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Editorial

SHOULD OLD IDEALS

BE FORGOTTEN...

It is often said that the people of Hong Kong are practical-minded, and the students are no exception. They study only to pass exams; they pass exams only to enter universities; they enter universities only to get degrees; they get degrees only to make money. We regret to say that evidence supporting such comments far outweighs that to the contrary.

Yet is it not a universal phenomenon that childhood breeds beautiful dreams and youth high ideals? Is it not therefore a sick society which fails to generate these things? It may be argued that these are mere symptoms of spiritual immaturity: as a child grows older and wiser, gets nearer and nearer to the brave new world of adulthood, his dreams will fade away and ideals vanish, and the sooner the better — for he has then known and come to accept reality, cold and brutal as it is. Such arguments we must reject as negative and unjustifiably pessimistic. For history shows that civilisations live and die as nations' ideals grow and perish, and a society is propelled, not by machines, but by the high hopes and impossible dreams of its men and women.

It is now a cliché to blame everything on Hong Kong's education system, to say that it stultifies creativity and suffocates independent thinking. This is certainly valid to a large extent, but we do not agree that the 'victims' of the system should be exonerated from all responsibility. It is fashionable nowadays to attribute all faults to environment or heredity. We believe, however, that Man is, in the final analysis, free. Free to build or to destroy. Free to climb forward or to slip behind. The ultimate decision rests on ourselves, whether to act or to be mute, to give away or to keep for ourselves.

So let ideals flourish, and let them to do so right here in the Law School. In this respect we would like to share with our readers a few words from the book *Recollections of Alexander Stephens* (1910).

'No pursuit in life is more honorable or useful than that of the law when followed as it should be. None requires more rigidly a stout adherence to all the precepts and principles of morality, or the possession and practice of the highest and noblest virtues that elevate and adorn human nature. Not even the office of the holy minister opens up such a wide field for simply doing good to one's fellow man. The lawyer's province is to aid in the administration of justice, to assist the oppressed, to uphold the weak, to contend against the strong, to defend the right, to expose the wrong, to find out deceit and to run down vice and crimes of all grades, shades, and characters. What a field is his for calming passions, allaying strife, composing disputes, settling quarrels, and quieting contentions.'

Should old ideals be forgotten and never brought to mind?

We hope not.

A Word from Our Council Rep

It is my honour to be elected as the Council Representative of the Law Association and I take this opportunity to report briefly on the interesting issues which took place in the last few months in the Students' Union of the University of Hong Kong.

1. Some routine work

Both external and internal affairs concerning the University students in general are discussed and resolved in the Council Meeting. Sometimes, working parties and ad hoc committees would be set up to organise a specific project or investigate into a particular issue. In addition, being the highest student executive body, the Union Council receives and adopts reports from various standing committees, organising committees and ad hoc committees on different events. The aim of this is to check on the progress of these committees, to see whether they have acted within their delegated powers and fulfilled their missions.

2. Chinese Language Movement

During November 1978, the ad hoc committee which was responsible for the Chinese Language Movement requested the fellow students of the University to pledge their support by participating in the 'signature campaign'. These signatures were handed to the Educational Department, the Chief Secretary, the Hong Kong Examination Authority and the Vice-Chancellor of the University of Hong Kong. The purpose of the Chinese Language Movement is three-fold. First, to promote the use of Chinese in society. Second, to promote the use of Chinese as the medium of teaching in secondary schools. Third, to advance the standard of Chinese in secondary schools without lowering that of English. In fact, it is delighting to know that the Hong Kong Examination Authority has responded to this by raising the standard of Chinese in the entrance requirement of the Higher Level Examination. ('E' or above in Chinese Language of the Hong Kong Certificate of Education Examination instead of 'F' or above.)

3. Boat People Issue

The Students' Union supported the Boat People when they were arrested and accused of unlawful assembly. They requested the Government to release the charges against the Boat People in accordance with civil rights and to grant them a suitable place to live on land.

4. Emergency Council Meeting

In late February, a 'big letter' poster was taken off from the poster board by the Chairman of the Students' Union because the majority of the Exco members thought that the contents of the poster involved personal attack. After a 16-hour long discussion, it was finally decided by the Union Council that the taking off of the poster by the Chairman of the Students' Union was a justified act according to constitution. Moreover, a motion that the writer of the poster should submit a letter of apology to the Exco was passed on the ground that the writer of the poster had wrongfully accused the Exco of deceit by changing the contents of the poster.

5. Evaluation Project

This year, the Students' Union has borrowed ideas from foreign universities to introduce for the first time the 'evaluation project' to our University. The primary aim is to improve the educational programme offered by the University. Moreover, it serves to collect the opinions and attitudes of the students towards their lecturers and tutors so as to promote staff-student relationship. In order to achieve this, the project consists of two questionnaires basically. The first one is designed to provide information concerning teaching methods, teaching facilities and staff-student relationship. The second questionnaire is more specialised and it concentrates on the curriculum of each faculty.

Finally, it is envisaged that the evaluation project will eventually be taken over by an independent committee consisting of both staff and students. However, this takes time to 'evolve' and this year's work will be at an elementary and experimental stage.

Terence K. S. Tung
March 14, 1979

LAW ASSOCIATION ACTIVITIES

* The Annual Ball Organising Subcommittee was formed at the 4th Exco meeting (Jan 20, 1979). The date of the ball is temporarily fixed on Oct 6, 1979. Miss Nancy L. S. Lau (I) and Miss Barbara W. K. Mok (II) are the Chairman and Vice-Chairman of this Subcommittee.

* On Jan 23, a talk on 'unlawful assembly' was organised jointly by the Law Association and the Students' Union. Mr. Jonathan T. P. Cheung (II) was in charge of this function. The talk was held in the Chemistry Theatre and attended by about 100 University students. The speakers were Mr. Patrick Chan (a barrister and a graduate of our School) and Mr. Mak Hoi Wah (a social worker and a past president of the Student Union).

* A new winter T-shirt (in two colours, yellow and grey) was put on sale by the end of January. The design was made by Mr. Sit Hoi Wah (II).

* About half a dozen law students attended the New Year Gathering organised by the Students' Union in Loke Yew Hall on March 7. Mr. Sunny Fong Ho Yin (III) performed a programme in 'toi kueng to' on behalf of the Law Association.

* We participated in nearly every programme of the Students' Union Festival which was held from Feb 28 to March 6. We were again champions in the choir and debate contests. We wish to express our sincere thanks to all participants, especially Mr. Roy M. K. Yu (III) and Mr. Eric K. P. Pun (I) as the Captain of our champion Debate Team and the Conductor of our champion Law Choir respectively.

* On Feb. 26, Mr. Peter T. L. Man (II) and Miss Nancy L. S. Lau were elected the Student Senator and Student School Board member of the School of Law for the period March 2, 1979 until the date of announcement of the result of the next election to be held in Feb, 1980.

* An EGM of the Law Association was held on March 8 (the last day of the second term) in the Mellow Room to adopt the Financial Report of the previous session. It was followed immediately by the staff-students gathering. The teaching staff and students met under a very friendly atmosphere and we wish to express our thanks to the performers in this function (Mr. Benny Y. B. Yeung (III), Miss Connie S. M. Tsui (III), Miss Roselle M. L. Chow (I), Miss Agnes S. L. Chung (II) and Mr. B. Allcock).

FUTURE ACTIVITIES

* Friendly Basket Ball Match with Article Clerks' Association (March 17, 1979)

* Interyear Football Match (March 23, 1979)

* Law Talk by Mr. Justice Simon Li (a High Court Judge) (March 30, 1979)

* Summer Job Placement Scheme for LA members

— LA EXCO
March 15, 1979

UNION FESTIVAL '79:

RESULTS

Debate: 1st (Team members: Roy Yu, Barbara Mok, Leo Yeung, Jonannes Chan, Clement Lin)

Choir: 1st (Conductor: Eric Pun, Member from Years I, II, III)

Games Day: 2nd (16 members from all Years)

Singing Contest

Western Folk — Group : 1st (Connie Tsui, Benny Yeung)

4 entires, 2 entered final

Western Folk — Solo : 3rd (Joseph Tsang)

5 entries, 2 entered final

Chinese Folk — Solo : 2nd (Iris Tsang)

Art Song — Group : 3rd (Quartet of 8 members from Years I, II, III)

Art Song — Solo : 3rd (Connie Tsui)

Other participation in Bridge, Chinese Billiards, Chinese Chess, Photograph, Drawing.

Overall Result: 2nd among all Faculties and Schools

* Thanks to all the participants and helpers *

INTER - FACULTY SPORTS, '78 - '79:

RESULTS

Aquatic Meet

Ladies Medley 4x50m: 2nd

Ladies Free Styles 4x50m: 3rd

Ladies Butterfly 50m: 3rd (Winnie Siu)

Ladies Breast Stroke 50m: 3rd (Agnes Chung)

Ladies Breast Stroke 100m: 3rd (Agnes Chung)

Ladies' Overall: 3rd

Athletic Meet

Ladies 4x100m: 3rd

Ladies 400m: 1st (Barbara Hung), 3rd (Agnes Chung)

Ladies 800m: 2nd (Agnes Chung)

Ladies Short Putt: 1st (Barbara Hung)

Ladies Discus: 1st (Barbara Hung)

Ladies High Jump: 3rd (Barbara Mok)

Ladies Overall: 3rd

Ladies' Individual Champion: Barbara Hung

Men Shot Putt: 2nd (Roger Wong)

Tennis: 2nd

Squash: 3rd

Lacrosse: 4th

Football: 4th

Basketball: 4th



At the staff-student gathering



Our Law Choir singing and winning



Our Debating Team: Victory once again!

THE SCHOOL OF LAW AND LEGAL AID AND ADVICE SCHEMES

Unlike the three-year course for the Bachelor of Laws (LLB) degree, which is academic and theoretical in nature, the follow-up one-year course for the Postgraduate Certificate in Laws (PCLL) provided by the School of Law aims at vocational training. For the practising lawyer, the most difficult task is often to ascertain the facts of a case (or what the client believes to be the facts) rather than to find out what the law is. Thus legal education through classroom lectures and tutorials can never make up for the lack of practical experience in dealing personally with clients. It is largely to fulfil this need for practical experience that the present arrangements for the participation of PCLL students in three legal aid and advice schemes have been introduced.

The University Legal Aid and Advice Scheme (HKU Legal Aid and Advice Clinic)

This scheme grew out of an informal scheme based on St. Joseph's Church. The informal arrangement was established by Father John Davies, who is both a priest and a qualified solicitor. It had been in operation for about a year when Father Davies left Hong Kong in 1975, and by then a nucleus of voluntary practitioners was well formed. Professor P.G. Willoughby took over the running of the scheme and built upon it further by involving PCLL students. So the present University scheme came into being in the academic year 1975-76.

The referral agencies from which the cases come include the Ward System, especially through Mrs. Elsie Elliot, the Legal Aid Department (for example, where an applicant fails to satisfy the means test), the City District Offices, Caritas, the Christian Family Service Centre, the Social Welfare Department, Umelco, the Community Advice Bureau, the Discharged Prisoners Aid Society, the Hong Kong Family Welfare Association, the Hong Kong Marriage Guidance Council and even private solicitors. At present cases are running at about two per week. The yearly average is 60 to 70. Most cases involve criminal matters within the jurisdiction of the magistracies.

Mr. H. Bramwell is in charge of this scheme (as well as the involvement of PCLL students in the two other schemes discussed below), and Mr. Eric Chan is the student demonstrator directly responsible to Mr. Bramwell for the day-to-day administration. The normal working procedure is as follows. When a referral comes, Mr. Bramwell will decide whether to take up the case or to reject it. The latter very seldom happens, but will be necessary when the case is a time-consuming and complicated civil one. If accepted, the case will be allocated to a pair of PCLL students, who, under the supervision of a professionally qualified member of the teaching staff, do preparatory work in the case, interviewing the client (at his home, in the cells if he is in custody, or at the Legal Aid Office, Fifth Floor, Knowles Building), writing letters, etc. Court proceedings are usually necessary, and a voluntary lawyer will be instructed. He may be a private practitioner or a School of Law lecturer qualified to practise in Hong Kong. The students will assist him and observe how the case progresses in court.

Under this scheme each PCLL student will be involved in two to three cases within the year of the course. As Mr. Bramwell pointed out, this is probably the most rewarding and beneficial one among the three schemes from the students' point of view, since they have the opportunity not only to interview clients but also to brief counsel and follow the court actions. According to Professor Willoughby, it has at least three functions. First, as a valuable social service, providing legal aid as well as advice; secondly, the students, especially those coming from more fortunate backgrounds, are brought into contact with the problems of the poor, and may thus become more socially aware; thirdly, the scheme helps the students to see the relevancy of their theoretical training to actual practice and to have some ideas of law as practised. He went on to stress, however, that the latter must not be overstated. The scheme provides quite a narrow view of the law only: commercial matters such as tax, banking, land transactions or wills are almost never encountered. It is not the equivalent of a hospital where medical students receive clinical training. It is at most a tiny corner of a legal hospital, and this is of course better than having nothing.

The scheme has been smoothly and successfully run during the years. There have only been minor problems. One is the breakdowns of communication between staff, students, voluntary practitioners and clients, but these are relatively few and of a kind which any busy legal practice would expect to have occasionally. Sometimes it is found that the scheme is abused, the clients being rich enough to engage lawyers themselves. Yet it is administratively quite impossible to have means tests. An increasing difficulty is finding voluntary lawyers to take up the cases, even among the roster of participants, which at present contains about 20 solicitors and 30 barristers.

The Magistrates Court Legal Assistance Scheme (Duty Lawyer Scheme)

This scheme is part of the Law Society Legal Advice and Assistance Scheme run by the Law Society and financed by Government. (See Law Media, vol 1, 1979, pp 9-10.) The service of a duty advocate is available to a defendant charged with one of the scheduled offences in the three magistracies at Causeway Bay, Sanpokong and North Kowloon. PCLL students' participation in this scheme is very limited in extent only. Every Friday morning three students go separately to the three magistracies to help the liaison officers in taking statements. Mr. Bramwell is hoping that the scheme can be brought into the Practice and Procedure part of the PCLL course in a more complete and worthwhile way.

The Law Society Legal Advice Scheme

This started operation in November 1978 and replaced the scheme run by the Hong Kong Council of Social Service, which had been in operation since 1969. The involvement of PCLL students in the former scheme was initiated by Mr. Downey. There were two legal advice centres at Kowloon and Wanchai. Two students went to each centre weekly to help as interpreters and with follow-up actions.

In the new scheme (which, like the Magistrates Court Scheme, is also part of the Law Society Scheme), there are two centres at the Eastern and Mongkok City District Offices, with three voluntary solicitors at each centre each Thursday evening. Three PCLL students attend each centre at the same time and sit with the solicitors as they advise the clients. Whereas the students interpreted in the old scheme, they do not now do so as there are government Chinese Language Officers to do the interpreting.

Looking at the picture as a whole, the contribution made by the PCLL students varies in degree with the different schemes but is certainly useful. While the social value in terms of actual benefit to society may not be great if one considers it in the context of whole legal system, the educational value of the experience cannot be denied. So there seems to be no reason why such participation by students should not be extended and more widely encouraged. In fact, considerations are at present being given to involving third and even second year students in some of the schemes. Professor Willoughby believes that students can gain some valuable experience even by just observing the schemes in operation and the clients being interviewed and advised. However, he thinks that the students' opinion of the matter should be given the uppermost consideration. Students will not be compelled to participate if they do not want to. We would suggest that such involvement of LLB students is highly desirable, for contact with real people with real legal problems is probably a most effective stimulant to intellectual pursuit in the law.

— Albert Chen, Mathew Ho,
Christine So, Ronnie Tang

Corrigendum

There is the following mis-statement in the article 'New Developments in Free Legal Services in Hong Kong', Law Media, vol 1, 1979, p 9: 'Free Legal Advice Scheme—This replaces the former schemes run by the HK Council of Social Service and the HKU Legal Aid and Advice Clinic and has been in operation since November 1978.' The HKU Legal Aid and Advice Clinic has *not* been replaced.

THE LAW LIBRARY

the place where you cherish and perish...

As more and more students are making use of the Library, a survey on the Law Library was carried out in February in order to see what improvements may be made on its present facilities.

Seventy-seven questionnaires out of 201 were returned i.e., 38.3% of the students. One of the major problems is the seating capacity : 90.9% of the students said that there are insufficient seats. Some suggested that the Asian Study Centre should be taken over for Library extension. Others suggested the opening up of studying rooms. Anyway, extension is necessary, especially because there will be 80 admittants to the School next year — a 1½-fold increase! On the other hand, it is good to learn that a majority (77.9%) seldom or never book a seat for their friends and 42.9% regard such an act as condemnable.

Another major problem is the insufficiency of law reports and reference texts. The whole school is fooling around in the Library, with citation sheets in their hands, but sighing when the shelf is blank! Many students suggested that there should be an additional series of Weekly Law Reports (WLR) and the All England Reports (ALL ER), of which there is only one series at present but are used more than frequent!

Another prevailing opinion concerns the loan system. More books should be available for loan for a short period. Besides, magazines or journals (e.g. Time, Newsweek) and newspaper are extremely lacking, which should not be a feature of any healthy library.

Ventilation creates another dissatisfaction: 36.4% feel it is endurable while 44.2% think it is just suffocating. The situation is terrible in winter, with over a hundred persons sharing the Library with windows almost closed and a poor ventilation system.

Another improvement suggested is that table lamps might be necessary for some seats near the corner. Even at day time the lighting condition is poor. The installation of table lamps seems desirable.

One sad point to make is that 71% feel that the Library is noisy while 35.2% treat the Library as either a place for fussy or merely a common room. Let it be a library and please reduce our voice to the minimum, especially in the afternoon — the tempting tea break period!

Another point we would like to make is on the re-shelving system. From time to time there are heaps of law reports lying on the bench. Why not take the trouble of re-shelving them? Just a minute and a lot of trouble may be saved. Please remember, not only you yourself are using these reports but your classmates and students from different years are also running mad after them. How frustrated you would be when after marching through the whole Library you cannot still find your 'sweetheart'!

Furthermore, 31.2% regard those placing columns of law reports before them as selfish. On the one hand you cannot read them simultaneously; on the other hand you deprive others from using them. So, please be considerate! Get the one you require and reshelv it at once after use. Just take a little trouble and in turn, it is you yourself who is benefited!

On the whole, certain improvements on the facilities of the Law Library are welcome and seem desirable. Yet we must not forget our part. Be considered, dear Law students, and make it our Law Library!

— JOHANNES CHAN
KELVIN LO

RESULTS OF THE LAW LIBRARY SURVEY

TOTAL = 77

SEX

M	F	UNDISCLOSED
22	17	38

YEAR

I	II	III	IV	UNDISCLOSED
19	17	1	2	38

1) Where do you study most ? (please tick one)

University main library	7.8%
Law library	59.7%
at home / hall	31.2%
public library	
classroom of HKU	1.3%
others	

2) Estimate the average hours you 'STAY' in the law library per day.

0—1	11.7%	2—3	15.6%	4—5	32.5%	6—7	19.4%	8 or above	20.8%
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3) Estimate the average hours of actual working in the law library per day.

0—1	16.8%	2—3	32.5%	4—5	40.3%	6—7	7.8%	8 or above	2.6%
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4) How often do you arrive outside the library before it opens early in the morning ?

often	20.8%	sometimes	13%	seldom	33.8%	never	32.4%
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5) How often do you stay in the library in the evening (after dinner) ?

often	22.1%	sometimes	27.3%	seldom	23.4%	never	27.2%
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6) Do you think the opening hour of the library should be extended ?

Yes	48.1%	No	51.9%
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- 7) If yes, what should be the extended opening hour ?
- | | | | | | |
|--------------------------------|-------|----------------|-------|----------------|-------|
| 8 a.m.—10 p.m. | 31.6% | 8 a.m.—11 p.m. | 28.9% | 9 a.m.—11 a.m. | 28.9% |
| Others (please specify) 10.6% | | | | | |
- 8) What do you go to the library for usually ? (2 ticks at most)
- | | |
|-----------------------------|------|
| to look up cases | 55% |
| to do study and assignments | 38% |
| for friendly chat | 4.7% |
| because others do so | 1.6% |
| no idea | 0.7% |
- 9) Do you think there are sufficient seats in the library ?
- | | | | |
|-----|------|----|-------|
| Yes | 9.1% | No | 90.9% |
|-----|------|----|-------|
- 10) Do you usually occupy the same seat near a particular area of the library ?
- | | | | |
|-----|-------|----|-------|
| Yes | 63.6% | No | 35.4% |
|-----|-------|----|-------|
- 11) Have you ever booked a seat for your friend ?
- | | | | | | | | |
|-------|------|-----------|-------|--------|-------|-------|-------|
| often | 3.9% | sometimes | 18.2% | seldom | 24.7% | never | 53.2% |
|-------|------|-----------|-------|--------|-------|-------|-------|
- 12) What is your sttitude towards such deed ?
- | | | | |
|-----------------|-------|-----------------|-------|
| to be condemned | 30.3% | not appreciable | 36.8% |
| do not mind | 31.6% | encourageable | 1.3% |
- 13) Do you think that the law library is well ventilated ?
- | | | | | | | |
|------------|-------|-----------|-------|-------------|-----|---------|
| satisfying | 16.2% | endurable | 37.8% | suffocating | 46% | no idea |
|------------|-------|-----------|-------|-------------|-----|---------|
- 14) What is your opinion on the lighting condition? ?
- | | | | | | |
|----------|-------|------------|-----|------------|------|
| too dark | 21.6% | satisfying | 77% | too bright | 1.4% |
|----------|-------|------------|-----|------------|------|
- 15) How do you feel about noise pollution in the law library?
- | | | | | | | | |
|------------|-------|--------------|-------|---------|-------|-----------------|-------|
| very noisy | 34.2% | fairly quiet | 17.1% | no idea | 10.6% | endurably noisy | 36.8% |
| very quiet | 1.3% | | | | | | |
- 16) How often do you use the photocopying machines in the library ?
- | | | | | | | | |
|-------|-------|-----------|-------|--------|-------|-------|------|
| often | 44.2% | sometimes | 40.3% | seldom | 14.2% | never | 1.3% |
|-------|-------|-----------|-------|--------|-------|-------|------|
- 17) What is your opinion on the photocopying service ?
- | | |
|-----------------------------------|-------|
| adequate but expensive | 58.4% |
| inadequate and expensive | 30 % |
| adequate and reasonably charged | 7.8% |
| inadequate and reasonably charged | 3.8% |
- 18) How often do you borrow books out of the library ?
- | | | | | | | |
|-------|-----------|-------|--------|-------|-------|-------|
| often | sometimes | 17.1% | seldom | 43.4% | never | 39.5% |
|-------|-----------|-------|--------|-------|-------|-------|
- 19) How often do you read materials in the library which are neither prescribed nor recommended in your course ?
- | | | | | | | | |
|-------|------|-----------|-------|--------|-----|-------|-------|
| often | 1.3% | sometimes | 27.3% | seldom | 39% | never | 32.4% |
|-------|------|-----------|-------|--------|-----|-------|-------|
- 20) How often do you go to the Main Library to read or borrow books ?
- | | | | | | | | |
|-------|------|-----------|-------|--------|-------|-------|-------|
| often | 5.2% | sometimes | 32.5% | seldom | 40.2% | never | 22.1% |
|-------|------|-----------|-------|--------|-------|-------|-------|
- 21) Which of the following do you think are relatively lacking in the law library? (2 ticks at most)
- | | |
|---------------------------------|-------|
| Text books / reference | 36.6% |
| Law reports | 28.5% |
| Academic journals / periodicals | 4.9% |
| Leisure reading books / fiction | 27.6% |
| others (please specify) | 2.4% |

JOY IN OUR LAW LIBRARY ?

BY CHRIS SO

Having been in the School for a few months, I found the Law Library is not as hellish as is pictured or imagined. The article is not written to gain credit for distinguishing (as one lecturer says that those who apply principles to a legal problem correctly will get a pass whereas higher marks will be given to those smarter ones who know how to distinguish the cases), nor to tell you that I'm a 'Don Quixote', but to express the joy that I've really found in our Library.

After reading Law for a few months, I am totally convinced that life of a Law student is a tough and hard one, but oh dear, it does not necessarily imply that it is a bitter one. Yes, the Law Library is a place for us to read piles and piles of 'small print' law reports; and for some others, it's also a place for reading heaps of duplicated materials, for lecture notes to be re-arranged and knowledge to be 'swallowed' or absorbed. But, is that all?

When I tell some of my friends that many of us Law students stay in the Law Library from 9 a.m. to 9:45 p.m., with a sigh, whether it be admiration or disbelief, they say, 'Oh, what a hard and tedious life !' But have they ever trodden or stayed in our Law Library? When we sit in our Library, we are not defencelessly surrounded by a mass of blank-faced strangers as we are in the public library, but we are in the midst of Law people who are never so miserly as not to give you a smile. I have no (or very little if any) fear of 'theft' when I place my property in our Library, but I have to be extremely alert if I go to some other libraries which are notorious for missing of books or purses.

After digging in the heaps of books, it is just easy and natural for one to feel bored or even depressed. But the advantage of staying in our Library is that we have a better channel to give vent to our boredom than to dwell on our last resort to leave the Library. We can take a stroll or go to have a chat with our school-mates, or with those who have become our friends. This helps to enliven us up. Maybe it is because of the presence of these 'talkative' people like me that keeps many from staying in the Library. Besides asking for their apology, I would ask them to tolerate for our human weakness. Who can remain speechless and motionless for over twelve hours?

Studying Law requires a considerable amount of hard work, besides intelligence, oratory and other attributes. We find life of a Law student is hard, but when we look around in our Library, we find that we are not alone. We are working very hard, but who else is not? We are feeling

depressed or bored, but which Law student is not? We have a fear to be 'discontinued' but who else has not? It's this feeling of comradeship and common fear in our Library that makes us feel less depressed and scared. It is this feeling that stimulates us to work harder, more happily and maybe, more efficiently. Others' diligence also gives a spur to us to work harder.

Our Law Library is also a good 'forum' for discussion on legal issues. When we find ourselves really at a point of being 'totally stuck' in understanding a legal point, or we are unable to help ourselves out from a whirlpool of queries, we can always discuss it with our classmates or even go to ask our seniors who are always so friendly and ready to help. I am in the opinion that in studying Law, the more you talk about Law, the more critical you become, and the more familiar with it you are. It is when we challenge each other or are challenged by others that we can get a more thorough understanding of Law. Moreover, quoting Glanville Williams in his 'Learning the Law', 'Talking about your work, whether in class or with friend, has the further very important advantage of helping the memory . . . (because it is a) potent principle of active repetition.' Gone are the days when we discussed our 'homework' with our classmates over the phone, so why we don't we treasure this 'forum'?

A feeling of warmth is prevalent in the Law Library (though it is in no position to challenge the physical chill of our Library in summer). It's a place that one can always go to when he has nowhere else to go in the university campus, for one can meet some friends, or at least acquaintances, there. (This, I think, is a privilege that students of some other Faculties cannot enjoy.) In the Library, I am told when it's 'Dinner time' and then we students of the same year go to the Canteen to have our 'High Table' supper all together. During dinner, we chat and relax. Then we dig ourselves back to our study (the Library is really very quiet then). When the 9:45 p.m. bell is rung in the Library, we wait for or are being waited by our classmates in 'LGI'. With a sense of achievement (from having stayed in the Library for so long an having done a satisfactory amount of work), we chat and walk down to the bus-stop in a usually high spirit.

Since it has long been established that life of a Law student is full of hardship and fear, why don't we accept it and take a positive view to it? Aren't we able to study more efficiently with a light-hearted state of mind than with a down-hearted one? This joyous feeling still remains when the article is written and I hope that it will remain when the examination is drawing near.

cont'd from p.6

22) Have you ever re-shelved law reports after use ?

often	19.4%	sometimes	37.7%	seldom	29.9%	never	13%
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23) What is your opinion of those who place columns of law reports before them ?

selfish	33.3%	pardonable	65.3%	appreciable	1.4%
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24) Which of the following do you regard as most suitably describing the law library?

A place for reference only	29.7%
A place for study	35.1%
A place for fussy	9.5%
A 'Common room'	25.7%

25) Do you think the security of the library adequate as regards to loss of books, stranger intrusions and hiding of books ?

inadequate but inevitable	45.5%
inadequate but not inevitable	36.4%
adequate	18.1%

INTERLUDE

*A blasted phone call reminds the funky frown,
The knotty sigh, nihilism sublime;
A tinkled chime with subtle set propounds
Embroidered jubilation of past good time -----
Ecstatic parties, raving juggled whirl,
Enchanting moments under bright moonshine,
Infatuated, evading actual world,
Together singing prime laudative psalm.
Hard-headedly, trusty mate decides to go;
With tears subsided, I bid him bliss and luck,
Assiduous work, devoted as solid gold,
Eternal chummy cherished, never to chuck.*

*And dusky nebulae, remote dull moon
Submit our eyes to meet each other's soon.*

NANCY LAU



ACROSS THE MILES...

*The billows of my ways
And days
Should all be known*

*The surges of my seas
Of ease
Shall be my own*

*Maybe some misty day you'll
Waken to find me gone-
And far away you'll
Hear me singing to the dawn
(Please don't ask what's wrong.)*

*I've got to be
Where my spirit can run free-
Gotta fly
In my corner of the sky*

NANCY LAU

A Piece of Nonsense

by Nonsense

This has always been my favourite passage. It runs like this,

*No room for regrets,
No time for misgivings,
But for doing what should be done
Here and now,
Hour by hour,
One day we might say:
We did not waste our time in useless dreaming,
We fought our battles day to day,
Accepting losses as well as winnings.*

I do not intend to introduce to you this favourite poet of mine but intend to talk about a theme most have heard of, or like me, unfortunate enough, to be a member of the 'Lost Generation' Society. If anyone has seen the 'Loose Change' Series faithfully, they would have come across an impressive metaphor. One of the protagonists said when they graduated from school full of ideals, they were like newly-minted coins, full of sparkle. But as they went through the late sixties and early seventies with the Vietnam War and their failures in marriage, they have become soiled. One day to be inserted in saving boxes never to see daylight again. Addressing another protagonist she said the latter was lucky to escape from a saving box — she is referring to the second protagonist's break with a famous artist who wanted to keep her as a private collection.

Does it mean that you only have to go through what is ahead of yours to know and find what life really means and what life is all about? Does it mean that there is no use pondering, planning for our life because we know our 'innocence' and 'illusion' could hardly stand their ground against the oncoming tide of reality and iniquities? In that case, we really should not waste our time in useless dreamings.

Moreover, if even our dreams are denied us, then we really are a Lost Generation. We do not even have a dream to work for. And how are we to do what should be done, 'here and now', 'hour by hour'? Could someone tell me how to find the answer?

I feel that I am at a cross-road junction, standing there staring, wasting time thinking which way to choose, which values or 'opinions' to follow, terribly indecisive, knowing that once the road is chosen I could hardly turn back to take the alternative. Either it is too late to do so or the stubbornness to right a wrong.

Do you feel terribly muddled by my questions and almost incoherent or illogical thoughts? If you do, then I have made a success. Have I a mission to confuse you? No, I am only trying to convey the thoughts of a person who is at a loss. Not knowing what she is doing is the right thing. Not knowing whether what she is doing is worth doing.

Once again, the poet's advice rescues me. I should not waste my time discussing 'irrelevant' things. All this time could have been devoted to reading law reports or research for the assignment. So you see why this particular poet is my favourite? He always liberates me from demented thoughts as soon as I turn my attention to his book which I always take up when in mood or feeling dejected.

Perhaps I can give a little advice also. Next time when my name pop up in the 'Law Media' ignore the article. Because you will be wasting your time reading just another piece of nonsense. And I thank you sincerely as readers of 'Law Media', for giving me this opportunity to air a little steam that is forcing a lid inside me.

A LETTER TO THE EDITORS

Dear Editors,

Referring to Spark's article 'Reflection on Orientation' in the last issue, I think the passage did speak our mind. Gorgeous efforts!

I still cannot help feeling sick when recollecting how we were ragged in the Tea Party. Why should such an otherwise joyful occasion be ended up in sadness, disgust and fatigue among us? Why should young men and women whose ages only differ by a few years be bothered by earthly concepts like seniority prevalent in the cold outside world?

I know the treatment we received this year milder than that of previous years. However, what does this justify?

A First Year Kid
Feb. 7, 1979

Book Review:

TOO TRUE - Australian Tall Tales

Compiled by Anne Bower Ingram

(Sydney: Collins, 1974 edition, 151 pp.)

Tall Tales, stories that are hard to believe, are the subject-matter of this book. According to Miss Ingram's introduction to the book, there are three main types of Australian Tall Tales. Firstly, there is the 'tall yarn', the story that goes on and on and on, becoming more and more improbable as it progresses, and often the teller will make it spin out for the whole day, assuring his audience that it's all 'fair dinkum'. Secondly, there is the 'chilly' the ghost story that will frighten any 'new chum' arriving in a country town. Thirdly, all the other tall stories which have developed from Australia's rare, strange and exotic animal and plant life. However, to the disappointment of many readers and myself, not a single one out of the 24 stories in the collection seems to belong to the second category. Perhaps, the 'chillies' are to be found in another book compiled by Miss Ingram: *Shudders and Shakes*, ghostly tales from Australia.

Too True is primarily a book of fun. It provides an excellent escape from the ordinary and unimaginative life in Hong Kong. It enables the matter-of-fact law student to indulge temporarily in the fine humour and big laughter of the Australian country life. The whole book is full of blatant impossibilities. In 'They were tough man on the Speewah', one of the tough men fell into a tank of boiling water and his fellow workmen immediately killed two wethers and used their hides to cover his body. The result was not a Workmen's Compensation case but a medical miracle. A doctor at the local hospital told the tough man that the skins were successfully transplanted to him. Subsequently, though the tough man ceased to work there, he went back every year to have himself shorn. He made 22 pounds of wool annually. Oh, that's fine?! By the way, no man who worked on the Speewah area ever married. They thought it was too sissy !!!

In one sense, all the stories are tragedies. But the authors seem to share an idiosyncrasy to turn every such tragedy into a comedy. In 'Tall Talk', a farmer half-cried and half-laughed when he discovered a dozen of the world's biggest mosquitoes had eaten his team of bullocks and that they were sitting on the log in his farm picking their teeth with the horns. Too bad! (But the reasonable man would expect to find the farmer quivering, as a matter of natural reaction.)

In *Too True*, the world is turned upside down. In 'Aboriginalities', a hard-working man who went to work at daybreak was admonished by his boss: 'Sneak down quietly. If the other chaps see you, they'll be wanting a half-holiday too!' Everyone who has studied the Law of Tort would agree that a sheep is a *mansuetae naturae*. But in 'The Merino Sheep', the Merino Sheep is described as a 'ferocious animal', a 'dangerous monomaniac', 'an animal that will attack a man without provocation' and 'an animal that has a genius to ruin the man who owns him'. Even worse are the crossbred rams. They have a habit of wandering into the neighbouring farms after lunch time. The wretched owner was threatened every week with actions for trespass. (Cattle Trespass, mind you, imposes strict liability!) Again, you might be surprised to learn that rats and snakes were friends of the Australian folks in *Too True*, whereas dogs, horses and sheep never allowed their owners a single day of peace. Moreover, when you read this book, you might as well forget the laws of Nature and other physical realities. For in 'Big Lolly's Little Brother', a clever little boy managed to dig a tunnel all through the centre of the earth to steal fog from England. He also invented pairs of scissors to cut up the fog (stolen property). These pieces of fog were then buried under the sand of the Great Australian Desert and subsequently, patches of oases emerged.

Generally, all the tales are well-written. Particularly noteworthy is the skill of characterization. The following is one of the fine examples: 'Uncle Percy said the only way to make anything of yourself these days was to get qualifications. Once you were qualified, the world was your oyster. The trouble was, Uncle Percy was still getting qualified after thirty years. He even looked the part. Flared jeans, a T-shirt

with POLITICIANS ARE MADE OF PLASTIC on the front of it, and stringy shoulder-length hair. . . But he certainly has qualifications. He has enough certificates and degrees and diplomas to sink a fair-sized fleet, but there is always one more he had to get "just to make sure". He is a fully-qualified vet, and a Doctor of Philosophy; a fitter and turner, an archaeologist, and an expert on conchology. He's got diplomas in agriculture and town planning, and a commercial pilot's licence; he's studied wine-making and Ancient Egyptian and psychology, and dozens of other things.' ('My simple little brother')

Finally, two stories deserve special attention. Firstly, 'My simple little brother and the great aversion therapy experiment' appears to be a satire on human language. The child in the story probably lived in a world totally different from that in which other members of the family lived. This was because he took seriously every word people said. It is a shame that the human language often does not mean what it means. The attempted indoctrination by this child's uncle could only lead to greater non-conformity on the part of the child. Secondly, in 'Weather Strike', a man working in the local Meteorological Station suddenly got an extra holiday due to an accidental strike. He found himself in a vacuum of agony, not because of the eagerness to work or to serve the community, but because he could not resist the tremendous pace of life around him and the resulting uncontrollable desire to catch up with it.

Too True is strongly recommended for everyone.

— Tang Hon Bui

UNREPORTED CASES

supplied by Judiana Barnes

CONSENSUS NON AD IDEM

The young and shy witness of a rape case was giving evidence. (Prosecution witness.)

Q. 'What happened next?'

A. 'He dragged me behind the bushes.'

Q. 'What happened then?'

A. 'He took off my clothes.'

Q. 'What next?'

A. 'He took off his trousers.'

Q. 'What next?'

A. '.....'

CROWN: 'I would like to ask for this court's permission for the witness to write down what happened next.'

COURT: 'Permission granted.'

Witness wrote on a piece of paper which was handed first to the judge, then to both counsel and finally to the jury.

One of the male members of the jury, after awakened from a convenient snooze by his pretty blonde neighbour, read the piece of paper she handed him and exclaimed, 'What?! NOW?!!!'

HYDE v WRENCH APPLIED?

A solicitor Mr. X, anxious to brief his barrister Mr. Y and not finding him in his chambers, went searching for him in the latter's favourite bars in Wanchai. Arriving at one girlie bar after several futile attempts at others, he encountered the mamasan who beamed and asked: 'Sir, can I help you? Are you looking for a girl?'

Mr. X answered, 'As a matter of fact, I am looking for a man.'

The mamasan lowered her voice, gave him an encouraging nudge and whispered: 'That can be arranged.'

NO CASE TO ANSWER

A man was charged with the offence of gross indecency. His counsel submitted that there was no case to answer as the Crown failed to establish that the defendant had done it 144 times!

PARLIAMENTARY PRIVILEGE

Gladstone was speaking in the House of Commons and had become so nettled by Disraeli's interjections that he turned to Disraeli, pointed an angry finger at him and exploded, 'You, Sir, will either hang from the gallows or die of the pox.'

Quick as lightning Disraeli flashed back: 'Only if I either embrace the Right Honourable Gentleman's principles or his mistress.'

衝破「玩新生」的思想牢籠

星火

一、「玩新生」的根源

玩新生的出現是有其社會根源的。作為社會的縮影，院校的活動反映了社會的架構和風氣。在這個社會裏，大學生是一群特權階級，如果在大學裏獲得「被玩」與「玩人」的經驗，據說對他們將來在社會裏處世行事會有所裨益。翻查字典，發覺在十九世紀的英國牛津大學已經流行這一門玩意。所以在我們這所英國殖民地式的學府裏，理應也跟着「大老細」的後面，也來搞好「玩新生」的風氣。

二、「玩新生」是為新生好

(一)新入大學的年青小伙子銳氣太盛，應該用「玩新生」來教訓他們一番。

(二)外面到處都有不平等的事情發生，現在就讓「綠角子」們嘗一嘗「大仙」的氣焰，好等他們將來適應這個社會。

(三)可以從「玩人」中認識新朋友，「玩」完之後，大家便是「老友」，誰也不會記仇。

(四)「玩新生」是一種傳統，它有助院系內的團結，促進新舊同學的聯繫，打開以後低年級同學向高年級同學請教功課的門路。

三、心明眼亮細思索，真理難容騙人詞

(一)對於把「玩新生」當作是一種教育下一代的手法和態度，實實在在是沒有一點可以自恃的地方。有些「綠角子」的氣焰固然大，但一部份「大仙」們的態度也不見得比他們好了多少，為什麼就不去RAG那些「大仙」呢！

(二)「適應社會」，這是一個堂而皇之的理由。但根據上述理由的邏輯推論，那就好像是說：如果外面有人強姦你，我就先強姦了你，好等你再給人強姦時，不會那樣反感。其實，我們應該教人練防身術才對的嘛！

(三)這裏我們要問是否「玩新生」是可以帶來法律學院的真正團結呢！不要說新同學來參加迎新（變相RAGGING）的不多，而大仙們又有幾人來湊熱鬧呢？還有一點，來參加迎新的「大仙」又有幾人落實地加入RAG人的行列呢？這些問題的答案都是少之又少。既然是那麼少人，我們又怎能把「玩新生」說成是團結大家的一個好方法呢！

(四)其實什麼理由都是假的，他們以前被人RAG過，現在想RAG別人，心理報復才真！通常喜歡作弄新同學的一小撮「大仙」，大都是只會讀書，不理世事，生活上比較沉悶無聊。他們習慣了社會上不平等和不公平的事。自以為是法律學生，高高在上，看不起別人。他們趁着迎新的時候，有新丁送上門來，他們不發洩一番才怪呢！

四、實事求是，對症下藥

既然「玩新生」是無聊、供人發洩、無目的、得不到大家同學支持的貴族玩意，我們就應該

實事求是地把它從底掀起，莊嚴地宣判它的死亡。但一下子想把它打下台來，定會發生一些不愉快的衝突。歷史已經給我們寫下了指示：在一個傳統勢力被解體之前，它一定會作出垂死的反擊，造成一定程度上的破壞。

所以我們為了要維護一個既愉快、又活潑的學習環境不受破壞，我們就不應該對這一小撮玩弄同學的紙老虎採取尖銳的對抗行動。我們應該用和平友善的方法，去解決現在的歧見。要知道「玩新生」之令人反感，就在於它的強迫性、專橫性和侮辱性。所以如果我們要剷除這些大毛病，自己切不可用同樣蠻不講理的手段。

在剷除壞習慣的當然，我們更應該有條不紊地建立起新的迎新標準，多提出建設性的意見，合力把新舊同學的距離一步步地拉近。

五、時移勢異莫空嘆，如今邁步從頭越

隨着港大的平民化，法律學院也開始不是專供富家子弟製造專業人才的地方。我們也已經開始在蠢蠢欲動了。雖然外表上沒有多大的變化，但內部已經醞釀了一股又一股衝破傳統枷鎖的勢力。從七八至七九年迎新時不到半數的「綠角子」完成簽名功課，到三月對艇戶事件所發表的聲名的大字報，都在不斷地反映了我們在蛻變當中。而可以在預計的將來，「玩新生」的玩意會在港大漸漸的式微，及至全部死亡，成為歷史的陳跡。

最後就用部份刪改了的國際歌的歌詞帶出反抗不合理的舊制和為真理而鬥爭的心聲作為收筆，希望我們的理想能夠早日得到實現！

……滿腔的熱血已經沸騰，

要為真理而鬥爭！

舊世界打個落花流水，

同學們起來！起來！

不要說我們一無所有，

我們要做天下的主人！

這是最後的鬥爭，

團結起來到明天。

我們的理想，

就一定要實現。

這是最後的鬥爭，

團結起來到明天。

我們的理想，

就一定要實現。

編者按：本文的觀點頗具爭論性。雖然它並不代表編委會的意見，而編委會也並不認為法律學院大部份同學或大多數一年級同學持有本文的看法，我們仍加以刊登；真理是愈辯愈明的；幾個月後又是新一學年的迎新了，希望大家快在下一期（七月出版）來稿討論這個問題。

TWO INTERVIEWS WITH MAGISTRATES

The Law Association Yearbook, *Justicia*, of the academic year 1977-78, which is to be published soon, has been engaged in a project on the magistrates' courts system in Hong Kong. Part of the project involved interviewing magistrates. Since the interviews will not be published in full in *Justicia*, we have decided to give an account of two of them here. Although we do not necessarily agree with the views expressed in the following, we believe it is worthwhile to get to know how some members of our judiciary live and think. Moreover, it may also contain some food for thoughts, some points for us to ponder over.

HONG KONG IS HIS HOME TOWN

— an interview with

Mr Ian Alexander Ramsay —

Mr. Ramsay has been the magistrate of the Juvenile Court at Sanpokong for the last two years. He came here together with his family from New Zealand in December 1976, and returned there in March this year.

Q. What attracted you to come to Hong Kong?

A. Hong Kong is my home town. My grandfather and father were born in Hankow. I left in a ship-out with my mother when I was two years old. My father was killed here in the defence of Hong Kong. I came back when I was eight, left when I was ten. I visited here again at sixteen. So I have fairly close ties with Hong Kong. My family has been in China for several generations.

I was a partner in a law firm in New Zealand before I came here. I wanted to have a change, and to see how Hong Kong was surviving without me, so I applied to become a magistrate here.

Q. Do you like your work here?

A. As a Juvenile Court magistrate, I find my work rewarding and interesting. The kids are usually nice, well-behaved and pleasant. I am able to do something constructive to help them. The social welfare institutions and the reformatory schools are well-run, so I am able through these to help the needy. The nature of work is somewhat different here from the adult courts, in that there is more paperwork to do, more reports to read, and it also requires going through institutions, visiting boys' homes, etc.

Q. How in fact are magistrates allocated to the courts?

A. The magistrates system here is organised on a friendly helpful basis. I am interested in Juvenile Courts and social welfare, so I was sent here from the Tsuen Wan Court (where I first worked) when there was a vacancy.

Q. What are the qualifications required for a magistrate? There are no express provisions in the Magistrates Ordinance.

A. In practice, I think he must have been a solicitor or barrister for at least three years, but there appears to be no such requirement in the Ordinance. The area of law applied in the magistracies is not large, so it is more a matter of personality than qualifications. Paper requirements are not so important as the quality as an individual.

Q. Do you think magistrates should sit on the Bench immediately when they arrive in Hong Kong, before they have a chance to get accustomed to local conditions?

A. I think this is just as good as any other way. It is impossible to get any clear information about local customs and attitudes, because no two persons tell you the same thing and your own views change all the time, even week by week. One has to learn by experience, and might as well do so on the Bench. There are more assessors to assist a new magistrate.

Q. Magistrates have a duty to take down minutes of proceedings. Do you think it's a great burden, given that they are also expected to give their decisions within a short time after hearing the evidence? What about having shorthand writers in the magistracies, as they always do in the High Court?

A. I spent five years getting one degree and two years getting another, and it's been notes-taking all the time. Writing is more or less an automatism. I think it may be a good idea to have tape-recorders. As for taking shorthand, I doubt whether we can have sufficient stenographers with standards high enough, for English is not their mother tongue.

Q. We know that each case turns on its own merits, but there must be some general principles in sentencing. What are the major factors affecting you in giving sentences?

A. In the Juvenile Court we operate on a constructive basis, working out what's best in the interest of the children in making every effort to reform them, by considering the probation reports, etc. I don't like to think of punishment per se.

Q. What do you think of the new duty lawyer scheme?

A. It does not apply to Juvenile Courts, and I think it should be extended to cover them. All cases involving juveniles are heard in Juvenile Courts except homicide, and these include such serious offences as rape and arson. If a person over sixteen is charged with, say, rape, he is tried in the Supreme Court and can have legal aid. If he is under sixteen, he is tried here without such an option, even though the Crown may be represented by Crown Counsel. So one could be better off if one is older. I think a defence lawyer is especially necessary in a case where the interests of the child and his parents conflict.

Q. Do you think the public in Hong Kong are sufficiently informed of and educated in their legal rights and the machinery of justice?

A. What legal rights have they got? When ten or more people meet together in public without police permission, it's unlawful assembly. When you are walking at night in the street, it's loitering if you cannot give a reasonable excuse, and if you have a watch with you you are in possession of something which may be stolen.

There is no recognised group in Hong Kong searching for rights for the individual, and no power blocs interested in rights being given. The fact that there is more freedom in Hong Kong than in the surrounding countries appears to owe more to a benevolent administration than to the actual laws.

However, I am exaggerating a bit as there are rights as to when a person should be brought before court, a juvenile's right to bail, right to counsel, etc and it is good if people can be informed of these.

Q. What about the legal system and how it works? Should they know about it?

A. They are fortunate if they don't know about the legal system. If they know that they may be committing a crime every time they're walking down the streets, they'll be in a state of terror whenever they see a policeman. It's no use knowing the law if the law isn't going to help one much anyway.

Q. What are your overall impressions of Hong Kong? Having been a Juvenile Court magistrate for two years, what have you learnt about, say, Hong Kong's education system or social welfare?

A. Living here makes me understand how important democracy is. In Hong Kong there's no way you can really go if you object to something except writing to the South China Morning Post. It's sometimes very frustrating. In a democracy you at least have a sanction to get somebody to look into things. I also appreciate the fact that for practical reasons it cannot be a democracy and that some of the more liberal elements in the community are in the administration. It is just that before coming here, I could see the inefficiencies in a democracy, while I can now see its advantages.

As a Juvenile Court magistrate, I can only say that the education system here is wonderful. Juvenile delinquency here would appear to be only about 10% of that in the West. Perhaps the poor little souls are so crushed that they don't dare to do anything.

As for social welfare, the system seems to be founded on the British-American model, with social workers trained by English and US teachers, some of whom I know and respect personally, but I doubt whether it has such a large relevance to conditions in Hong Kong. We have highly-trained social workers with middle class values from universities, with special training to look after a British-American type caseload. Then we have one to two million people living in sub-standard conditions, with few people to deal with them, to provide facilities for them. In other words, we have a sophisticated system to deal with rather unsophisticated problems.

For example, I would have a care and protection case with a girl sleeping with a boy. She needs special guidance for her sexual problems. I would get a very good social welfare report, made by an understanding social worker, who has the problem completely under control and has coped with the parents. Excellent work by western standards. Then in the same morning I may get a hawker case, a twelve-year-old girl hawking when her mother is sick. I would get another social welfare report, (to take a somewhat extreme case) showing that she has seven or eight brothers and sisters, all living in the back of a derelict truck. One is mentally retarded, one suffering from malnutrition, the father has no job or low earnings, and the mother is dangerously ill, having had a breakdown in coping with the situation. And then I would think, why do we have a university graduate worrying about that stupid girl's sexual problems, while the problems of these eight kids are so immense in comparison? Perhaps the social problems of Hong Kong are so immense that Government cannot look at them in detail and just deals with those it can. It seizes on one or two problems and works on them, so that the Social Welfare Department feels that it's doing something. There are always a massive number of people who appear to need help here. The problems of the refugees will also place a large burden on social welfare in Hong Kong.

Q. What do you think law students should and can do for society?

A. I think they should be much more socially aware, and try to help people, even at the risk of their future career to a certain extent. I know it's hard in money-crazy Hong Kong to accept any other values, but they should accept other values, and know that the Rule of Law is more important than the Rule of Money. When a client comes in, you should think first of helping him, and only second of being paid. But I'm not too sure how law students can help too much.

In New Zealand, the Law Society does take a stand on people's rights. If a law is passed which is unfair and is an abuse of the Rule of Law, the Law Society goes public and says it's bad law. I think the Law Society in Hong Kong should also be prepared to do the same, to stand up and say, 'This is bad law.' At present, many members of Judiciary seem to be fighting for people's rights and individual liberties but they have few allies.

Q. Finally, what are your hobbies and do you have any religion?

A. My hobbies are music, reading, fishing, boating, and studying people. I am a Christian, but I do not believe in the established churches. The Church of England appears to be an institution often concerned more with matters of status and social order than with religion. The Roman Catholic Church with its cold authority and its stand on birth control and other things repels me. In Hong Kong, only one side of Christianity is practised in the rules and regulations; whilst little of the deeper meaning of love and humanity gets through. I've never seen so many missionaries under foot and so little Christianity practised.

— Albert Chen and
Judy Tsang

THE OTHER SIDE OF THE BENCH

- an interview with

Mr Bernard Joseph Moylan -

Wearing metal-rimmed glasses, this Sanpokong magistrate, a man of 40, has a bulkiness (which does not necessarily imply clumsiness, I beg your pardon!) that gives him a stature demanding respect. Yet he proves to be very friendly.

THE CHANGE. 1958, he has come to Hong Kong on many occasions. He got to know the place well. Having worked for ten years as a Crown Counsel in Australia, he made a decisive change some six years ago. The desire to see things from the other side of the Bench landed him at Sanpokong (not far from the Airport). Just as in many other cases, personal preference keeps him there. According to him, magistrates are transferred only if they so wish.

Although more than ninety percent of cases in Hong Kong are tried in the magistracies, Mr. Moylan himself does not seem to feel much pressure. At present, he sits in a trial court and normally deals with four or five cases every day. In a court supposed to be of summary jurisdiction, great points of law do not often arise and not much time is expected to be spent on these cases.

FRUSTRATION? He does, however, admit that there may sometimes be frustration when the prosecution cases are not done as well as they should be. 'The police are sometimes unfair on their own witnesses for not interviewing them properly and not preparing them well beforehand.' When the defendant is unrepresented, it is the magistrate's responsibility to take care that every point that the defendant has is put to the witnesses and any defence that he may have is raised. He adds that the standard of counsel, in general, varies enormously. And when he says that some actually 'practise on' the magistrates, he refers both to members of the Bar and Crown Counsel.



Mr. Ramay

DUTY LAWYERS. Now that there is the Duty Lawyer Scheme (See Law Media, vol 1, 1979) part of a magistrate's responsibility is relieved. When a defendant is eligible for a duty lawyer's services, a magistrate no longer has to direct and induce the defendant, during the proceedings itself, to disclose matters that may be to the latter's advantage. The duty lawyer interviews the defendant and builds up a line of defence before the trial.

It is inevitable that the scheme only applies to a limited category of cases in the initial stages of its introduction. However, one can be assured that the scheme is not at all deficient in this respect. As his experience tells us, whenever the scheme is to start working, it is to be on these cases first. That is, these are the cases that need the service more urgently than the others.

THE PRACTICES. You have probably noticed that magistrates take their own notes during the proceedings. This appears to Mr. Moylan the only practical and reliable way to keep a record. To have short-hand writers is nice but it is not necessary to have them in the magistracies. Tape-recording proves to be unpopular among magistrates who have tried it because it is a potential source of embarrassment when no written notes are taken and the proceedings are not clearly tape-recorded.

There are cases in which he can give his decision as soon as the defendant's case is over. But as it is his practice to give reasons for his decisions, he sometimes has to adjourn for about twenty minutes. When he finds it necessary to reconsider the evidence as a whole, he may adjourn for a day or even a week. Therefore there is really no haste.

Throughout his six years here, he has, of his own motion, exercised his statutory power to review his decision once. The Crown, through Crown Counsel's application, requests him to do so about three times a year. Some of these applications, however, are withdrawn when the counsels receive the notes of proceedings. So far, there has only been one case in which the defence asked for a review.

SENTENCING. As regards sentencing there are various guidelines to assist magistrates. While Mr. Moylan himself does not take hawker cases, he knows that the disparity in the amount of fines is always kept within upper and lower limits. The locality where a case comes from is one of the determining factors, as is the age of the hawker.

In general, the two Cantonese-speaking magistrates in Sanpoking are of great help in sharing their local experience with the others.

Advisers (in adult courts) and assessors (in juvenile courts) are another source of help. Most of them, however, are posted at North Kowloon Magistracy where newly arrived magistrates serve. Mr. Moylan does occasionally sit in a juvenile court in Sanpokong with an assessor and he finds the latter's experience invaluable although, he concedes, they are not always in agreement.

Furthermore, the Magistrates Association organises an annual conference on sentencing. Supreme Court judges are invited to discuss with the magistrates the difficult cases of the years so as to keep people within similar bounds.

But one particular difficulty with sentencing, according to him, is that in cases when unrepresented defendants plead guilty, they often do not disclosed very much to help their own mitigation because of reluctance of other reasons. Therefore he makes full use of pre-sentence reports of probation officers even when he is not contemplating probation. In this way, he gets an idea of the defendants' family backgrounds so that he can give the proper sentences. Accordingly he feels that the work of probation officers in the magistracies is to be commended.

INTERPRETERS. What about the court interpreters? 'Their work is of the greatest importance' is the reply. Although his own interpreter is experienced, misinterpretation is unavoidable. 'When such is pointed out to him, he is always happy to consider it, and, if necessary, correct it.' However, he finds it intolerable to see some being invariably rude to hawkers, members of the public and defendants. For instance, in hawker cases, some just call the defendant's name, announce the item of the charge and demand to know whether he admits it or not. Preferably the whole charge should be read to the defendant and an opportunity to speak properly in reply should be given to him. Mr. Moylan thinks that a magistrate who has worked here for over two years should have picked up sufficient Cantonese to give a check on the interpreters.

REFORMS. On talking about possible reforms in the magistrates court system, he would like to see that 'anyone facing a serious charge who wants to be legally represented could be represented'. Otherwise the present procedure is already the best to see whether the prosecution has established a person's guilt.

On **HIMSELF.** Being unmarried, Mr. Moylan spends most of this leisure hours reading. He swims and plays tennis in the summer. On weekends he goes hiking which he rightly thinks is one of the few ways to see Hong Kong in depth.

After his 2½ years' contract expires, he will most probably apply for another one. But, of course, he will take a leave before returning to work. A leave? A chance to escape from everyday pressures? 'It all depends on how you feel.' Perhaps he is reiterating that he feels not much pressure from his work and so indeed why should he "escape"? Personally, he thinks that sixty is the acceptable retirement age for magistrates.

As he puts it, his work is 'satisfying though definitely not rewarding in terms of pay'. What he means by satisfaction is not that he takes matters so leisurely that he does not give them their due consideration. His occasional frustration is already an indication that he does care about the proceedings. Weighing evidence and giving an appropriate judgment may well be other areas which receive his careful thoughts.

A **CASE.** In fact, he is kind enough to tell us what he was deliberating before our interview. In that particular case (don't learn the facts please!) the defendant, who has jumped bail on a charge of drug trafficking, was spotted by a policeman. He broke away, climbed over a fence and when he fell down some thirty feet, he broke some of his ribs and injured his bladder. He was acquitted of the former charge. As for the charge of escaping from lawful custody and assaulting policeman, Mr. Moylan feels that the defendant has suffered enough and is prepared to give him an absolute discharge.

Maybe it is fairness that is an important part of his character as a typical arbiter. Above all, it is worth noting that he is able to derive satisfaction from his work among his daily problems and occasional frustration.

ON LAW STUDENTS. Finally, on learning that our law course is so compact, Mr. Moylan agrees with the view that intensive study has to be done. Ironically he says it is necessary to read the cases to decide they are irrelevant. But he could manage to read the papers and play tennis when he had, on the average, a fifteen-lecture week in his university days. Perhaps his question is worth pondering, 'Don't you (people) take time off to put in the Mark Six from time to time?'

— Anthony Shin and Albet Chen

RIGHT OF PETITION

AND UNLAWFUL ASSEMBLY

The following is condensed from Mr. Patrick Chan's speech at the talk on the law of unlawful assembly in Hong Kong at the Chemistry Theatre of the University on the afternoon of Jan. 23, 1979. It was then in the heat of the Boat People Affair. Fifty-six boat people from the Yaumati typhoon shelter and their 11 supporters were arrested on Jan. 7 in the course of presenting a petition to the Governor for early resettlement and charged with unlawful assembly, for which they were later found guilty by Magistrate O'Connor on Feb. 13. Mr. Chan was a defence counsel in the CTV case last year, in which some petitioners were convicted of the same offence.

The right to petition the Governor

One of the many means to voice our complaints is by way of petition. In Britain, such a right of petitioning the Crown was recognised indirectly in the Magna Carta, and was subsequently confirmed in the Bill of Rights 1689. Petitions can be made to the Crown or to Parliament for the redress of private of local grievances, or for remedies which the Courts of Law cannot grant. It must be noted that the Bill has no local application and our position follows that of the Common Law. At Common Law such a right exists and since it is applicable to the local circumstances of Hong Kong, it follows that we have such a right too (section 3 (1) (a), Application of English Law Ordinance, Cap 88). But in Britain the petition is made to the Crown while here, it is made to the Governor. Is the Governor in the same position as the Crown? Is he entitled to deal with such petitions? This begs the question of what is the extent and scope of the powers of the Governor. The Governor can do, not what the Crown can do, but only what the Crown has entrusted to him, or what is vested in him by the local Legislature. As far as the Letters Patent, Royal Instructions and local Ordinances are concerned, there is no such authority granted to the Governor to deal with petitions, but it is submitted that there are provisions in the Colonial Regulations dealing with this though the document is kept confidential.

The right of assembly

Having established that there is a right here to petition the Governor, the big question which then arises is whether, during the process of petition, it will constitute an unlawful assembly. In general, the right of petition should include a right to assemble to draft the petition as well as a right to go and hand in the petition, for otherwise, it is not petitioning in the proper sense of the word. It is necessary at this stage to determine what is an assembly? Have we got a right to assembly? When will an assembly be unlawful?

Firstly, a right to assembly. Unfortunately, the Law recognises a right of petition but not a right of assembly. In Britain, there was no provision in the Magna Carta or in the Bill of Rights dealing with this. The Common Law answer is also in the negative. Since the Common Law has local application in Hong Kong, it follows that we don't have such a right either. It can be argued that the right of assembly is nothing more than a combination of individual liberty of the person and individual liberty of speech. Since these two rights are so firmly established in the British Constitution, the right of assembly which is a 'product' of their combination, should be a recognised right as well. However, the attitude of the Courts remains unchanged.

What is an assembly and when is it unlawful?

There seems to be no legal definition of 'assembly'. It is usually regarded as a synonym of 'meeting'. (As the right of assembly is a residuary right which is not legally recognised, it is necessary to know the restrictions imposed by the law in order to determine its extent, if it at all exists.) At common law, an assembly is unlawful when the purpose of the assembly is unlawful or when unlawful means are used to achieve a lawful purpose. It usually involves a breach of peace and order. This definition is adopted by Britain and other Commonwealth countries, such as Canada, Australia, New Zealand. Here, we have the Summary Offences Ordinance 1948 which says an assembly is unlawful if, apart from causing a breach of peace and order, it is without a licence. The same Ordinance also defines 'meeting' as a gathering of persons for discussing matters of public interest. This Ordinance has now been replaced by the Public Order Ordinance 1967. By section 2 of the new Ordinance, a meeting is 'any gathering or assembly of persons which is convened or organised for any purpose or at which any person assumes or attempts to assume control or leadership'. Exceptions are meetings held by any public body or held for the purpose of carrying out any duty or exercising any power imposed or conferred by any Ordinance. 'Public body' includes the Executive Council, Legislative Council, Urban Council or any Government bodies. The number of persons is not defined, but normally, three are required to form a 'meeting'. (Unlawful public gathering, as distinct from unlawful public meeting, means a gathering or assembly of ten or more person in a public place without a licence.)

A public meeting is one held in any place to which the public or any section of the public are entitled or permitted to have access, either paid or unpaid. Such a definition is wide enough to cover meetings such as funeral meetings, university seminars or even dinner parties.

Presumably, a public meeting does not include a public procession though both are different forms of public assembly. The Ordinance does not specifically define procession. The Common Law definition says a procession is 'a body of persons who are moving along a route'. This definition is most unsatisfactory. Every one has the right to walk along a street or go to a certain place, and when incidentally, a group of persons, complete strangers to each other, walk in the same direction, does this constitute a procession? Furthermore, the definition is silent on the requirement of some form of organisation.

Assembly without a licence

Having discussed what is a public meeting and what is a public procession, it is necessary to determine when is such activities unlawful. Section 7(1) of the Ordinance says a public assembly (meeting or procession) requires a licence from the Police. An application for such a licence is to be made 7 days in advance to the Commissioner of Police. And a public assembly is deemed to be unlawful if without a licence. As said earlier, the Common Law definition of unlawful assembly is where there is a breach of peace and order, but here, an assembly is also unlawful if it is unlicensed notwithstanding that there is no disorderly activities. Though an unlicensed assembly is deemed to be unlawful, it is submitted that the defence can show that the assembly is conducted in a peaceful and orderly manner. So the onus of proof is on the defendant and not on the prosecution. The position is reversed if the assembly is licensed but conducted in a riotous manner.

On a charge of unlawful assembly, the defendant can escape liability if he can put up certain valid and convincing defences such as involuntary presence at the scene or that he has acted on a representation made by the Police authority that a licence has been issued or that the assembly is a licensed one, etc.

Going back to the very first question, will an exercise of the right of petition infringe the rules as to unlawful assembly? According to the definition, it will — there are more than 3 persons moving along a route in an organised manner without a licence. This is both unlawful meeting as well as unlawful procession. But the problem is that these people are exercising their legal right of petition, (and it is necessary that during the petition, there should be a meeting as well as a procession.) The judge in the case where the staffs of CTV were arrested during the petition recognised that a right of petition existed but avoided the question as to whether this would constitute an unlawful assembly. There, a police constable told the petitioners that to walk two by two would not constitute unlawful procession. The judge said there was a mistake of law, and since this would not be a defence, the petitioners were guilty. At the end of the day, the real question was still unanswered.

Other executive powers in respect of assemblies

The Police have extensive powers to control all public assemblies. A person in possession of an offensive weapon at a public meeting is guilty of an offence; all participants are obliged to comply with the conditions specified in the licence etc. It is also worth noting that the Governor-in-Council may prohibit all public gatherings for a period of not more than six months while the Commissioner of Police may, if it appears to him to be in the interest of the public, prohibit the holding of all such gatherings with no time limit. There is no answer as to why the power of the Commissioner should be wider than the Governor.

— reported and translated (from Cantonese) by Albert Bux

NOTE It is perhaps worth noting the grounds for Mr. O'Connor's decision in the Boat People case. He rejected the two main arguments put forward by defence counsel Mr. Patrick Yu, ie (i) that the word 'deemed' in s 12(2) of the Public Order Ordinance introduces a rebuttable and not conclusive presumption which can be rebutted by showing the absence of criminal intent or disorderly behaviour which would result in a breach of the peace so that the assembly would not be unlawful at common law; (ii) that on the facts of the case the defendants had 'lawful authority or reasonable excuse' within s 12(3) (a) of the Ordinance, which would constitute a defence.

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