

Speech at Launching of the Book
“Sentencing Practice in Malaysia”

By Mdm. Ho Mooi Cheng

At

Evergreen Laurel Hotel, Penang,
30 November 2007

By

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President, Court of Appeal Malaysia
(Also Acting Chief Justice Malaysia)

I thank the publisher, Sweet & Maxwell Malaysia and the author Mdm. Ho Mooi Cheng for inviting me to launch the book “Sentencing and Practice in Malaysia” this evening. I also thank all of you for being present here this evening. It is heartening to see so many familiar faces, though eight years older. This is the first book by Mdm. Ho Mooi Cheng. I am told that this is the first serious and in depth book on sentencing in Malaysia. This is the first time that Sweet & Maxwell launches a book in Penang, which happens to be my home State and where I first served as a Judge for a record of 9 ½ years, which still stands until today. This is also the first time that I am launching a book in my life. So, there are many firsts in this evening’s event. I hope that all these point to a good omen, particularly for the sale of the book!

It took me 38 years, having sat in all the courts in this country, from the lowest to the highest to be given this honour. Perhaps, that gives me the advantage of looking backwards at my own experience since my first day sitting in court as a Magistrate until now sitting in the Federal Court and also “overseeing” judges of all levels of the courts in this country exercising the power of sentencing given to them by law.

Looking back, I find something ironical: the most number and the most difficult of sentencing work is done by the most junior and the most inexperienced judges i.e. Magistrates. The least in terms of number and the easiest work of sentencing is done by the most senior and the most experienced judges, i.e. judges of the Federal Court. Why do I say so?

At least 90% of the criminal cases (in terms of number) are heard by Magistrates. The punishments for the cases heard in the Magistrate Courts vary from fine only, imprisonment and/or fine, whipping and binding over. Magistrates have to make the choice. The seriousness of the cases vary from, in my days, riding a bicycle without the rear red light, operating a radio without a license, which, I am sure present day Magistrates do not come across anymore to gambling in public, and causing grievous hurt. Nowadays, I am sure that the nature of the offences has become more complex, including what we may call

“commercial crimes” e.g. producing and selling pirated CDs which did not even exist then.

In any event, the range of offences has become wider now. The element of profit making has become an important factor in the commission of offences now, as against pure necessity as in stealing fowls then. Besides, especially those days, one Ringgit meant more to the people in one area than in another. I remember imposing a fine of RM15 which I thought was already very low for the offence of operating a radio without a license in Baling, in default 1 week imprisonment which I thought was only for record purposes. To my horror one offender chose to go to prison! On the other hand, I also remember imposing a RM30 fine in default one month imprisonment on every person on a Siamese fishing boat for illegal fishing in Malaysian waters. I thought that the crew members had no money to pay and why should we to feed them for a long period in the prison. Again I was wrong. The “towkay” paid the fines and they had a celebration that night. You see, how naïve and how wrong one can be, otherwise I would not remember the incidents for thirty eight years. It also shows how difficult it is to choose the “correct sentence”. All those things happened during the first one or two months that I became a Magistrate, the only one in the whole State of Perlis, fresh from the university. Of course, at the university I was taught the various principles of sentencing especially from English text-books. I thought it was difficult to understand those principles. But I later found that to apply them to a particular offence or case under local circumstances was even more difficult.

As I have said, ironically, a Judge sitting in the highest court, having accumulated more than three decades of experience finds that the sentencing job has become easier too. The reason? Most of the cases that reach the highest court carry mandatory sentence? He does not even have to think!

That is the practical aspect of the work. But, let it be known that it is not merely an exercise of common sense. There is certainly more to it. Experience is not obtained in one day. Besides, experience only reflects what actually happen, not what it should be. It is the knowledge of the principles, and the appreciation of and the experience based on local circumstances that make a Judge or a Magistrate better qualified for the job of sentencing. Furthermore, we must bear in mind that they have to give reasons for their decisions in their grounds of judgment. Surely they cannot only rely on their intuition or discretion for their reasons.

That is where this book becomes very important. It is more so when, until now, there has not been any serious and comprehensive reference materials produced on the subject. I am told that this is the first reference book to cover the field of sentencing in great depth. It discusses the applicable principles of sentencing, the application of those principles and analyses the language used in

sentencing provisions. Supported by relevant provisions and useful case authorities, the book critically discusses various sentences available to the court, such as death sentences, imprisonment, fines, whipping, bonds of good behavior and other non-custodial orders. Attention is also given to youthful offenders and their treatment, an area that has drawn much interest in recent times. The book also provides an extensive and detailed exposition of the law governing sentencing. All procedural and substantive requirements are analyzed at length to take the busy judge, magistrates and lawyers through the multitude of technicalities inherent in sentencing practice.

What is important is that the book is written by someone who had spent twenty years in the court doing the very job that she now writes about.

I am sure that this book will provide the invaluable information which will make it an essential source of reference for judges, magistrates, judicial officers, lawyers as well as teachers and students of criminal procedure and sentencing.

Ladies and gentlemen,

It gives me great pleasure to officially launch the book "Sentencing Practice in Malaysia" by Mdm. Ho Mooi Cheng and I wish the author and the publisher a great success.

Thank you.

30 November 2007.