

Tales from
No. 9 Ice House Street

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5 Room 711B: *The Last Episode*

Room 711 on the seventh floor of No. 9 Ice House Street had an area of some 700 square feet and for a number of years used to be tenanted by a local firm of importers and exporters by the name of Much More (多多公司). By the second half of 1954, Much More's business had become much less and its management decided to reduce drastically the size of the staff it employed as well as the premises it occupied. Accordingly, Hong Kong Land divided Room 711 into two halves by putting up a partition wall between them. While Much More remained the occupant of the first half renamed as Room 711A, I was offered, in place of Room 404, the other half to be known as Room 711B. As this meant trebling the size of my chambers, the offer could not have come at a more opportune time because in the preceding months the ever-increasing number of legal files piling up on my desk and the constant additions to my meagre collection of law books, not to mention the embarrassing endless flow of social callers, visiting solicitors and lay clients, had rendered my pigeon-hole chambers altogether unmanageable. Besides, I had ordered two sets of law reports from England and room must be found for them before they arrived.

Naturally, I hardly hesitated before accepting this timely and welcome offer of Hong Kong Land, and at the end of 1954 happily moved into the spacious quarters of Room 711B. Much as I appreciated the vastly improved amenities of my new chambers, I could not help cherishing nonetheless many a unique lingering memory of Room 404, which, notwithstanding its limitations and shortcomings, had served me so very well at the most difficult and testing phase of my professional career.

What I was totally unprepared for was the numerous surprises which

this upper floor held in store for me in the years to come. To begin with, little did I know in 1954 that my chambers would remain at Room 711B for the next thirty years until after I had retired, and until No. 9 Ice House Street had to be evacuated for demolition and redevelopment. The reader may be interested to know that throughout the 1950s and for at least a part of the 1960s, I was the lone member of the Bar having his chambers in this part of Ice House Street altogether.

I never expected that ten years after moving into Room 711B, I would be appointed by the Governor Sir David Trench as one of the only three members of the first ever University Grants Committee in Hong Kong, and be required as such to play a leading role, apart from setting up the Chinese University of Hong Kong, in establishing in particular the first ever law school in the territory at the University of Hong Kong. This was indeed a real surprise because I never took silk or chaired the Bar Association and had always lived a low profile and sheltered existence.

I remember querying at the time whether I was the right choice for the job since I had not read law at the university and had only scraped and scrambled, out of sheer desperation and necessity, to qualify for the Bar in the final year of my scholarship. Sir David, who was a good friend of my family, simply said, 'Patrick, you have been a pain in the neck clamouring for such a long time both publicly and privately for a law school to be installed in the territory. Now that you have got what you want, get on with it!'

I never even dreamt then that as a result of the part I played in setting up the Hong Kong University Law School and my subsequent close association with it, I would in the mid-1970s cause my chambers to be extended to include three more rooms on the seventh floor of No. 9 Ice House Street in order to set up one of the first joint chambers of barristers in the territory with a number of the early graduates from that law school.

Three of those Hong Kong University law graduates who spent time in my chambers became High Court judges in later years. One of them was subsequently appointed the first ever Chief Judge of the territory, and a little later a Justice of the Court of Final Appeal. To this day, Patrick Yu's Chambers still live on despite my having long since retired.

Last but not least, in the mid-1970s I was once again an unexpected appointee to represent the Bar as a member of the first ever Judicial Services Commission in the territory presided over by the Chief Justice Sir Geoffrey Briggs. The function of this commission was to review, consider, recommend and approve the appointment of judges, magistrates and other judicial officers.

I think I could be excused for feeling singularly gratified that in this capacity I was enabled to play a not insignificant role in securing the appointment in 1977 of Archie Zimmern of the local Bar to the Supreme Court Bench. This was the first time in the legal history of Hong Kong that a Supreme Court Judge was appointed from the local Bar and not from the so-called Colonial Legal Service, the latter institution being a separate entity altogether, the overwhelming majority of whose members never practised in the private sector, and many of whom had no experience as either prosecution or defence counsel in criminal trials. Mr Justice Zimmern's appointment in 1977 created a more than welcome precedent which paved the way for other similar appointments to be made from the local Bar in later years.

In this connection, one cannot help being reminded of the case of Fr T. Sheridan (see Chapter 1 in Part One), who in 1951 was found guilty of contempt of court for publishing an article in the Wah Yan College magazine, *Echo*, criticizing the appointment of our judges exclusively from the Colonial Legal Service. It would seem that Fr Sheridan's comments must have taken root in the right places, although somewhat belatedly. I do not intend to render an account of the three decades I spent at Room 711B in the manner I have done with my two initial years at Room 404. It would be neither feasible nor practical even if it does not bore the reader to tears. Instead, my selection of court cases set out in Part Two herein as well as in my first book can best be left to do the talking.

It was for a very good reason, though, that I have particularly mentioned my lawyer friends in the earlier chapters. I owe it to them for helping me, an unheralded newcomer as I then was, to establish an early bridgehead in a competitive profession for which I shall always be grateful. It is not possible to evaluate my priceless indebtedness to each and every one of them, especially Arthur Lui, Y. H. Chan, P. C. Woo, H. L. Kwan, Gordon Hampton, and Francis Wong. Time and again, they gave me the early and gratifying opportunity to be known, often enough via eye-catching headlines in the local newspapers, to the general public and even more particularly to the legal profession, as a promising although hitherto unknown contestant and aspirant with the right credentials vying for recognition, and eager to prove himself in the legal arena. As the Chinese saying goes, '萬事起頭難', that is to say, the greatest difficulty always comes at the very beginning. This was especially so when I was one of the first Chinese barristers in the colonial days of the early 1950s' seeking recognition at the local Bar.

The two following incidents are excellent examples of some of the obstacles and unpleasant experiences which a newcomer to the Bar not infrequently has to put up with from time to time. I cannot help recalling an occasion when a senior Chinese solicitor, who was a personal friend of my father, rang me up to say he would like to brief me in a particular case. Without realizing how offensive it was, he added that Bernacchi and Wright normally charged \$1,500 on the brief, and asked whether I would be content with \$750. On the spur of the moment, I told him that unlike Bernacchi and Wright I had the advantage of being bilingual and that I would not accept anything less than \$2,000. After putting the phone down, I could not help instantly regretting my insolence, especially when I could do with the \$750 which was not altogether a bad fee in those days. To my surprise, my father's solicitor friend contacted me again in no more than fifteen minutes to let me know that he had got me my fee! Happily, I won the case for him. Thereafter, to be fair to him, he continued to send me briefs every now and again, and never paid me less than \$2,000 on the brief, which made him easily my favourite paymaster for a very long time. I never found out whether he benefited more or less from paying me the fee I demanded!

On another occasion, a Chinese solicitor came to my chambers specially to offer me the following package deal. He said that he had a large portfolio of criminal cases which he would normally only farm out to '鬼佬' (!), meaning European counsel. However, he said he was prepared to make an exception in my case and would send me all his clients provided that (1) I would accept an inclusive fee of \$500 for each case, that is, without refreshers; and (2) I would take instructions directly from lay clients, as he had more important things to do in his office. He added that most criminal trials would hardly take a day and I could easily handle four or five such cases each week. Politely I told him that his proposal was, to begin with, altogether improper and irregular, and that in any event, only a barrister desperate for work would be foolish enough to accept a flat inclusive fee which could easily be his ruination if any case should turn out to be unduly long, although a non-appearing solicitor would not be affected. On that note we parted company.

Several weeks later, I met my good friend Sam Gittins at a cocktail reception. Sam was a respected and popular Eurasian member of the local Bar who spoke fluent Cantonese and was full of humour. With an inscrutable expression in his face, he said to me, 'Patrick, I didn't realize I am twice as good a criminal lawyer as you are!' Apparently, the same package proposal had been made to him by the solicitor in question save that the inclusive fee proffered was \$1,000 per case and not \$500! Needless to say, Sam brushed him aside just as I did.

I wonder whether a barrister's practice has anything to do with *fung shui* (風水), or the relative size and comfort of his chambers. After moving into Room 711B, my practice grew noticeably and before long there was a regular stream of a variety of briefs coming to my chambers from practically every known firm of solicitors in town. Week after week, I would appear in either the civil or the criminal jurisdiction of our courts. In those days, the Bar was far too small for specialization to be worthwhile, and every member was more or less a general practitioner. One day, I would appear in a commercial case. Another day, I would be defending an accused person for murder.

The irony was that while some solicitors were slow to brief a Chinese instead of a Caucasian barrister for whatever reason, others were quick to note the advantages of instructing a bilingual counsel who could read and advise on Chinese documents, who could communicate directly with lay client in conference, who could better understand and evaluate evidence given in the Chinese language without having to wait for it to be translated, and who was no less competent in other respects.

These recognized advantages soon enabled me to command a unique position in the profession and must have caused innumerable instructions to be diverted to my chambers which might otherwise have gone elsewhere. Even the two leading silks in those days, namely, Leo D'Almada and John McNeil, were known now and again to have specially requested their instructing solicitors to retain me as junior counsel because 'it is so helpful to have someone who can read, write and speak Chinese'.

In the past decades, it was an interesting phenomenon that almost every time there was an important change in the law, it would create endless work for the legal profession. The Landlord and Tenant Ordinance was enacted in 1947 with the primary objective of stabilizing the postwar housing situation in Hong Kong, by controlling the rental chargeable in respect of existing premises and sparing subsisting tenants from being unreasonably evicted by unconscionable landlords. This objective was by and large achieved admirably without a doubt. Otherwise, chaos and pandemonium would more than likely have resulted. Unfortunately, this ordinance surprisingly failed to take cognizance of the large number of sub-tenants, sub-sub-tenants as well as other users and occupants who had come into existence during the war years. As a result, there was no end to the legal proceedings brought before the Tenancy Tribunal throughout the 1950s. In the initial years of my private practice, I was regularly involved in these tenancy disputes representing one or other of the parties. Some of these disputes created not a few obscure intriguing legal problems.

Meanwhile, a different kind of housing problem rapidly reared its ugly head. This took the form of an acute shortage of both domestic and business premises brought about by a combination of factors. The ever-increasing local population after the war, the constant huge influx of immigrants from the Chinese mainland for political reasons, the emergence of Hong Kong as an up-and-coming new international business centre in Southeast Asia, and the stagnation of the local property market caused by the Landlord and Tenant Ordinance all played a part. Because of the controlled rent, landlords saw no reason to keep their property in good repair, and as an inevitable result, most of the pre-war buildings had deteriorated to an appalling state. There was also a noticeable change in the lifestyle of the local population after the war. Large Chinese families living bunched up together were no longer the order of the day. Instead, the younger generation preferred to set up their own separate homes which in itself created a regular demand, altogether unheard-of hitherto, for smaller living residential units.

By the late 1950s, the 1947 ordinance had obviously outlived its useful purpose and the inevitable occurred. The law was changed to provide a solution for the housing shortage. However, instead of repealing that ordinance, a new section was enacted to provide a back door exit for landlords from its rent control and other restrictions. By this enactment, landlords were permitted and enabled to evict all tenants, sub-tenants and other occupants and users of their premises for the designated purpose of redeveloping their property, provided that a number of statutory conditions were fulfilled.

These included:

- (1) satisfying a Tenancy Tribunal that the scheme of redevelopment was in the public interest;
- (2) satisfying the tribunal that the applicant landlord had the requisite means to finance and carry out the proposed scheme;
- (3) undertaking to the authorities to complete the proposed scheme within a specified period of time;
- (4) compensating the tenants and sub-tenants and other users and occupants for vacating the premises in monetary terms to be determined by the tribunal;
- (5) underwriting the legal costs of any tenant, sub-tenant or other users and occupants of the existing premises electing to appear before the Tenancy Tribunal to oppose the redevelopment scheme.

Needless to say, existing landlords promptly lined up to make application to have their premises exempted from the control of the

Landlord and Tenant Ordinance. They were soon joined by property entrepreneurs who wisely bought up many of the pre-war premises in order to add to the length of the queue seeking redevelopment. This proved to be one of the wisest pieces of legislation passed by the postwar government. It not only offered a happy solution to the acute housing shortage problem and led to a bull market in the property sector initially as well as in the overall economy of Hong Kong in due course, but also caused many of the modern buildings to be erected in the territory, thus helping Hong Kong to develop into an international city as it is today.

These so-called exemption proceedings lasted quite a number of years in the late 1950s and the early 1960s, and were a windfall bonanza for the legal profession. There was hardly any member of the Bar or firm of solicitors not involved in them from time to time. The underwriting by the applicant landlord of the legal costs of the tenants, sub-tenants and other users and occupants of the premises invariably caused the overwhelming majority of the latter parties to be legally represented by counsel and solicitor in those proceedings.

Leslie Wright of the local Bar almost had a monopoly representing these applicant landlords to the extent that he was at one time given the nickname 'Exemption Leslie'. I, too, acted for a number of property owners on occasions but was much more often instructed to represent the opponents. It was money for jam because hardly any preparation was required, the main work consisting in bargaining between the parties as to the amount of compensation to be paid after the redevelopment scheme had been approved by the tribunal. Although the fees payable by the applicant landlord to legal representatives of the opponents were on a fixed limited scale, acting for a sufficient number of these opponents in the same proceedings often enough rendered the overall remuneration by no means inadequate. To members of the Bar, these exemption proceedings were particularly welcome because, more often than not, they served the useful purpose of filling up otherwise blank dates in one's professional diary.

In 1971, the Prevention of Bribery Ordinance passed into law. This was followed by the Independent Commission Against Corruption Ordinance in 1974. Once again, these two pieces of legislation did Hong Kong a world of good. The setting up of the Independent Commission Against Corruption, better known simply as the ICAC, was in particular the best thing that could have happened to the territory, thanks to Governor Sir Murray MacLehose. Its painstaking and conscientious investigations would seem to spare no one, and led to a long list of members of the general public, government servants, as well as known

individuals employed in various cross-sections of the community including banks, public companies, and other institutions being prosecuted for a variety of corrupt practices under the 1971 ordinance.

These cases were almost invariably tried in the District Court, and there was no end to the number of people investigated and prosecuted by the ICAC from time to time. As a citizen of Hong Kong, I must say that we owe much to Sir Murray, and indeed the ICAC, for their efforts to uproot corruption in Hong Kong which not only made the territory a much better place in which to live, but also significantly improved its international image beyond recognition as a result.

The legal profession naturally benefited even more than any other cross-section of our society from these corruption trials, the majority of which were heard in the late 1970s and early 1980s. From a lawyer's point of view, most of them were straightforward humdrum affairs of little legal interest which almost invariably ended in either a guilty plea or guilty verdict being returned. The only surprise, if at all, was the odd big names which would come up once in a while in some of the underhand dealings exposed by the ICAC investigations.

For a while I was continually involved week after week and month after month in these corrupt investigations and proceedings. There was no denying that they were utterly trying and boring at times, because there was rarely any plausible defence. It was also singularly depressing to learn time and again of some of the undeniable ugly truths subsisting beneath the surface of our otherwise respectable society hitherto.

While I was thus busily engaged, I was suddenly and unexpectedly taken badly ill in more ways than one. In the early part of 1983, I was medically advised at least to take a good break from my legal practice. As a result, I declined all briefs to appear in court for some six months, during which I enjoyed my leisure and in particular my having nothing more to do with the law and especially with court cases to such an extent that even my dear wife has since failed to persuade me to go back to work, even while my health continued happily to improve.

So much for my general practice at Room 711B, No. 9 Ice House Street which not a few readers of my first book said they would like to know more about. What follows in Part Two is another collection of several more of my prehistoric court cases. I hope I shall be excused for intermingling these accounts with a number of entertaining legal stories, hopefully to add to the amusement of readers. Once again, I must explain that save and except in Chapter 3, I have omitted to include any account of civil lawsuits because they are, by and large, too long and far less interesting, and both civil procedure and civil law are unnecessarily

complicated and often enough boring and somewhat difficult for the lay reader to follow.

At the special request of a number of my lawyer friends, I had in fact at one time begun writing up a full account of one of my better-known cases tried in the civil jurisdiction of our courts between 1971 and 1972. This was the so-called 'Case of the One-Armed Swordsman', which was a legal battle between Shaw Brothers (HK) Ltd. and Golden Harvest (HK) Ltd., the two cinema film industry giants in the territory. It was all about three Chinese sword epic films, each starring a one-armed swordsman. The first two of which were exhibited by the former, while the third was by the latter company. Briefly, Shaw Brothers claimed that in its two films it had created a legendary character in the person of a one-armed swordsman, and that Golden Harvest was seeking in the third film to mislead the cinema public into mistaking its hero for that in the two earlier films.

This case was tried in the first instance before Mr Justice Huggins sitting with a jury comprising six Chinese members and one European. The twenty-page learned judgment of Mr Justice Huggins was a real eye-opener and was the first of its kind in Hong Kong on the complicated law of passing off. At the end of the three-week trial, the jury, on the evidence of the three Chinese films and a limited amount of additional verbal evidence adduced, returned a majority verdict in favour of Golden Harvest. The claim of Shaw Brothers was accordingly dismissed. On appeal however, in a seventy-page judgment, the Full Court comprising Mr Justice Blair-Kerr as president and two other non-Chinese-speaking judges reversed this verdict returned by the jury on the ground that it was perverse, and judgment was instead awarded to Shaw Brothers. There was no further appeal from this judgment of the Full Court. Instead, the case was finally settled amicably out of court. Surprisingly, despite the success of the first two one-armed swordsman films, and although these sword epic films remained very much the vogue in Hong Kong throughout the first half of the 1970s, no other film was produced by Shaw Brothers again based on this alleged legendary character of a one-armed swordsman.

Halfway through my account of this difficult case, it became obvious that its ultimate length would easily be in excess of 150 pages, which would take up considerably more than one half of this work. This fact, coupled with the complicated nature of civil procedure and the law of passing off, rendered it altogether questionable whether such an account would be suitable for inclusion in a work such as this. In the end I have reluctantly discarded it, although I am not unaware that my lawyer

friends who had requested it would be sorely disappointed. Perhaps one of these days, if circumstances permit, it can be made the subject-matter of a third book after all.

Thirty years is a long time in any professional career. In my case, it just about covered the whole duration of my private practice at the local Bar. This episode began with the British colonial government striving after the war to re-establish itself and restore normality in Hong Kong, and ended with the Sino-British Joint Declaration in the early 1980s, leading eventually to the reversion of the territory to Chinese sovereignty. It was altogether an eventful era.

During this period, Hong Kong developed from being no more than a tiny insignificant colonial outpost and naval base to become an international city and a prominent financial centre in Southeast Asia especially after Communist China had reopened its doors to the world in the 1970s. The standard of education of the local population went steadily up; so did the national income and standard of living. Naturally, every profession and every cross-section of the community benefited in its own individual way from this growing wealth and prosperity. The Bar was no exception.

In 1950 when I was admitted to practise locally, the Bar was still an institution barely known, if at all, to the general public who had very little to do with it. I was the eleventh and the last name on the Bar list. When I retired in 1983, its membership already exceeded two hundred. Today, it has more than trebled again. Likewise, over the years the number of our courts and the size of our judiciary have both increased many times. This was necessitated from time to time by the ever-growing awareness of the populace of its legal rights, and its financial ability to seek legal advice and go to court to defend those rights. As a result, litigation increased manifold, and the Bar at last came into its own.

Against this background, naturally innumerable changes took place as the law became daily more sophisticated, competitive, selective, and specialized. Perhaps the most gratifying and noticeable change at the Bar was that while in the 1950s a newcomer would more than likely feel thankful every time a brief was delivered, in later years with the availability of a wider choice of counsel, it was more often the turn of the instructing solicitor as well as lay client to feel gratified for any expert advice and professional service rendered.

I cannot resist specially mentioning an isolated incident which occurred some twenty years ago on which, despite the passage of time, I still look back with considerable filial pride and warmth. A master of arts (MA) degree acquired at Oxford or Cambridge has no academic

value or significance, because any graduate is entitled to it after a number of years upon payment of a fee. However, it does confer on the holder a measure of respectable seniority especially in his particular college. In 1980, my son Denis and my son-in-law Richard Cauldwell, husband of Estella, decided to take their MA degree at Oxford. I was happily persuaded to join them, although until then I had never given the matter a thought. The three of us must have made history on that day because it does not happen too often that father, son and son-in-law would appear contemporaneously before the Vice-Chancellor to be awarded their respective degrees. After the ceremony, we held a delightful luncheon party to commemorate the occasion, attended not only by all our family but also by a number of the contemporaries of Denis and Richard and their respective families who had no difficulty in making me forget that I had graduated as long as thirty-two years ago.

In 1969, the first law school in the territory came into existence at the University of Hong Kong when the first batch of law students was admitted. In 1999, it proudly celebrated its thirtieth anniversary. In 1998 I was more than surprised to be awarded an honorary fellowship for my part as one of its founder members, despite the long lapse of time. It is singularly gratifying that although at its inauguration this law school was no more than a department in the Faculty of Social Science and Law, it has long since been elevated to become a faculty of law of international repute, and over the years has produced a long list of eminent barristers and solicitors including more than a dozen distinguished silks, numerous respected judges and magistrates, as well as a Justice of the Court of Final Appeal. What a shame that I myself never read law at the university before qualifying for the Bar.

2

The Case of the American Gangster Who Bribed the Jury to Convict Him

(This is no more than an amusing story of no truth whatever, and not meant to be in any way a reflection or satire on American society, its legal profession, or its jury system.)

There was a time when gangster warfare was of daily occurrence in various parts of America. Cold-blooded shooting causing death would frequently be followed by infamous attempts to rig or influence juries upon those responsible for the killings being charged and tried for the offences committed.

In one instance, a gangster shot one of his rivals dead after an argument in a bar in the presence of witnesses. He was duly arrested and charged with murder. While awaiting trial, he was advised by his lawyer and fully appreciated that in the circumstances and on the indisputable evidence available, the best he could hope for at the trial was to be convicted, not of murder, and only of second degree homicide, which would at least spare him the death sentence.

As the shooting had taken place in a small town where everybody knew almost everybody else, the lawyer was instructed to try, without regard to cost, fixing the jury in order to ensure that a verdict of second degree homicide be returned in lieu of murder.

In due course, the case came on for hearing and a jury of twelve men was empanelled. That evening, the lawyer went to the foreman's home. After a few preliminaries to explain his visit, the lawyer placed a large envelope on the table saying, 'While my client readily appreciates that what he asks for will not be easy, he is prepared to pay generously for services rendered. Herewith is one hundred grand on account. All

that my client wants of you and your fellow jurors is that a verdict of second degree homicide be returned, regardless of the evidence. When that is done, there will be another hundred grand waiting for you. But, remember, *second degree homicide only*.'

The trial proceeded as scheduled. While one witness after another was called by the prosecution to testify to the shooting at the bar, the gangster's lawyer made no attempt whatever to deny the killing. Instead, he cross-examined each witness at length in order to establish that the shooting took place only as a result of severe provocation from the deceased. Under cross-examination several of the witnesses readily, while others less readily, confirmed that a heated argument between the accused and the deceased had preceded the shooting in the course of which the accused was time and again submitted to all kinds of insults and wanton accusations and recriminations. According to one of the witnesses, at one stage the deceased had called the accused a coward and dared him to draw his gun.

At the conclusion of the evidence and after the respective final submissions made by the prosecution and the defence, the trial judge directed the jury more than fairly that although the shooting had not been denied, an important factor remained to be determined, namely, whether the heated argument, insults and recrimination which had preceded the shooting sufficed to reduce the killing from murder to second degree homicide. He said that it was a decision which was the jury's exclusive privilege to make. In other words, he left it entirely to the jurors to determine whether the verdict should be one of murder or of second degree homicide. The defence lawyer was naturally more than satisfied with this summing-up. He could not help priding himself on his successful cross-examination of the material witnesses, and assured his client that the desired verdict of second degree homicide was almost a foregone conclusion.

Despite this confidence on the part of the defence lawyer, however, the jury obviously took their time before returning their verdict. While the hours ticked slowly by, the gangster became more and more nervous and agitated with every minute, as he repeatedly asked his lawyer whether it had been made clear to the foreman what was required of him. Still, time continued to roll tantalizingly by. Eventually, however, after many hours of deliberation, the jury finally returned to announce their verdict. Much to the relief of the gangster, he was convicted, indeed not of murder, and only of second degree homicide. The gangster and his lawyer could hardly contain their satisfaction at attaining their common

objective, and wildly congratulated each other upon the announcement of the verdict.

That evening, the gangster's lawyer took another envelope to the foreman as promised. He could not refrain from asking why the verdict had taken so very long. The foreman replied, 'You were absolutely right. Achieving that verdict was by no means easy. Each and every one of the other jurors knew, feared and hated the dead man and wanted to acquit your client!'

Perhaps there is some truth in the well-worn saying that crime does not always pay.

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