

UNREPRESENTED DEFENDANTS IN THE SUBORDINATE CRIMINAL COURTS OF SINGAPORE (1979-1980)

This study of subordinate court trials was conducted with two objectives in mind: (i) to examine the relationship between legal representation of accused persons and the conviction rate and (ii) to assess the relationship between legal representation of accused persons and the sentences they receive upon conviction.

The study reveals that accused persons with legal representation in criminal trials have a significantly greater chance of acquittal than those who are unrepresented. The study also suggests that defendants who are legally represented have a greater likelihood of receiving less severe sentences than those who have not engaged legal counsel.

The study sample

The study comprised a total sample of 839 cases where accused persons had claimed trial in subordinate courts. Cases where the accused pleaded guilty were omitted from the sample because in a majority of such cases the accused was unrepresented. Furthermore in these cases the adversarial system had not been fully effected so that the advantages of legal representation, if any, could not be ascertained.

The total sample comprised of 428 cases in Magistrates' Courts numbers 16, 17, 19 and 20, completed between 1/1/79 and 31/12/80, and 411 cases in District Courts numbers 8, 9, 11 and 12 concluded during the same two year period.

Where an accused was charged with two or more counts of the same offence or where he was charged with more than one offence, he was treated as one case in the sample. In joint trials, each defendant was regarded as a separate case. By way of illustration, where in one trial, three persons were charged with the furtherance of a common intention to commit robbery and two were legally represented while the third was not, the study considered these as three cases. This was so even though the two accused were defended by the same lawyer. These criteria for the designation of cases stem from the objectives of the study *i.e.* to determine whether being legally represented at a trial significantly assists an accused to be acquitted or to receive a less severe sentence. It follows that it is of little concern whether an accused was charged with a number of offences or shared the lawyer of a co-accused. What is of importance is whether or not he was legally represented.

The cases in the sample involved only those offences in contravention of the Penal Code,¹ the Misuse of Drugs Act² and the Prevention of Corruption Act.³

¹ Cap. 103, Singapore Statutes, Rev. Ed. 1970.

² No. 5 of 1973.

³ Cap. 104, Singapore Statutes, Rev. Ed. 1970.

Legal Representation in Trials

Table 1 is a breakdown of the number of cases which had legal representation in the Magistrates' Courts and the District Courts. In both these courts, more than two-thirds of all trials were represented by legal counsel. Accused persons tried in Magistrates' Courts are legally represented in 68.9% of all cases which is marginally less than the 72% of cases legally represented in the District Courts.

Table 1

Representation in Trials

| | Legal representation | | Unrepresented | | Total | |
|-------------------------------|----------------------|------|---------------|------|-------|-----|
| | No. | % | No. | % | No. | % |
| Trials in Magistrates' Courts | 295 | 68.9 | 133 | 31.1 | 428 | 100 |
| Trials in District Courts | 296 | 72.0 | 115 | 28.0 | 411 | 100 |
| Total | 591 | 70.4 | 248 | 29.6 | 839 | 100 |

Court findings in Trials

Table 2 categorises the findings of the Magistrates' Courts in cases where the accused was legally represented and where he was unrepresented. The figures show that an accused who is legally represented is found to be not guilty in one out of two cases (50.5%). On the other hand, an accused person who is unrepresented is found to be not guilty in only one out of four cases (24.8%).

Table 2

Finding in cases where the Defendant in Magistrates' Courts claim Trial

| | Found guilty | | Found not guilty | | Total | |
|----------------------|--------------|------|------------------|------|-------|-----|
| | No. | % | No. | % | No. | % |
| Legal representation | 146 | 49.5 | 149 | 50.5 | 295 | 100 |
| Unrepresented | 100 | 75.2 | 33 | 24.8 | 133 | 100 |

That legal representation increases the acquittal rate is also indicated in the District Court cases. According to Table 3, an accused person who is legally represented in a District Court will be found not guilty in nearly one out of three cases (37.5%). In comparison, an accused who is unrepresented is found to be not guilty in only one out of six cases (16.5%).

Table 3

*Finding in cases where the Defendant in
District Courts claimed Trial*

| | Found guilty | | Found not guilty | | Total | |
|----------------------|--------------|------|------------------|------|-------|-----|
| | No. | % | No. | % | No. | % |
| Legal representation | 185 | 62.5 | 111 | 37.5 | 296 | 100 |
| Unrepresented | 96 | 83.5 | 19 | 16.5 | 115 | 100 |

A comparison of the Magistrate's Court and District Court findings where the defendant is legally represented reveals that the ratio of such defendants who are found not guilty is 1:2 in a Magistrates' Court and 1:3 in a District Court. Therefore it would appear that a defendant who is legally represented has a greater chance of being acquitted in a Magistrate's Court than in a District Court. Turning now to cases where defendants were unrepresented, if the trial was conducted in a Magistrate's Court, the chances of acquittal are 1:4. Before a District Court, the ratio of acquittal would be 1:6. Hence as in the case of a legally represented defendant, an accused person who is unrepresented has a greater likelihood of being acquitted in a Magistrate's Court than in a District Court.

One reason for the lesser likelihood of acquittal in a District Court, whether with or without legal counsel, may be that cases tried in the District Courts are comparatively more serious and attract stiffer punishment than those tried in Magistrates' Courts. This fact may cause the Attorney-General to delegate the task of prosecution to more experienced public prosecutors. It may also result in the prosecution being more certain of its case before it initiates criminal proceedings in a District Court.

When the whole sample is brought together in Table 4 it is shown that an accused with legal representation will be found to be not guilty in a ratio of about 1:2 cases. In contrast, the ratio is nearly 1:5 cases where the accused is unrepresented. From the table it is observed that 44% of legally represented defendants are found not guilty while only 21% of unrepresented defendants are found not guilty. One can deduce from these results that an accused person with legal representation has at least 100% chance of acquittal than one who is unrepresented.⁴

⁴ The Chi-square distribution, at 0.01 level of significance (*i.e.* 99%) shows that whether a defendant is legally represented or unrepresented is related to his being convicted or acquitted.

Table 4

*Finding in cases where the Defendant in
Subordinate Courts claimed Trial*

| | Found guilty | | Found not guilty | | Total | |
|----------------------|--------------|------|------------------|------|-------|-----|
| | No. | % | No. | % | No. | % |
| Legal representation | 331 | 56.0 | 260 | 44.0 | 591 | 100 |
| Unrepresented | 196 | 79.0 | 52 | 21.0 | 248 | 100 |

Admittedly, there might be other factors, besides legal representation, which have contributed in achieving this result. For instance, the study did not take into account the possibility that some of the accused had not engaged legal counsel simply because they regarded the evidence against them to be very strong.⁵ Another factor that was not considered was that unrepresented defendants might be more likely to have previous conviction records than represented defendants. If this was the case, the view may be proffered that a defendant with a previous criminal record might regard his chances of acquittal as slim and that it would therefore be futile to engage a lawyer.⁶ A third factor which the study did not account for was the possibility that defendants who can afford legal counsel come from better socio-economic and educational backgrounds than those who are unrepresented. Should this be the position, the defence of the former type of defendant would have a substantial advantage over the latter in terms of his verbal presentation, demeanour and physical appearance at the trial.

However, even if each of the above factors had influenced the result of this study, it is difficult to imagine that their combined effect would diminish the highly statistically significant factor of legal representation on conviction rates to an insignificant level.

Legal Representation under Offence Heads

There are no official statistics as to the kinds of cases tried by Subordinate Courts in which defendants were legally represented. Table 5 is an attempt to co-relate various offence heads with legal representation. The reason for classifying specific offences under more general offence heads was because the sample for each specific offence was too small for any meaningful analysis. It was therefore necessary to present the offences in a group. For example, the offence head

⁵ However, the sample goes some way towards obviating this factor by omitting plea of guilty cases. It may be assumed that in such cases, defendants might plead guilty rather than claim trial in the hope that their plea would mitigate their sentences.

⁶ However, such a defendant might be prepared to plead guilty, in which case, he would not have influenced the result of this study. Furthermore it may be argued that a defendant with previous convictions would engage legal counsel on account of the greater punishment he would face should he be found guilty.

'grievous hurt' covers sections 325 and 326 of the Penal Code and 'corruption' covers sections 5 and 6 of the Prevention of Corruption Act as well as sections 406 to 408 of the Penal Code.

The offence heads appearing in the first column of the table are listed under each category in order of the severity of maximum punishments provided for by statute. Hence under the category 'offences against property', robbery is listed before theft because the maximum punishment for robbery is ten years imprisonment while for theft it is seven years.⁷

Table 5

*Offences in Subordinate Court Trials showing
whether the Defendant was legally represented*

| Offence Head | Legally represented | | Unrepresented | | Total | |
|---|---------------------|------|---------------|------|-------|-----|
| | No. | % | No. | % | No. | % |
| 1. <i>Drug offences</i> | | | | | | |
| trafficking | 18 | 75.0 | 6 | 25.0 | 24 | 100 |
| possession and consumption | 55 | 50.9 | 53 | 49.1 | 108 | 100 |
| 2. <i>Offences affecting human body</i> | | | | | | |
| grievous hurt | 16 | 94.1 | 1 | 5.9 | 17 | 100 |
| hurt | 65 | 55.6 | 52 | 44.4 | 117 | 100 |
| 3. <i>Offences against property</i> | | | | | | |
| robbery | 60 | 64.5 | 33 | 35.5 | 93 | 100 |
| theft | 96 | 64.4 | 53 | 35.6 | 149 | 100 |
| housebreaking | 21 | 61.8 | 13 | 38.2 | 34 | 100 |
| corruption | 60 | 98.4 | 1 | 1.6 | 61 | 100 |
| cheating | 30 | 93.7 | 2 | 6.3 | 32 | 100 |

⁷ Certainly some of the specific offences attract a greater or lesser maximum sentence than that provided for the other specific offences under the same offence head. In such cases, an approximate average of the maximum sentence was obtained to determine the position of the offence head in the first column of Table 5.

While the samples for some of the offence heads are numerically too small for proper statistical analysis, there may be some benefit gained from making general observations on the available data.

For the first two categories of offences, namely 'drug offences' and 'offences affecting the human body' the figures indicate that accused persons charged with the more serious offence are more often legally represented than those charged with the lesser offence. The obvious possible reason for this is that the more serious offences attract more severe punishment. Consequently defendants charged with these offences would be more likely to engage legal counsel. With regard to the drug offences, there is also a likelihood that persons charged with drug trafficking would be financially more able to retain a lawyer than those charged with possession or consumption of prohibited drugs.

For the third category, 'offences against property', there are only marginal differences in the percentages of cases involving charges of robbery, theft and housebreaking where the accused were legally represented. However the last two offence heads, corruption and cheating, have a large proportion of defendants who were legally represented. Of the combined 93 cases in the sample for these two offence heads, 90 were represented. One possible explanation for this occurrence is that these cases involve what have been termed 'white collar crimes'.⁸ Such crimes are usually committed by the higher socio-economic class who have the financial means to engage legal counsel. In contrast, robbers, thieves and housebreakers usually belong to the low socio-economic class⁹ who have less financial resources to be legally represented.

Court finding under Offence Heads

Using the same column of offence heads in Table 5, the sample was next reordered to determine the likelihood of acquittal for a legally represented defendant.

⁸ See Reckless, "The Crime Problem" (5th edition, Goodyear, 1973) Chap. 13.

⁹ See the Report of the Committee on Crime and Delinquency (Singapore) (1974) paras. 3.1.29, 3.2.3. and Table DIII at pp. 101-2.

Table 6

*Offences in Subordinate Court Trials showing
whether the Defendant was found Not Guilty*

| Offence Head | Legally represented | | | | Unrepresented | | | |
|---|---------------------|------------|-----------|--------------------|---------------|------------|-----------|--------------------|
| | Found guilty | Not guilty | Total No. | % found not guilty | Found guilty | Not guilty | Total No. | % found not guilty |
| 1. <i>Drug Offences</i> | | | | | | | | |
| trafficking | 14 | 4 | 18 | 22.2 | 5 | 1 | 6 | 16.7 |
| possession and consumption | 46 | 9 | 55 | 16.4 | 49 | 4 | 53 | 7.5 |
| 2. <i>Offences affecting human body</i> | | | | | | | | |
| grievous hurt | 11 | 5 | 16 | 31.3 | 1 | 0 | 1 | 0 |
| hurt | 28 | 37 | 65 | 56.9 | 32 | 20 | 52 | 38.5 |
| 3. <i>Offences against property</i> | | | | | | | | |
| robbery | 37 | 23 | 60 | 38.3 | 29 | 4 | 33 | 12.1 |
| theft | 49 | 47 | 96 | 49.0 | 45 | 8 | 53 | 15.1 |
| house-breaking | 11 | 10 | 21 | 47.6 | 9 | 4 | 13 | 30.8 |
| corruption | 32 | 28 | 60 | 46.7 | 1 | 0 | 1 | 0 |
| cheating | 18 | 12 | 30 | 40.0 | 2 | 0 | 2 | 0 |

Although the sample for the category 'drug offences' is small, the figures tentatively suggest that the chances of being found not guilty are slight for trafficking and even slighter for possession and/or consumption *whether or not the accused was legally represented*. A possible explanation for this might be that the accused has to rebut the numerous presumptions against him under the Misuse of Drugs Act.¹⁰

The sample is likewise too small to draw any firm conclusions for the category 'offences affecting the human body'. However the available figures suggest that the likelihood of being found not guilty

¹⁰ For example, s. 16(2) of the Act states that "[a]ny person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of such drug." This is what is known as a double presumption. In the said sub-section, one presumption rides on the back of another. A person is firstly presumed to be in possession of a prohibited drug. He is secondly presumed to know the nature of such a drug.

on a charge of grievous hurt is 3 times greater, and for hurt it is 1.48 times greater, if the accused was legally represented.

For all the offence heads under the category 'offences against property' there is a significantly greater chance of acquittal for accused persons who are legally represented. The chances of acquittal for both the offence heads of robbery and theft were more than 3 times greater, and for house-breaking it was nearly 2 times greater than in an accused who was unrepresented. While among the 90 combined cases of corruption and cheating which were legally represented, 40 were acquitted, all the 3 cases which were unrepresented faced convictions.¹¹

Legal representation and sentences

Table 7 relates the cases in the whole sample to the sentences imposed by the courts. The first column of the table lists the sentences in order of severity.¹² The figures presented in the table broadly indicate that accused persons with legal representation are given less severe sentences than those who are unrepresented.

Table 7

Sentences imposed in Subordinate Courts and Numbers and Percentages of Defendants represented

| Sentence (in order of severity) | Legally represented | | Unrepresented | | Total | |
|--|---------------------|------|---------------|------|-------|-----|
| | No. | % | No. | % | No. | % |
| 1. discharge not amounting to an acquittal | 57 | 78.1 | 16 | 21.9 | 73 | 100 |
| 2. conditional discharge | 7 | 70.0 | 3 | 30.0 | 10 | 100 |
| 3. fine | 95 | 66.4 | 48 | 33.6 | 143 | 100 |
| 4. disqualification | 8 | 61.5 | 5 | 38.5 | 13 | 100 |
| 5. probation | 18 | 60.0 | 12 | 40.0 | 30 | 100 |
| 6. imprisonment and fine | 77 | 58.0 | 57 | 42.0 | 134 | 100 |
| 7. R.T.C. | 7 | 58.3 | 5 | 41.7 | 12 | 100 |
| 8. imprisonment | 29 | 56.7 | 21 | 43.3 | 50 | 100 |
| 9. imprisonment and caning | 34 | 54.8 | 28 | 45.2 | 62 | 100 |
| Total | 334 | 63.4 | 193 | 36.6 | 527 | 100 |

¹¹ However the number of unrepresented defendants for these offence-heads is too small for any accurate statistical deduction.

¹² The writer acknowledges that there may be disagreement as to the listing order of some of the sentences. For example some might consider that a disqualification is less severe a sentence than a large fine or that a conditional discharge is more severe than a fine. The scale has been formulated by evaluating the immediate suffering imposed on the offender by the sentence and treating non-custodial sentences as less severe than custodial sentences.

For the least severe sentence, discharge not amounting to an acquittal, 78.1% of the cases given this sentence were legally represented in contrast to 21.9% who were unrepresented. The percentage difference between cases with and without legal representation was therefore 56.2%. The percentage differences for the other less severe sentences diminished as the sentences became more severe. Thus for the next least severe sentence, conditional discharge, the percentage difference was 40%. This was followed by percentage differences of 32.8% for fines, 23% for disqualification and 20% for probation.

This diminishing trend of percentage differences as the sentences became more severe continued on in the custodial sentences. For imprisonment and fine¹³ 58% of cases given this sentence were legally represented while 42% were unrepresented. Hence the percentage difference here was only 16%. For the second most severe custodial sentence, reformatory training (R.T.C.), the percentage difference was 16.6%. This was followed by percentage differences of 13.4% for imprisonment and only 9.6% for the most severe sentence of the scale, imprisonment and caning.

When Table 7 is studied as a whole, the figures indicate that for defendants who were legally represented, the percentage of cases *decreases* as the sentences become more severe. Conversely, for defendants who were unrepresented, the percentage of cases *increases* as the sentences become more severe. In other words, there appears to be a tendency for defendants who are legally represented to receive less severe sentences upon conviction than those who are unrepresented. A reason for this may be that the training and experience of a lawyer makes him a more effective pleader of mitigation than a defendant.

However this conclusion is, at best, only tentative for the following reasons. Firstly, the sample size for a number of sentences falls short of statistical requirements. Secondly, and connected with the sample size, the differences between many neighbouring percentages are small. The effect might be that a slight increase or decrease in the number of cases under a sentence-head can greatly affect the percentages and thereby distort the diminishing trend of sentence severity to legal representation indicated previously. For example, an increase of one case where the legally represented offender was sentenced to undergo reformatory training would cause the percentage of that sentence-head to become 61.5% instead of the 58.3% shown in the table. Thirdly, the study did not account for the diverse individual sentences that could be meted out within each sentence-head. To illustrate the defect which could arise, a sentence of imprisonment might range from one day to ten years while a probation order might range between one and three years. It is arguable that three years probation would be more severe a punishment than one month's imprisonment. Finally in respect of both the type and quantum of sentence a convicted prisoner may receive, a number of factors that are personal to him may well be more relevant than the mere fact that he has not been represented by counsel. Such factors include his employment stability, age, the nature of the offence, family background and previous convictions.

¹³ This sentence was regarded as less severe than R.T.C. or imprisonment *per se* because in 72.4% of the cases studied, the offenders given this sentence were imprisoned for only one day coupled with a fine.

A Call to Reform¹⁴

If the conclusions of this study are accurate, one must ask why there are still unrepresented defendants in criminal trials. The short explanation might be that such defendants would like to retain a lawyer but are constrained by their limited financial resources. While there are no Singapore-based studies as to who lawyers generally work for, some interesting studies¹⁵ elsewhere have indicated patterns which are likely to be present here. There seems little doubt, for instance, that in most developed countries, lawyers are employed considerably more by the higher rather than the lower socio-economic class. This study has pointed out that defendants charged with white collar crimes are more usually represented by lawyers than defendants of other property offences such as robbery, theft and housebreaking.

Confronted with the difficulties of comprehension of statutes and case-law, the special rules of evidence and the limitations of their own education, most accused persons are at an unfair disadvantage when representing themselves. The question must then be posed: why should defendants who are financially incapable of engaging legal counsel be placed at such a disadvantage to defendants who are wealthier? That the disadvantage may have dire consequences to the accused has been shown in this study. Not only are his chances of acquittal considerably lower but it is possible that the sentence he receives might be heavier than that given to an accused who is legally represented.

It should also be recognised that there is one other disadvantage faced by defendants in criminal proceedings. This is that against them is the State with virtually unlimited resources at its disposal for the purpose of proving its case. An accused person without legal counsel will in most cases be rendered defenceless before such powerful opposition.

One might here venture to suggest that a failure to provide legal counsel to a financially disabled defendant is in contravention of the equal protection clause in the Constitution.¹⁶ From this clause may be derived the general proposition that there should be equal access to the law for everyone. This includes equal rights and opportunities for legal representation in criminal matters.¹⁷

¹⁴ This article has confined itself to presenting the methodology and conclusions of the study. These conclusions raise many interesting issues, some of which may be pursued at a later date. For the present, only a general proposal to introduce legal aid in criminal cases will be made.

¹⁵ Carlin and Howard, "Legal Representation and Class Justice" (1965) 12 U.C.L.A. Law Review, 381; Zander and Glasser, "A Study in Representation" (1967) 117 New L.J. 815; Zander, "Who goes to the Solicitors?" (1969) Law Soc. Gaz. 174.

¹⁶ Article 12, the Constitution of the Republic of Singapore (Reprint No. 1 of 1980).

¹⁷ While the Singapore courts have not ruled on this issue, the United States Supreme Court has expressed its opinion in clear terms. In the leading case of *Gideon v. Wainwright*, 372 U.S. (1963), the court held that the "noble ideal" of "fair trials before impartial tribunals in which every defendant stands equal before the law cannot be realised if the poor man charged with crime has to face his accusers without a lawyer to assist him". See also *Argersinger v. Hamlin* 407 U.S. 25 (1971). It is acknowledged that equality before the law in the context of legal representation may be satisfied by the availability of legal counsel as opposed to the actual assistance by such persons. However the view expressed by the United States Supreme Court is, it is submitted, to be preferred.

It is proposed that access to legal advice and legal aid should go some way towards reducing the present injustice and imbalance in criminal trials. The framers of the Legal Aid and Advice Act¹⁸ had as their aim "an Act to make legal aid and advice more readily available for persons of limited means." In accordance with this objective, not only were there provisions for civil matters but also for criminal matters. Part II of the Act, which is entitled "Legal Aid in Criminal Cases", enables a person charged with a criminal offence to apply to the court for legal aid in his defence.

Unfortunately this Part of the Act has not been in force. At present the only defendants who are assigned counsel by the State are those charged with capital offences.¹⁹ It is difficult to appreciate the distinction between a capital charge and one which might attract, say, a custodial sentence when in either case the innocence or liberty of the accused is at stake. Only when legal aid is provided for all criminal cases dare we unequivocally echo the words of the Magna Carta that "to no man will we deny, to no man will we sell, or delay, justice or right."²⁰

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¹⁸ Cap. 9, Singapore Statutes, Rev. Ed. 1970.

¹⁹ The assignment of counsel in such cases is without statutory basis and merely stems from a practice of the Supreme Court.

²⁰ Recently the Royal Commission on Legal Services (U.K.) (Report, Cmnd. 7648), in the spirit of this statement, made proposals which, if accepted by Parliament, would grant legal aid to virtually all defendants in both civil and criminal matters. For a critical comment of the said proposals, see "Royal Commission on Legal Services" [1980] Crim. L.R. 73.

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