



An address given by

The Honourable Mr Justice Chan Siu Oi, Patrick, LLD (Hon), LLB, PCLL

On behalf of all the awardees of honorary fellowship and myself, I would like to express our most sincere gratitude to the University for receiving this honour. It is an honour which we accept with profound humility. It is an honour which we happily share with our families and friends. And it is an honour which will encourage us in continuing to serve the community in our respective disciplines.

There can be no dispute that the rule of law is essential to the success of Hong Kong. The rule of law cannot be maintained without the citizens' respect for the law and their confidence in our legal system. They will respect the law and trust the system only if they are fairly confident that the courts deliver generally just and acceptable results in a fair and reliable manner. It is necessary that justice must not only be done but must also be seen to be done.

In an adversarial system, there is always at least one party who is disappointed with a court decision. What is justice to one party is injustice to the other. The party who wins is likely to hail the court decision as fair and just. On the other hand, the party who loses will feel dissatisfied and aggrieved. In some cases, neither party is happy with the judgment and for different reasons, each considers that the judge was wrong. Occasionally, we see cases where families of crime victims are not satisfied with the sentences imposed on the offenders and complain that justice had not been done. Whether justice is done in a particular case is thus often debatable and controversial.

From time to time, sensational and high profile cases hit the headlines of the press and media and readers and viewers (who are not involved in these cases) get immensely interested, either out of curiosity or looking for topics for casual conversations. Who was Madam A, B or C? Who was Mr X, the alleged victim in a crime? What was the relationship between the accused and the alleged victim? Did the accused commit the alleged crime for money or something else? A lot of people are, as a matter of fact, less concerned with whether justice is done but more interested in knowing the private lives of the rich and famous, details of family disputes or probate actions over the estates of celebrities who had passed away. There were even competitions on the internet on what the truth is or more correctly, what they think the truth is. There is simply no shortage of rumours and no end to speculations.

Depending on the amount of information they can get from reports in the mass media and the internet which are very often coloured by hearsay and gossips from different sources, it is natural for different people holding different views on the rights and wrongs of the characters involved and the merits and demerits of a particular case. It is not surprising that frequently, even before the relevant court proceedings are concluded, moral judgments have already been passed on those involved in the case. Without knowing the full picture, one should be slow to do just that, as it is unfair that any person should be "condemned" without going through a proper trial. To publicly comment on the merits of a case even before it is tried before a court of



law also runs the risk of interfering with the administration of justice if this is done with a view to influence the court's decision.

But the public have a right to receive information, especially on matters concerning how justice is administered in our courts. Our system is an open justice system. Leaving aside rumours and speculations, by and large, the majority of the Hong Kong community do have the interest of justice at heart and they expect reasonably acceptable decisions from the courts. As Hong Kong people become more educated, they hold much higher expectations of those responsible for administering justice. When a particular court decision does not accord with their views or does not meet their expectations, they would naturally feel disappointed and are rightly concerned.

As public officers, judges must of course be subject to the same evaluation by the public in the discharge of their duty. But unlike other public officers, judges are usually unable to answer comments and criticisms leveled at their decisions. Sometimes, there are reasons for an outcome which is at variance with public expectations. Under our system, judges make decisions according to the facts as presented by the parties and apply the relevant legal principles to those facts. They are not entitled to take into consideration materials which are hearsay or inadmissible, let alone speculations and gossips which may be widely and freely circulated in public. In fact, they must exclude these matters from their consideration. It is thus not surprising that the public may not have the same perception of the facts which, when they are properly admitted and evaluated in the adversarial setting, compel the court as a matter of law to come to a certain conclusion. One simply cannot expect the public to agree with or accept every decision handed down by the courts.

It is not uncommon nowadays to hear comments and criticisms on individual court decisions, whether this is prompted by pre-conceived views or moral judgments on the cases in question, or because the decisions fall short of public expectations. After all, people have a right to freedom of expression.

I must not however be taken to say that judges are always right. Far from it. Judges are only human. They can and do make mistakes. That is why we have an appeal system. But one thing is certain. Judges' mistakes cannot be concealed. They are under a duty to provide sound and adequate reasons for their decisions. The reasons they give are subject to scrutiny by the public and the appeal court. It is often said that on appeal, it is the judge and not the defendant who is on trial. Once a decision is handed down, the judge cannot change or supplement his reasons afterwards. It is the tradition of the judiciary that judges rarely give press interviews or appear on television to defend their decisions and are discouraged to seek to defend themselves when criticized. The rationale for this tradition (which dated back to the 1950s in England) is to keep judges insulated from controversies. Modern commentators cast doubt on the validity of such rationale. The most a judge can do now is to write to the press or law journals and explain any misunderstanding over his decision but this has to await the ultimate disposal of any appeal



by the highest appellate court. This indeed is rare and very often, there is no longer any need to do so after the appeal.

We have seen decisions overturned on appeal. There are principles for assessing the correctness of judges' decisions and remedies for correcting mistakes. Mistakes are sometimes not apparent to the judge at the time of his decision and his decision may be rendered wrong or inappropriate with the benefit of hindsight. There were examples where judicial decisions had to be overturned many years later when new evidence came to light. There were cases where convicted criminals, even murderers, who were reprieved years later on proving that they had been wrongly convicted.

Unfounded, misinformed or even scurrilous attacks on individual judges or their decisions are not conducive to the proper development and maintenance of the rule of law, especially when they are based on an incorrect understanding of how the justice system works. On the other hand, comments and criticisms which are well informed and well reasoned are desirable and necessary. Without them, judges will remain ignorant of how they have gone wrong. Such comments and criticisms are an impetus to improving the standard of judicial qualities.

While bona fide comments and criticisms are more than welcome, misbehavior in the courtroom cannot and will not be tolerated. Judges have the experience of having verbal abuses, shoes or other articles hurled or thrown at them. This of course is contempt in the face of the court and not permissible in a civilized society. It is the dignity of the court (not the judges) which must be protected. I should add that in my experience, almost without exception, those who have behaved in such a way ended up going to gaol.

With this remark, I would end this speech. Hopefully I will not be greeted with shoes or handbags or something more valuable.