

**Speech of the Chairman of the Hong Kong Bar Association  
at the Opening Ceremony of the Prosecution Week  
17 June 2016**

Secretary for Justice, Director of Public Prosecutions, President of the Law Society, Distinguished Guests, Ladies and Gentleman:

I am honored to be given the opportunity to address this distinguished audience again since last year.

I spoke last year in strong support of the independence of prosecution. On this occasion, I would like to focus on the “Role of the Prosecutor”. This topic is important for the understanding not only of those who are charged with the duty to prosecute, but also of the public.

In fact I would suggest that public understanding of the mechanism of criminal justice and the process of prosecution has never become more necessary in the history of Hong Kong. This is as a result of the aftermath of the episodes of civil unrests that took place between late 2014 and early 2016.

Factions of the public hold polarized views of the conduct of those involved in the incidents of unrests. Prosecutions of protesters and law members of the police were eagerly awaited by the public. It was against this background that these high profile prosecutions took place.

Prosecutors are ministers of justice. As the name of the department to which they belong suggests, their primary responsibility in that role is to see that justice is done according to the law. They are not hired to secure convictions, or to set any track record in terms of the number of convictions they manage to secure. They are not to be likened to employees of a listed company, who are required to maintain a certain

level of profits in order to prove their value of existence.

Sometimes, justice is done by seeing the accused convicted and punished. At other times, justice is done by the acquittal of the accused because the law demands a high level of assurance of his guilt, proved strictly according to the relevant law and procedure. The procedural rules are installed to ensure the innocent is protected, even at the expense of high hurdles to catch the guilty.

Our criminal justice system does not acquit defendants because it is lenient. It acquits defendants because the public requires a system they can rely on not to victimize the innocent. The unthinkable tragedy that can happen to an innocent man is epitomized in a recent example.

Two months ago, African American Darryl Pinkins was released after 25 years in jail for a rape he did not commit. It was a misidentification, but it took one month short of 25 years for a new DNA technology to be applied for him to be exonerated.

If the unjust conviction were secured with improper means or without fairness and due process, many would agree that it would be as heinous, if not more heinous a crime than the crime the man was wrongly accused of committing.

The standard of conduct to be met by a prosecutor, and likewise by a barrister prosecuting on fiat, cannot possibly depend on his view of whether the accused was guilty or innocent or deserved punishment. It must depend on a rigorous and faithful adherence to the rule of law, which involves applying the law correctly and faithfully adhering to due process regardless of any view one might take of the parties involved or the type of conduct. Conviction must not be allowed to be the end, or the goal, that justifies any means outside the law.

While anyone would applaud the punishing of the guilty, sacrificing the innocent is not acceptable even as a risk. Emotionally, it is not difficult to empathize with the frustration of both the law enforcement and the prosecutor, who are expected to work as a team towards the common goal to bring the offender to justice. It is understandable that the prosecutor would not wish to see the good efforts of the law enforcement officers frustrated. However, the prosecutor must not stand too close, lest he loses his impartiality. He must strive to carry out his duty to the best of his ability, but never too rigorously as to lose sight of fairness.

This is where the prosecutor's work is most challenging, and it requires him NOT to align personal glory to success UNLESS it is achieved with uncompromising integrity. Where the demands of justice and due process result in acquittal, he may feel "defeat" and may be put to shame by those who are less enlightened.

However, in the good tradition of the Bar, I have been brought up to believe the highest accolade a prosecutor can receive is not that he is competent, fearless, or that he enjoys a high conviction rate. The highest praise for a prosecutor is that - not only is he competent, he is fair. As a matter of fact, fairness and integrity in a prosecutor are what earn the greatest amount of respect within the legal community. Prosecutors with those qualities are regarded as the ultimate guardians of our liberty.

Civilians often have a poor understanding of the process of criminal justice and of the prosecutor's ethical duties. The outcome of a prosecution depends on a number of uncertainties. A reasonable chance of success estimated at the stage of decision to prosecute is no guarantee for a conviction. Ultimately, the defence case to be run will often remain obscure to the prosecution until the prosecution case

is closed. The judge or jury must acquit where there is a reasonable lurking doubt. The quality of the testimony of either side's witnesses is a major factor of uncertainty that would directly affect the outcome. These are not difficulties in a case that a competent prosecutor can overcome in order to secure a conviction. It follows that statistics on conviction and acquittal do not point to any meaningful conclusion on competence in prosecution, nor of the quality of the justice system. During my short-lived practice at the criminal Bar, there used to be a magistrate in North Kowloon reputed to enjoy the highest conviction rate in his court. He used to boast about it amongst his peers. What he failed to recognize was it was itself a testimony of his lack of a sense of fairness, his crown of shame.

Unfortunately, prosecutors who understand their duties are nevertheless put under constant pressure (perhaps unwittingly) to secure convictions. Commentators who have little understanding of criminal justice rely on conviction rates to gauge prosecutorial competence. As soon as an acquittal ensues, those who support the acquitted defendant cry "abuse" in prosecution. Those who want to see him convicted find fault or incompetence in the law enforcement officers or the prosecuting officer. These reactions tend to drive a prosecutor towards making conviction a goal to be achieved regardless of whether it is proper and faithful to due process. They could lure the otherwise competent and upright prosecutor into sacrificing absolute integrity for expedience.

Where prospects of promotion and greater professional recognition are even partially gauged by the rate of conviction achieved, the maintenance of fairness and integrity becomes illusory. We should be highly vigilant not to let intangible pressure become serious challenges to the rule of law.

Given the political climate in recent times, the maintenance of public confidence in the effective administration of justice demands a better understanding at the level of the public. Commentaries on convictions or acquittals will continue to grab headlines, but it is important for the public to be able to form an educated view, or to know to reserve their views where the relevant facts are unavailable, rather than be guided by commentaries of varied standards.

I am therefore a staunch supporter of the educational function of the Prosecutions Week. The theme of the Prosecution Week this year rightly puts Justice first and foremost, followed by Independence and Impartiality. I see justice as the goal of prosecution work, and “independence” and “impartiality” the qualities needed to fulfill the role of minister of justice. I wish the DoJ a very successful week of events ahead, and I sincerely wish that all who participate in the events will come away with a new understanding of our time-revered criminal justice system. Thank you.

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17 June 2016