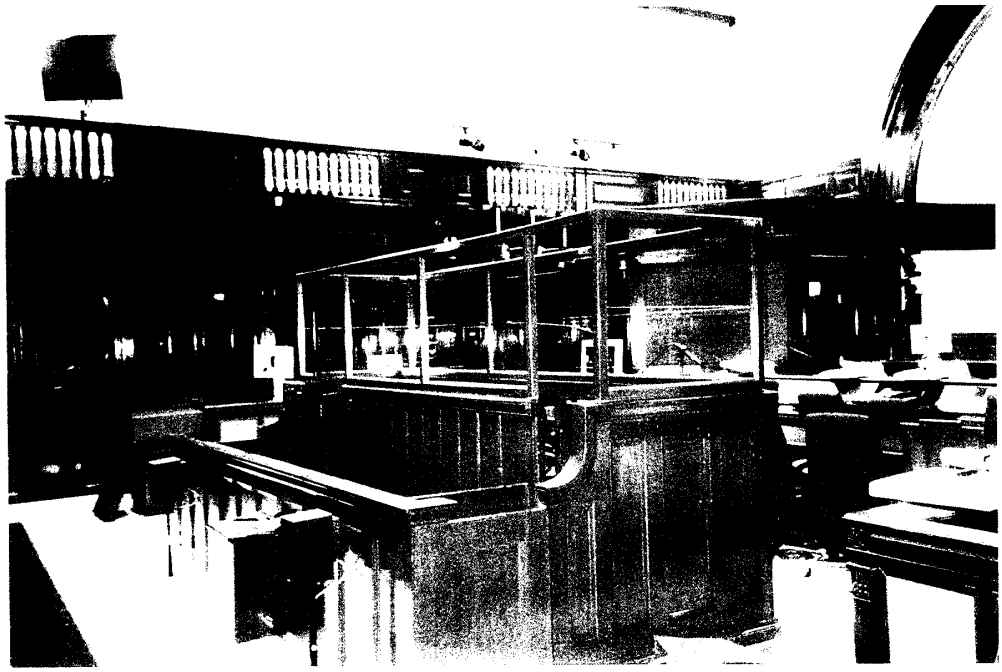
與新加坡總檢察署李主任檢察官興立（左二）、邱主任檢察官恩賜（左三）、李檢察官立貞（左四）、黃檢察官淑冰攝於新加坡法律學會餐廳

攝於高等法院科技法庭

參訪商業調查局與陳局長松泰合影

參訪中央緝毒局與該局公關室主任合影

參訪中央警署與黃署長裕喜（右四）及其他同仁合影



新加坡法庭內被告席（dock）之設置

一行四人合力在新加坡總檢察署簡報室以 powerpoint 簡報
"The Current Reform In Criminal Procedure In Taiwan"

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傳送日期: 2002年10月2日 AM 11:31
主旨: Re: Thanks

Dear Jenny

Thank you for your note. I am happy to note that you and your three wonderful colleagues found your two week stay in Singapore interesting and enjoyable. It was our pleasure hosting the visit. Lee Sing Lit worked very hard and I am also thankful to him for taking care of you and your colleagues.
I hope that you will have the opportunity to come again to Singapore. Maybe the next time you would be accompanying your Minister, just like David.
Hope to see you soon, perhaps at some International conference.
Please convey my regards to Justine, Linda and Jackson.

With warmest regards

Lawrence Ang
Principal Senior State Counsel
Head, Criminal Justice Division (9th Floor)
The Attorney-General's Chambers of Singapore