

**KEYNOTE ADDRESS OF THE ATTORNEY-GENERAL
AT THE CRIMINAL JUSTICE CONFERENCE 2013
NATIONAL UNIVERSITY OF SINGAPORE (17 MAY 2013)**

ENHANCING “ACCESS TO JUSTICE”

A very good morning

Prof Simon Chesterman, Dean, NUS Faculty of Law

Students,

Friends,

Ladies & Gentlemen

Introduction

1. I am delighted to be here this morning to deliver the keynote address for the second Criminal Justice Conference. A Conference such as this is of particular significance as it serves as a vital platform to discuss some of the more pressing issues pertaining to the criminal justice process and the values that underpin it. Such discussions are both essential and important because, in many ways, the principles and ideals that underpin our criminal justice system also form the foundational ethical building blocks of our society. I accept the reality that each of our individual points of view are informed by our respective perspectives and experiences, and much like any debate informed by a multitude of equally well-reasoned and legitimate views, there is unlikely to be unanimity on the direction the law should be headed, or whether the ideas propounded by the various speakers in this Conference ought to inform the shape of the criminal justice system in the years to come.

2. Be that as it may, I am positive that most would agree with the basic proposition that we must all aim to further the goal of providing “access to justice”. Indeed, the intuitively unobjectionable nature of the proposition is not lost on the Conference organizers this year, who have dedicated the entire first day’s proceedings to this very topic. However, what does the phrase “access to justice” really mean? On one level, in line with our intuitive understanding of the import of the phrase, “access to justice” is about ensuring that legal representation is not exclusively available to the well-heeled, or to the well-connected. Understandably then, when those in the legal

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fraternity discuss how we can further society's "access to justice", we almost invariably do so by exploring ideas on how a larger proportion of individuals who have been accused of a crime can receive legal representation. Undoubtedly that is an important facet of "access to justice". However, I would suggest that "access to justice" is a much more variegated concept and involves much more than just the question of whether an accused person can afford or is provided legal representation.

Adequacy of Criminal Legal Representation

3. For starters, we can all agree that there is a significant difference between *legal representation* and *competent and adequate legal representation*. Having had the privilege of presiding over several criminal proceedings during my time in the High Court, I would observe that a very large proportion of our criminal law practitioners exhibit the very attributes that exemplify the best traditions of the Bar. Many of them undertake assignments on a *pro-bono* basis. However, occasionally, and thankfully very infrequently, I have had situations where the legal representation has left much to be desired. There have also been instances in recent years in both the High Court and the Court of Appeal where the Courts have made clear their disquiet about the adequacy or competence of the legal representation afforded by counsel. Now, I should add that these represent exceedingly rare occurrences, and I do not in any way suggest these situations to constitute the norm. But given the weighty issues of life and liberty that are invariably involved in such cases, it may be fair to say that one such instance of inadequate legal representation is perhaps already one too many. Although the Courts have done admirably in safeguarding against such risks, in an adversarial tri-partite common-law system where the prosecution and the defence are typically on opposing ends and where the judge's role is largely limited to that of umpire and adjudicator, it cannot be seriously disputed that the potential for injustice to be occasioned is exponentially enhanced where the accused receives inadequate or incompetent legal representation. As the former Chief Justice Chan Sek Keong highlighted in his 2011 Opening of Legal Year Speech, the Criminal Bar's role in the criminal legal process is indispensable and they keep "an eye on the proper

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administration of criminal justice through their steadfast defence of their clients and their legal rights.”¹

4. Thankfully, as I had intimated earlier, situations where there had been inadequate or incompetent legal representation are rare aberrations. The Criminal Bar, for the most part, comprise an outstanding pool of advocates who are very dedicated to their cause. Though no doubt not the only or most important reason, I’d like to think that, to some extent, this is a development engendered through the flow of talent from my Chambers to the Criminal Bar. Indeed, it should not escape the attention of those who practise criminal law that many of the leading lights in the Criminal Bar had themselves previously been prosecutors in the Attorney-General’s Chambers. Amongst the long list of our illustrious alumni who are now doyens of the Criminal Bar include Mr Michael Khoo SC, Mr Tan Chee Meng SC, Mr Sant Singh SC, Mr Hamidul Haq and Mr Wendell Wong. Now, let me be absolutely clear: my Chambers ought not, and should not, have a monopoly on talent in the field of criminal law. Such a trend of DPPs leaving to practise at the Bar, and who then proceed to make their mark, represents a healthy development, and it ensures the constant renewal of ideas and perspectives both at the Criminal Bar and in my Chambers.

AGC’s Involvement in Criminal Justice Initiatives

5. Of course, renewal represents an ever-continuing process, and we must always be sensitive to the need to train the next generation of criminal law practitioners and to sensitize students to the virtues of criminal practice. My Chambers has been, and continues to be, committed to this endeavour. I would do no more than state, very broadly, some of the initiatives that my Chambers has invested in. The running of the Advanced Criminal Legal Process course over the past two years in the Faculty of Law at the National University of Singapore represents such an endeavour. Every year, students in that course are given the opportunity to get a first-hand sense of the

¹ See Chan Sek Keong CJ, *Opening of Legal Year 2011 – Response of Chief Justice Chan Sek Keong*, available at: <http://app.supremecourt.gov.sg/default.aspx?pgid=3621&printFriendly=true> (date accessed: 7 May 2013), at [8].

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intricacies of criminal legal practice, and are subject to the rigour of criminal practice through the platform of mock moots. As part of the course, students participate in a dialogue session with the AG. I was impressed with their enthusiasm when I met them earlier this year. In the same vein, my Chambers is also very intimately involved in the running and management of the Criminal Litigation Practice module of the Part B course conducted by the Singapore Institute of Legal Education. There is no reason why we cannot or should not engage them while they are still young – true to that spirit, two of my young prosecutors recently gave a well-received presentation in a primary school, complete with a Lego mock-up of a court room, on the administration of criminal justice!

6. My Chambers is also committed to contribute to the wealth of jurisprudence on matters relating to criminal law and criminal legal developments. To state one example, some of my officers, together with the Deputy Chief District Judge of the Subordinate Courts, published a well-received commentary last year on the revised Criminal Procedure Code to assist the various stakeholders understand the scope and breadth of the Code's numerous provisions.² Initiatives such as these represent but a small sampling of our concerted efforts to engage the next generation of criminal law practitioners and to ensure that we share our know-how so that they have adequate knowledge to discharge their roles with distinction.

7. I pause at this juncture to state a rather obvious point but one that, given the adversarial nature of the court process, is nonetheless worth highlighting. Our involvement in the initiatives that I have just discussed were deliberately fashioned to allow my Chambers to contribute not only to the development of the next generation of *prosecutors*, but to contribute more broadly to building up the next generation of individuals who, in some way, play a critical role in the criminal legal process, whether in my Chambers as prosecutors, as defence counsel, or even as adjudicators of criminal law cases as District Judges or Magistrates. Just as justice and the public interest is not served by an incompetent prosecutor who is unable to advance the best

² Jennifer Marie & Mohamed Faizal Mohamed Abdul Kadir eds, *The Criminal Procedure Code of Singapore: Annotations & Commentary* (Academy Publishing: 2012).

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possible case for the prosecution, so too justice is detracted when an accused person is defended by a counsel who is not fully *au fait* with the law, or where the Judicial Officer is not fully sensitized to the principles that ought to guide the adjudication process. As I indicated earlier, every stakeholder represents an important player in the criminal law system – for us to genuinely desire “access to justice”, it is imperative that each and every single constituent in the criminal justice process execute their roles not only to the best of their ability, but equally with distinction and dignity. In this regard, my Chambers and the Criminal Bar recently launched the Joint Code of Practice to encapsulate best practices to assist the court in ensuring a speedy and efficient trial process, and in assisting the Court in arriving at a just outcome. This was a very significant initiative because it is the first Joint Code of its kind and it was implemented on a voluntary basis and not pursuant to any statutory obligation.

8. I have thus far touched on the importance not just of legal representation, but on the *quality of legal representation* in ensuring “access to justice”. But, taking a further step back, it is my view that accessibility to criminal justice is not merely a function of ensuring that the various stakeholders in the criminal legal process discharge their duties diligently, but is also determined by the equity of the criminal legal framework as a whole and the values and beliefs that the framework embraces. In this regard, I can do no better than to place reliance on the succinct but insightful observation made by an advocate in the United Kingdom, who in making the point that the concept of “access to justice” represents a much broader concept than merely ensuring access to the Courts and to litigation, stated that he viewed the matter of “access to justice” as encompassing “a recognition that everyone is entitled to the protection of the law and that rights are meaningless unless they can be enforced. It is about protecting ordinary and vulnerable people and solving their problems.”³ It is a characterization of “access to justice” that, I think, impresses the point that, at its heart, “access to justice” is not so much only a question of the extent of availability of legal aid but really about the wider matter of ensuring fairness and equity, and of making sure that the problems of society are addressed and solved. Such a

³ See the comments attributed to Michael Mansfield QC as reported in Jon Robbins, “Access to Justice is a Fine Concept. What does it mean in view of cuts to legal aid?” *The Guardian* (6 October 2011).

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characterization also makes clear that “access to justice” is about ensuring that the weak and vulnerable amongst us are given due protection of the law and their rights jealously safeguarded.

Changes to the Law to Facilitate Access to Justice

9. On that note, it is important to observe that the desire to protect ordinary and vulnerable people underpins many of the changes to the legislative framework and investigative policies in recent times. The introduction of a criminal disclosure regime in 2010 by way of the changes to the Criminal Procedure Code, for example, is informed by the desire to level the perceived disparities in the playing field between the Prosecution and the Defence.⁴ Lest it be suggested that the aim of the changes to the Criminal Procedure Code is to benefit one constituent at the expense of another, the Criminal Procedure Code in fact imposes *quid pro quo* obligations on *both* the accused and the Prosecution to disclose certain aspects of their respective cases. The Criminal Procedure Code also seeks to ensure that the playing field is not inordinately distorted just because an accused individual who is acting *pro se* may, at times, not necessarily have a full appreciation of his obligations under the law. Indeed, it is precisely for that reason that there are differing repercussions placed on accused persons represented by counsel and those who are unrepresented in failing to articulate any objections of law to his prosecution.⁵ Parliament, in its wisdom, has also put legislative provisions in place to ensure that the accused individual who has no legal representation is apprised by the Court of the disclosure requirements under the law so that such an individual would not inadvertently fail to discharge such obligations.⁶

10. In introducing for the first time community sentencing options, the revisions to the Criminal Procedure Code have also afforded the Courts a more calibrated tool to deal with offenders who exhibit anti-social behavior or who had offended as a result of a mental disorder or mental illness. It is generally accepted that in many of such

⁴ See Parts IX and X of the Criminal Procedure Code.

⁵ See for example section 165(2) of Criminal Procedure Code.

⁶ See for example section 164 of Criminal Procedure Code.

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cases, an order that compels the individual to seek certain forms of medical treatment would be more appropriate than incarcerating the individual. The existence of such community-based sentencing options ensures that the accused, in appropriate cases, can be sentenced to a punishment where he or she remains plugged in to the wider society during his sentence, and consequently, minimize the likelihood of re-offending in future.⁷ Of course, it would be readily appreciated that such a system is not fool-proof and not without its own draw-backs – a system that allows the Courts to sentence an accused person to a community sentence necessarily assumes that the person *must be charged with an offence to begin with*. This may not be appropriate in all cases since the institution of a prosecution can occasionally visit an inordinate amount of stress on individuals afflicted with mental disorders. With that in mind, as I have stressed in my Opening of Legal Year speech,⁸ my Chambers is committed to finding ways to ensure that intellectually disabled and mentally disordered offenders are identified early on in the investigative process both to ensure that they be treated in a manner sensitive to their needs as well as to allow us to consider the propriety of having them undergo suitable rehabilitative programs as opposed to being put through the rigours of the conventional criminal justice process.

11. I am pleased to report that steps have since been taken to cater for the special needs of persons with intellectual disabilities or mental disorders. To address this group of offenders, AGC recently launched a pilot project to administer a simple screening test, the Hayes Ability Screening Index or HASI, to identify persons with intellectual disabilities so that they can receive appropriate assistance from volunteers, Appropriate Adults, during police interviews. The Appropriate Adults are generally persons from the community with special skills to assist vulnerable persons such as juveniles and persons with intellectual disabilities. Their role is to facilitate the communication of information between the investigation officer and the person with intellectual disabilities, so as to ensure that the questions asked and the answers

⁷ Jennifer Marie & Mohamed Faizal Mohamed Abdul Kadir eds, *The Criminal Procedure Code of Singapore: Annotations & Commentary* (Academy Publishing: 2012), at [17.002].

⁸ AG Steven Chong S.C., *Opening of Legal Year 2013 – Speech of the Attorney-General*, available at: [http://app.agc.gov.sg/DATA/0/Docs/NewsFiles/AGC%20Press%20Release%2004.01.13%20\[OLY13\].pdf](http://app.agc.gov.sg/DATA/0/Docs/NewsFiles/AGC%20Press%20Release%2004.01.13%20[OLY13].pdf) (date accessed: 7 May 2013), at [13].

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provided are not misunderstood. This will serve to enhance the reliability of statements taken from persons with intellectual disabilities and in the process enhance the “Access to Justice” to this group of alleged offenders.

12. “Access to justice” also incorporates the need for efficient investigative and prosecutorial practices and expeditious investigations and prosecutions. This is, of course, easier said than done: the reality of investigative work is that it often takes a significant amount of time for a sufficiently comprehensive and rigorous investigation to be conducted. This is exacerbated by the reality that often times, the investigative agency lies at the mercy of third party institutions which, for a variety of legitimate reasons, require a fair amount of time to furnish the information required for investigations. While this state of affairs is understandable, and one must never sacrifice due diligence for expediency, we ought to, where possible, see how we can render the investigative process even more efficient without sacrificing comprehensiveness. For quite self-evident reasons, the need to do so is particularly acute in cases where the accused person is in remand. It is with this in mind that my Chambers had recently launched an initiative for the embedment of selected prosecutors in the enforcement agencies. As I have indicated previously, such an initiative would allow some of my more experienced prosecutors to provide immediate assistance to the investigative agencies. Through such a process, it is hoped that the time required for investigations to be wrapped up, and for matters to be concluded, would be significantly reduced without any concomitant reduction in the standard of investigative work.

Shift in Jurisprudential Trends

13. These developments have been accompanied by a concomitant shift in the jurisprudential approach by the Courts in the past few years. Prof Michael Hor from

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the Faculty of Law here at the National University of Singapore summed those developments up in the following fashion:⁹

Careful observers of the Singapore criminal justice system would have detected a subtle but significant change in judicial attitude towards the ubiquitous question of where the balance ought to be struck between the apparently fundamentally-opposed values of crime control and due process – that proverbial yin and yang of the criminal process. Since 2006, the Court of Appeal has led an almost silent revolution in restoring some measure of due process into what was generally seen to have been a situation of crime control run riot...

14. While it may be possible to take issue with Prof Hor's characterization of the situation seven years back as having been one where "crime control run riot", it would be difficult to disagree with his observation that there has been a subtle, but discernible, shift in the judicial attitudes to criminal law. The case that many view as being most emblematic of such a shift is the Court of Appeal decision of *Muhammad bin Kadar & Anor v Public Prosecutor*,¹⁰ a case which I had the privilege of being on the coram for during my time in the Supreme Court. In that case, the Court of Appeal grafted upon the legislative framework a common law requirement of disclosure by the Prosecution in certain circumstances, overturning previous precedent that hinted towards the absence of such a duty on the part of the Prosecution.¹¹

15. I would also add to Prof Hor's observations that I have alluded to of the subtle change in the balance struck between due process and crime control by highlighting that the relationship between the constituents involved in the criminal legal process has also, to some extent, organically developed. The Supreme Court Bench in recent cases have not shied away from making pointed observations about perceived

⁹ Michael Hor, "Police Confessions in the "New Normal", *Criminal Law Conference 2011*, available at <https://docs.google.com/viewer?url=http://docs.lawsociety.org.sg/criminallaw/docs/Police+Confessions+in+the+New+Normal.pdf&embedded=true> (date accessed: 7 May 2013).

¹⁰ [2011] 3 SLR 1205 (Court of Appeal).

¹¹ *Selvarajan James v PP* [2000] 2 SLR(R) 946.

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shortcomings of prosecutions, whether be it the arguments canvassed by the Prosecution, or the conduct of those involved in the investigative processes. This is exactly as it should be. A healthy criminal justice system is one where each constituent acts as an effective check and balance of the other. On my part, I assure you that all such criticism by the Courts is taken very seriously by me and my Chambers, and that we have always, and will continue to, reflect on how we can, as an organization, discharge our duties with even greater distinction and fairness.

16. Having regard to these connected, yet separate, trends, it would not be inaccurate to suggest that there has never been a better time to practise criminal law. The confluence of circumstances, namely the watershed changes to the legislative landscape, my Chambers' approach to criminal law and justice, and the jurisprudential leanings of the Court in recent times have significantly addressed the concerns in some quarters of the Bar and academia that the criminal litigation process was overly weighted in favour of the Prosecution. While I may not agree with such perceptions, given the changes that have taken place in the domestic criminal legal landscape as I have just outlined, these perceptions can only have diminished force in the present day and age.

Student Involvement in Criminal Law Initiatives

17. Notwithstanding the clear winds of change, there remains some concern about the apparent lack of interest in criminal law in recent years amongst the student population.¹² This is especially disconcerting when one takes cognizance of the fact that a large proportion of students actually do enter law school with idealistic aspirations to practice criminal law, but in the course of their time in law school, decide that they wish to dedicate their practice to other areas of the law. Seen on its

¹² This was, for example, the subject of much discussion during the Opening of Legal Year 2011. See Chan Sek Keong CJ, *Opening of Legal Year 2011 – Response of Chief Justice Chan Sek Keong*, available at: <http://app.supremecourt.gov.sg/default.aspx?pgid=3621&printFriendly=true> (date accessed: 7 May 2013), at [8] to [10]. See also AG Sundaresh Menon (as he then was), *Opening of Legal Year 2011 – Speech of the Attorney-General*, available at: <http://app.agc.gov.sg/DATA/0/Docs/NewsFiles/OpeningofLegalYear2011.pdf> (date accessed: 7 May 2013), at [8] to [11].

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own, this is not necessarily an unhealthy development, since criminal legal practice is but a relatively small sub-set of a much larger, and diverse, eco-system of legal opportunities and students should ultimately pursue the fields which are of especial interest to them. My concern, however, lies in the popular perception that the decision not to pursue criminal practice on the part of a sizeable proportion of students is motivated by push, rather than pull, factors. Some of the oft-cited concerns about exploring a career in the criminal bar are the stresses that come with fighting for the life and liberty of one's client, and the less financially lucrative nature of criminal practice when contrasted with other areas of law.¹³ On the assumption these concerns possess a kernel of truth, these are significant challenges that we, as a legal community, must confront, deliberate upon, and hopefully, overcome.

18. Challenges there always will be but the little I have seen in my short time as Attorney-General leaves me confident that we are treading on the correct path and that the tide is slowly, but surely, changing. To state the obvious, this Conference itself, only in its second instalment, is evidence of the renewed interest in criminal law amongst the student population in both the law schools in Singapore and in Temasek Polytechnic. This Conference, however, must be seen in the backdrop of the fact that the two criminal law-related clubs in the law schools, namely the NUS Criminal Justice Club and the SMU Criminal Law Club, are themselves relatively new entities which have been developed to expose students to criminal practice and to raise awareness and interest on issues in criminal justice. Coupled with other exciting student initiatives in the field of criminal law that have mushroomed in recent times, for example, the Innocence Project, a student-led initiative that has taken root at NUS' Criminal Justice Club, these developments represent both a potent symbol of the changing times and the renewed interest in criminal law as they are an invaluable platform to have students appreciate the virtues of criminal practice. These developments comport with my own, admittedly anecdotal, observations about the enhanced interest in criminal law amongst the student populace: to state one example, an increasing number of students in the local law schools have applied to join my

¹³ There does appear to be some merit in this suggestion. See, for example, Mavis Toh & Kimberly Spykerman "More to criminal law than money", *Straits Times* (January 14, 2011).

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Chambers in recent years, and many of these young officers have made it clear to me that they do so because they are interested in the practice of criminal law. This corresponds with other encouraging signs elsewhere of renewed interest amongst students and young practitioners in criminal practice.¹⁴ I therefore encourage you to consider a career in criminal law as a serious and viable career option either as defence counsel or as prosecutor. Either choice will augment the criminal justice process.

Conclusion

19. In the final analysis, the phrase “access to justice” is compendious and eludes easy definition or characterisation. What I hope to have done is to have attempted to persuade us not to be slavishly wedded to the use of titles or labels and to keep an eye on the prize that all of the different stakeholders in the criminal justice process are invested in, namely the development of a fair, workable, cost-effective and practical criminal justice framework that protects society and that solves its problems. Seen in the context of our low and ever-decreasing crime rate, it would be fair to conclude that we have collectively done well in achieving that goal thus far.¹⁵ Needless to say however, as we move forward, more can and should be done.

20. These are undeniably exciting times for all stakeholders in the criminal justice process. However, exciting times are almost invariably accompanied by increasingly complex and multi-faceted challenges. Criminal law and criminal justice have proved no exception in this regard. In order to meet these challenges and to ensure the continued relevance of the criminal legal framework, it is imperative that we are exposed to new ideas and fresh perspectives on some of these challenges, and diverse viewpoints and novel suggestions on how to overcome them. Since taking office, I have provided content to this perspective by initiating a number of projects to further

¹⁴ See, for example, the observations on the recent increase in the number of students who have sought to intern in Mr Subhas Anandan’s criminal law practice in Mavis Toh & Kimberly Spykerman “More to criminal law than money”, *Straits Times* (January 14, 2011).

¹⁵ See statistics from the website of the Singapore Police Force (online), available at http://www.spf.gov.sg/stats/stats2012_overall.htm (date accessed: 7 May 2013).

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strengthen our criminal justice system. Given the diverse, and I might add, distinguished, profile of the speakers at this Conference, I have no doubt that this Conference would prove to be an invaluable platform in attempting to achieve this aim. I hope, what I have said today have provided all of you with some food for thought to reflect on as you go forward in this journey. I wish all of you a very engaging and enriching Conference. I am confident that all of you will leave this Conference tomorrow evening with fresh perspectives and renewed interest on the road-map for the Singapore criminal legal framework and how it can be refined or further calibrated to meet the many challenges that lie ahead.

21. Thank you.

**STEVEN CHONG S.C.¹⁶
ATTORNEY-GENERAL
SINGAPORE**

17 May 2013

¹⁶ I would like to express my appreciation to one of my officers, Mohamed Faizal, for his assistance in the preparation of this address.