

Speech by Secretary for Justice at 12th Annual Dinner of British Chevening
Scholarship (HK) Association (English only)

Following is the speech by the Secretary for Justice, Mr Wong Yan Lung, SC, on “The Success of the Silk Road” at the 12th Annual Dinner of the British Chevening Scholarship (Hong Kong) Association today (April 12):

Hector, thank you for your kind introduction.

Ladies and Gentlemen, good evening. Thank you for inviting me to join you on this happy occasion of your annual dinner.

Hector, your President, gave me instruction to speak on this title. I have ascertained from him that by this title he would like me to speak on my career path at the Bar and beyond.

Taking silk

For those of you who may not be familiar with the jargon and traditions of the barristers’ profession, “silk” is equivalent to “Senior Counsel” or previously “Queen’s Counsel”. “Taking silk” means “being appointed as a Senior Counsel” and thus occupying the top rank of the profession. It has got something to do with the material of the gown that you wear after you have been elevated to the senior rank. The cotton gown of junior barrister is replaced by the silk one. He will be the leader, usually appearing in court with a junior counsel. He is called in because of his expertise, experience and advocacy skills.

But of course taking silk is not merely an honour but brings with it tremendous responsibilities and pressure. At least two Bar Chairmen had borrowed the famous sentence from the movie “the Spiderman” to describe this career elevation: “With greater power comes greater responsibility”. Your clients and solicitors expect a lot more from you – and justifiably so when they have to pay a higher fee for your service. The judges expect a lot more from you – some of our judges, though on the face of it will become more courteous, can be more sarcastic with their comments when a silk under-performs. But more importantly, you expect a lot more from yourself: you have to demonstrate that you are worth the salt or the silk.

Applying for silk is not without risks. First of all, you may not get it and somehow people get to know about it despite the confidentiality of the application process. In about two weeks’ time there will be five more junior barristers joining the top league, leaving unsuccessful applicants disappointed and some of them bewildered. Second, the transition from a “senior junior” excellent with paper and advisory work to a “junior senior” expected to deliver the silk-class advocacy performance in court may not necessarily be smooth. Many actually fear there may be a drop in income.

Amidst considerations such as these I put in my application in 2001. At that time I felt quite sure that I need some changes and challenges on my career path. I

was popular as a junior but I definitely need more court appearances which I enjoy. I believed it was time to stretch. Otherwise, one's career development would get into a rut and inertia could easily creep in.

Silk Quality

After taking silk, I experienced a new dimension of practice involving new areas, some very interesting cases, and new firms of solicitors instructing me. Because the issues were bound to be more complex and you usually had a silk on the other side, every case was an arduous test and a good training ground. I really enjoyed working with juniors, particularly the up-and-coming ones. It is amazing how you can improve on your arguments with a good junior playing the role of the Devil's Advocate. I also had the opportunity to sit as a Deputy High Court Judge, which was a most enlightening experience.

I was in silk for just over three years, a very short time indeed, before I made a major change in career. The present responsibilities as Secretary for Justice are such that it is really hard to find time to prepare and appear personally in any important case. So, honestly, there is nothing particularly "successful" I can talk about regarding my professional silk practice.

But perhaps I can share with you what some of the truly successful silks have taught me and how such experience has helped me even to this day.

I was junior to the late Permanent Judge of Court of Final Appeal Charles Ching on a criminal case before he joined the bench. I prepared a first draft of the submissions, which was revised by Charles very substantially. (It does not always happen with other Senior Counsel; some merely correct your English grammar). It was past 8 o'clock at New Henry House, Charles was obviously very tired. I asked him, "Charles, how do you maintain such enthusiasm and dedication in your work?" He answered, "Young man, it is a great privilege and responsibility that your client let you participate in his personal affairs which affect his life in such an important way. Every case is different. I do not look at it as work. Every case is a rare opportunity and privilege." That is professionalism.

I was against Ms Gladys Li, SC, in one case where the judge invited Gladys to develop a technical point against me. Gladys rose up graciously and said, "My Lord, as a matter of fairness, this is not a point that should be made." That is integrity, and that is the kind of independence we expect of our legal profession.

The role of the advocate and wider responsibility

Barristers are experts in advocacy. In Scotland, barristers are called advocates rather than barristers or attorneys. That's why you have the Advocate General rather than the Attorney General in Scotland.

So Senior Counsel are senior advocates. The Latin word for "advocate" is "advocatus" which is derived from "advocare" which means "call (to one's aid)". To render assistance to someone who may not be able to assert or defend his cause.

In that spirit, many Senior Counsel have devoted much of their time to community service. Many eminent Senior Counsel have joined the Bench and become the pillars of our Judiciary. Others have taken up leadership roles in the Bar Council. Some have chosen to serve the public as Legislative Councillors; others have taken up appointments with public bodies, statutory boards and committees. Senior Counsel are much sought-after as favourite appointees because of their status, ability and integrity. Still there are others who give their time on other worthwhile causes, utilizing their legal knowledge and skills, to help people who are less able to protect themselves.

The other Silk Road

On that note, I believe I can share with you further the experience of another “Silk Road” which I embarked on since joining the HKSAR Government, not about success or failure, but about the meaning and privilege of the experience.

But before I do that, may I invite you to switch your focus from the silk gown to the real Silk Road.

The Silk Road refers to a number of routes between China and Europe established since the Han Dynasty which were used by China to establish diplomatic links with other countries, and by businessmen to establish trade links for commodities such as silk. Today, the Silk Road generates different impressions among different people, but I am certainly not going to get into any controversy this evening. Maybe I can suggest some common perspectives.

First, back in the 1st century BC, much of the area covered by the Silk Road was un-trodden. Those who were given the task to explore it were venturing into the unknown. The Silk Road is in fact the consolidation of a number of routes over many years and the collective achievement of many pioneers.

Second, the region separating China and the Europe is one of the most adverse environments in the world. I was in Ningxia last year to attend the 7th All Lawyers Forum in China and had a glimpse of what one of the Western entrances to the Silk Road might be like. There is very little rainfall and people survive on underground water. Climate is extreme throughout the Silk Road. Temperature can exceed 40 degrees Celsius in the summer and go below minus 20 in winter. Landscape is rugged. Much of it is taken by desert. Sandstorms are frequent with very few oases. (But as we just learned, even oasis can dry up quickly in a hostile environment).

But, third, one should not forget the importance and the contribution of the Silk Road. It has brought tremendous benefits to China and the West over the centuries enriching their economy and culture. It has enriched those who have the courage and privilege to travel on it.

Becoming Secretary for Justice

When I accepted the invitation to become the Secretary for Justice in 2005, I was leaving the comfort zone of the “silk” practice at the Bar, to embark on the uncertain and notoriously treacherous journey as the politically appointed law minister on the alternative “Silk Road”.

I received many letters when the appointment was announced. Most of them were pledges of support. But there were some who were more ready to speak their mind. One fellow barrister said I was “very brave”. A friend said quite bluntly that I was “very stupid”.

However, the past two and a half years in this office has indeed been very exciting and rewarding. The volume and spectrum of legal matters which I have to advise on are breathtaking. The people I have met during this period are more than all I have met in the past two and half decades before the appointment.

The responsibility, as you know, is colossal. However, having been in the office for some time now as the principal official having responsibility over the law, I appreciate, more than ever, the deeper mission in upholding the rule of law and in the provision of legal service.

In private practice, I saw the law more as a means to resolve people’s disputes, to vindicate people’s rights, and to punish wrongs. It is fulfilling because it demands one’s intellectual and inter-personal skills. It is a career which allows us to assist in the personal and business lives of countless clients, from all walks of life.

Now as Secretary for Justice, I can testify to the much wider purposes of the law. It is here, in the handling of “public” justice, in areas such as human rights, criminal law, enforcement, access to justice and law reform, where you are challenged more often by hard questions of law which engage idealism, principles, public interests, proportionality and significant impact on the community.

The role of the Attorney General has never ceased to provoke debates. And here in Hong Kong, with our new constitutional order under the “One Country, Two Systems” principle, the Secretary for Justice, is faced with both conventional and unprecedented challenges.

People have asked me whether I have a problem serving two masters: the law and the Government. The answer is I don’t. As is the collective wisdom elsewhere, the best way for the AG or the SJ to serve the Government as its chief legal adviser is to provide independent, sound and effective legal advice to enable the Government to make the best decisions within the law and with the knowledge of all relevant circumstances.

In the past decade since the Reunification, you may have heard of many legal challenges mounted on freedom of expression, freedom of assembly, protection of property and privacy rights, and the like. Do these challenges suggest that the Government is increasingly less committed to the rule of law or somehow our system here is hitting problems?

I don’t think so. The fact is by comparison with the position before 1997 and that in other countries in the region, we have now under the rubric of the Basic Law a far more superior, extensive and effective guarantee on fundamental rights and freedoms. We also have an independent competent and trusted judiciary and a well-

informed public more conscious of our fundamental rights and freedoms, and more ready to safeguard them by resorting to the court and legal remedies.

We at the Government and Department of Justice have to be more vigilant and work harder. However, the increase of public law cases provides the best testimony of the breadth of the human rights protection conferred by our constitution, the Basic Law, and its potency to override inconsistent domestic legislation and to streamline government actions.

In fact, this phenomenon is not unique to Hong Kong. In the UK, since the implementation of the Human Rights Act, the courts have been hearing cases alleging that certain current laws fall short of the standard required by the Act.

The ability of the people to challenge the Government in court is the litmus test of the rule of law. However, as our Chief Justice has urged repeatedly, it is also important for the community to realise judicial review of government actions is no panacea to solving political or economic problems.

The Silk Road on the rule of law

Hong Kong has always been spoken of as the gateway to China. On the economic side, this proposition is gradually under threat as China is establishing many direct links with the West. However, on China's development on the rule of law, Hong Kong still occupies a very special position. It is here that we should consider providing an important "Silk Road" to export the core values of the rule of law to the Mainland.

Indeed, Hong Kong is becoming more and more dependent on the Mainland economy. However, our legal system which buttresses our status as a leading finance centre is still unmatched in China. Our rule of law provides Hong Kong with strong credentials as Asia's World City. It is the core value which gives international investors the confidence, and which gives Hong Kong the edge.

In the past few years, we witnessed numerous IPO listings of Mainland mega banks and companies on the Hong Kong stock exchange. Hong Kong's law and corporate governance are exerting unprecedented influence on the Mainland's financial market.

With China's entry into WTO, the development of the legal and judicial system in the Mainland is being driven by both commercial demands and international obligations. We have seen vigorous efforts on legislation and law reforms, not only in respect of the market economy, but also targeting the improvement of the legal and judicial proceedings. In the promulgation of important legislations such as the Property Law and the Lawyers Law, Hong Kong's law and practice have been considered.

Efforts are being made at different levels to build the necessary bridges. Subject to LegCo's approval later on this year, the arrangement enabling reciprocal enforcement of some commercial judgments between Hong Kong and Mainland courts will become law. And in establishing Hong Kong as the regional dispute

resolution centre, we seek to make Hong Kong the most favourite forum of international arbitration for both Mainland and overseas users.

Hong Kong lawyers are competing with lawyers from the US, UK and elsewhere for the vast Chinese legal services market. Under CEPA, Hong Kong lawyers had an edge over others in terms of forming association with Mainland firms. Hong Kong barristers, pending finalization of rules, will be able to appear in Mainland courts as citizens' representatives.

There are Hong Kong law professors teaching law at the top Mainland universities. Mainland officials and lawyers are studying common law. Our Department's common law training programme has enabled over 100 Mainland officials in the past 10 years to obtain a Master's degree in common law. There are numerous exchanges programs with Mainland lawyers undertaken by the Law Society and the Bar Association. My department has entered into cooperation agreements with our counterparts in eight cities or regions in China. And I have just returned from Shanghai and Zhejiang where I have had very useful exchanges with both officials and lawyers alike.

Hong Kong is not the only one on this Silk Road. I visited the Fudan University in Shanghai earlier this week. Apart from the impressive new school campus including a most amazing law school building designed by an Austrian architect, I was amazed by the international connections the university has already established with top universities all over the world. The same is being pursued by other leading universities in Beijing. The dynamism and potential are tremendous.

Quality for success of the Silk Road

The legal landscape of Hong Kong and of China is rapidly changing. The "silk road" in one's legal career in Hong Kong and the "silk road" in China's development on the rule of law may have to embrace more innovative and diverse routes.

However, some things never change. First, there is always the pursuit of excellence. And nothing can replace hard work. But may I say, if you can fall in love with what you are doing, you will feel less pain with long hours and other sacrifices. And better still, if you truly believe in what you do and can find a clear purpose in it. And even better still, if you can persuade you wife or husband to go along with you.

Second, may I suggest we all need courage to take risks, to venture into the unknown, to set foot on the land where few or even nobody have done before, to enter the arena, to be prepared to face the difficulties, opposition and failures, counting the experience, and not the outcome, as your reward and fulfilment.

Third, apply all these qualities to a wider pursuit, not just the advancement of your own career, enlarge your territory. Material reward is of course important. But if it becomes the sole or even primary motivator, we may be deprived of the freedom to pursue other causes which are more satisfying.

The words of Father Cormac Burke, a priest and judge from Vatican, keep ringing in my ears on occasions where I touch on the purpose of the law. I was deeply

touched by the theme that law and justice are designed to heal. He said “Law, like medicine, has a particular healing power – always provided it is properly applied.” That proviso is of course a difficult one. However, the objective to administer the law for the common good must be paramount, and one which we will all strive to attain.

The British Chevening Scholarship

Lastly, Ladies and Gentlemen, in my own limited pursuits thus far, I owe a great deal to the education and experience I had in England, and to the scholarships which enabled me to acquire them.

Having been involved in similar scholarship schemes myself, I know first hand how much Hong Kong and many talented individuals have benefited from the British Chevening Scholarship. It only remains for me to pay tribute to the generosity and far-sightedness of those behind the British Chevening Scholarship for your huge contribution in nurturing top talents for Hong Kong. And may this good work continue for many more years to come.

Thank you.

Ends/Saturday, April 12, 2008