

EDITOR'S INTRODUCTION: TRUTH AND FAIRNESS IN EAST ASIAN CRIMINAL PROCEDURE

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This issue focuses on criminal justice in East Asia as an axis for some recurring themes in criminal procedure. The themes include the tricky relationship between procedural fairness and truth in fact-finding, which sometimes are complementary goals and other times are in tension with one another, and the conflicts that can sometimes arise when formal legal rules supplant contradictory legal traditions and customs. They also include the dangers involved in conflating fair outcomes with fair processes.

In "Indonesia's Criminal Justice System on Trial: The Jessica Wongso Case," Simon Butt explores the gap between formal legal rules and on-the-ground practice in Indonesia. He argues that Indonesia's criminal-procedure law fails to guarantee fair trials, using the high-profile *Wongso* murder case to highlight his critical analysis. Wongso was convicted on the basis of limited evidence that she had committed murder, without a pathology report determining the victim's cause of death, and in spite of significant exculpatory evidence presented by the defense. Butt argues that the *Wongso* case demonstrated a failure of the presumption of innocence and the cost of Indonesia's lack of procedural rules governing police investigations and requiring the disclosure of exculpatory evidence by prosecutors. He also argues that it demonstrated the highly prejudicial impact of pretrial media publicity and a lack of professionalism in Indonesia's judiciary.

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In “The Concepts of Truth and Fairness in Thai Criminal Procedure,” Alex Chitov examines Thailand’s attempt to reconcile the instrumentalist justification for excluding illegally obtained evidence and the cost to accurate verdicts that they can impose. Thai criminal-procedure law includes an exclusionary rule for certain types of improperly obtained evidence, but also permits judges to consider such evidence when it is in the interests of justice to do so. This choice between the rationales for exclusion and inclusion is a discretionary exercise that involves balancing the rights of the accused against accuracy in criminal fact-finding. Chitov concludes that the absence of an organic legal tradition in favor of excluding illegally obtained evidence has led to a lack of clarity and consistency around these balancing decisions.

In “Is Safekeeping Drug Trafficking? The Singapore Court of Appeal’s Attempt to Delineate Role and Culpability in Drug Trafficking Offenses,” Kenny Yang explores Singapore’s notoriously harsh drug-trafficking laws in the context of the Singapore Court of Appeal’s review of convictions for the crime of safekeeping drugs for another. He discusses the Court’s recent jurisprudence, which has recognized that drug offenders who merely hold in deposit drugs belonging to others have reduced culpability by interpreting their conduct as falling outside of the definition of “trafficking.” He argues that the Court’s opinions employ poor reasoning based on a skewed selection of foreign authorities in order to reach the outcome that the Court desired: avoiding application of the mandatory death sentence for mere bailees. He concludes that, although the Court’s decisions may have resulted in fairer sentences for the individual defendants involved, their reasoning may hamper the ability to convict *bona fide* drug traffickers in the future.