

**THE JUDGE ROY BEAN OF THE HKSAR:
THE INDEPENDENT COMMISSION AGAINST CORRUPTION**

There was, in the late 19th Century, a very famous lawmaker, who was popularly known as '*The Hanging Judge*'.

The old West, as it is, now, fondly remembered, hung this monocle on this American '*judge*' because of the number of men and women who found justice in his courtroom, at the end of the hangman's noose.

The dubious label of '*The Hanging Judge*', as history has recorded in stone in the annals of the American West, was, probably, not to the late Kentuckian Roy Bean's liking – who, never, had the right to call himself a judge, in the first place.

'*Judge*' Roy Bean was a man who, when it was decided by him that justice needed a helping hand, was not averse to being very creative – especially when money was involved -- his money, that is.

There was the famous case of a worker who, having fallen some 300 feet, was pronounced dead by the 56-year-old Roy Bean, who, on this occasion, was doubling as coroner.

A coroner only received a fee of \$US5 for doing his duty, in those days, and so, Coroner Roy Bean, concerned for his pocket, quickly reverted to his other '*job*' of Justice of the Peace, the '*Law West of the Pecos*.'

Searching the worker's pockets, white-bearded Mr Justice of the Peace Roy Bean discovered a revolver and \$US40 in cash.

'*I find this corpse guilty of carrying a concealed weapon,*' he informed the assembled Court, '*and I fine it \$US40.*'

Justice is not always balance, of that there can be no question; and, more often than not, it is not blind, too.

Recently, there was the case of Mr Ambrose Lau Hon Chuen who had to appear before Mr Justice Peter Cheung Chak Yau in the Court of the First Instance over the princely sum of \$HK26.

The case involved Mr Lau's paying out this sum of money to Regional Services staff that had removed an election placard on June 5, 1999.

The placard was one of 10 such placards, which had been erected by an advertising agency, at Mr Lau's request, in last year's ballot, held on May 24.

Mr Lau, who had been charged with not declaring the \$HK26 as being an election expense, as defined by The Corrupt and Illegal Practices Ordinance, sought and obtained an exemption before Mr Justice Peter Cheung.

The reason that this ever came to Court is, perhaps, cause for speculation because there is, at law, the maxim: '*De minimis non curat lex*' (the law is not concerned with matters of trivia).

It is apparent that the prosecution of Mr Lau was, initially at least, the work of the Independent Commission Against Corruption (ICAC) which, without question, investigated the matter and, ascertaining that there was a prima facie case against Mr Lau, sent the paperwork up the line to the Office of the Attorney General for evaluation.

The charges were laid. The rest is history.

That Mr Justice Peter Cheung made the correct determination is unquestionable, but the good judge must have scratched his head at having wasted valuable Court time over this insignificant matter.

What about the legal principle of mens rea -- a criminal intent?

One would have thought that a man of the standing of Mr Lau, who is, among other things, the Chairman of the political party, The Hongkong Progressive Alliance, as well as being a Legislative Councillor, would not have attempted to cheat the system for the paltry sum of \$HK26.

Would it not have been reasonable, to whomever was responsible for the prosecution of Mr Lau, to have considered, in the first instance, that such a person as Mr Lau would not have set out to commit an act, contrary to the law, unless the rewards were commensurate to the risks involved?

In this case, there could hardly have been a reward for trying to cheat the system over the measly sum of money of \$HK26.

Going back to '*Judge*' Roy Bean, one recalls the famous case of a Chinese worker who was killed by an Irish railway hand.

About 200 Irish roustabouts turned up in '*Judge*' Roy Bean's Court to see that their countryman got fair treatment.

It was said, by observers of this case, that the good '*Judge*' -- the closest thing to a solid citizen in those hairy days -- surveyed the assembled audience in his Court, thumbed through his law book, rather haphazardly, and finally announced that, although there were many prohibitions against homicide, there was no specific ban against the killing of a Chinese.

'Case dismissed!' he exploded, looking carefully for approving smiles on the faces of the assembled Irish roustabouts.

For those with long memories, one will recall that the ICAC prosecuted the former Sikh doorman of The Hilton of Hongkong -- before the building was torn down to make way for Cheung Kong Center -- because he sought \$HK2 from a guest of the hotel for calling a taxi.

This act was considered contrary to Chapter 201 of the Laws of Hongkong: The Prevention of Bribery Ordinance.

The Sikh -- who had no right to ask for a tip, in the first place, due to the fact that it was his job to obtain taxis for whomever requested one -- was, naturally, found guilty, because he agreed to the charges.

Car jockeys and doormen of nearly every hotel in the Hongkong Special Administrative Region (HKSAR) of the People's Republic of China (PRC) seek tips from those for whom services are rendered; and, many of these people are obnoxious in the methods which they employ to enrich themselves at the expense of the public.

But is the ICAC going to spend taxpayers' money and time in order to entrap these vermin of the hospitality industry of the HKSAR?

It would appear that this is the job of the managements of the many HKSAR hotels and the Hongkong Tourist Association, both of which have extensive powers to deal with situations of this type.

The ICAC has been known, on many occasions, to take actions, which have been proved to be incorrect -- simply because an ICAC investigator determines that he does not like, or does not approve of, the actions of a member of the public.

Innocent men and women of the HKSAR have been forced to defend themselves, unnecessarily, as well as their lives, being made unnecessarily stressful and unbearable, due to the undesirable acts of one or more of

investigators of the ICAC.

With the onus of proof reversed, with regard to certain sections of Chapter 201, it is often onerous, sometimes even impossible, for a victim of the ICAC to prove his innocence rather than the State prove his guilt.

And even when it is proved that an ICAC victim has been wrongly accused, the amount of money, which the victim may recover from the ICAC, does not come close to the amount of money, which the victim had to spend in order to disprove the charges, wrongly laid against him.

While it is fair to say that the ICAC has done a creditable job in rooting out certain HKSAR criminals, it is, likewise, fair to say that excesses are not rare occurrences in the records of the Court where the ICAC has brought members of the public to stand to defend themselves.

In an authoritarian governmental regime, one of the worst elements is that the State is always deemed to be greater than any individual within the State; and, the individual may be sacrificed for the sake of the State.

The ICAC, sadly, must be of the opinion that a member of the public may be sacrificed on the alter of expedience in order to set an example for others who may, innately, be perceived to be, possibly, likeminded.

The problem with this jurisprudential *'flavour-of-the-decade'* is that man will, at some time, rebel against the authority, which is perceived to be unjustifiably omnipotent, and is acting not in the interests of the individual within the State.

One would have thought that Mr Justice Peter Cheung must have been thinking, while viewing the application of Mr Ambrose Lau for an exemption under the law, as to whether or not it was in the interests of the State to pursue this trifling matter.

Further, was it in the public's best interests to bring this matter to the Court? How much money was wasted in bringing these charges against the solid citizen of Mr Ambrose Lau?

As residents of a badly designed and engineered building would not hesitate to show their frustrations, physically, against what they consider to be a poorly designed structure, by kicking in common doors and throwing rubbish in corridors, so will the ICAC find itself, being denigrated by the very same people that it is sworn to protect.

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