

# MANAGING COMPLEX CRIMINAL TRIALS

**Presented by:**  
**The Honourable Madam Justice**  
**Alice Yorke-Soo Hon J.A.**



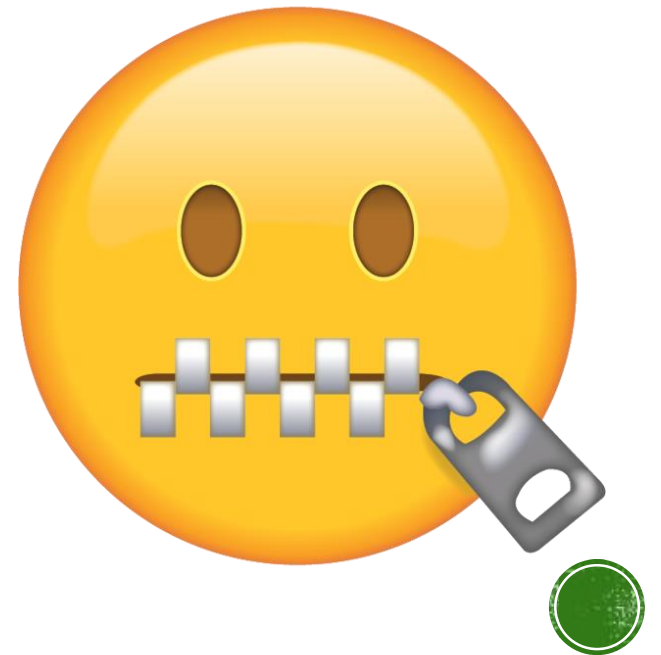
# ADDRESSING SECURITY ISSUES

- i. Identify the need;
- ii. Assess the security measures already in place;
- iii. Determine what more is required;
- iv. Be part of the plan.



# DEALING WITH THE MEDIA

- i. Principles for dealing with the media;
- ii. Protect the integrity of the trial;
- iii. Gag orders.



# KEY JURY ISSUES

- i. Jury selection;
- ii. Sequestration;
- iii. Depleted jury panels;
- iv. Contamination;
- v. Warnings – Social media



# IMPORTANT AREAS IN THE SUMMING UP

i. Pre-trial publicity;

ii. Separate treatment/ Separate verdicts;

iii. Mid-trial instructions;

iv. Dealing with the evidence;

v. Assisting the jury;

vi. Written directions;

vii. Route to verdict;

viii. Repeating warnings



**Title of Session:** Complex Criminal Trials

**Session Chairperson:** The Hon. Mr. Justice Jacob Wit

**Session Panelists:** The Hon Mme. Justice Alice Yorke-Soo Hon. J.A., The Hon. Mr. Justice Murray Shanks

**Objectives of Session:** At the end of this session, participants will be able to:

- a. Identify key elements of a complex criminal trial that require special focus, and
- b. Identify tools/methods that can be used to effectively and efficiently manage complex criminal trials.

**Key points from Presentations:**

1. **Managing Complex Criminal Trials – The Pre-Trial Stage by Hon. Mr. Justice Murray Shanks:**

- A. The main problem with complex criminal trials is that they take too long and, because they take too long, the jury or judge are not able to retain or assess the evidence properly; the jury or judge may become bored or unwell and abandon the task; and in any of the event, limited public resources are wasted. Furthermore, some of these can lead to a re-trial which is unfair to the prosecution and defense.
- B. The solution to these problems is to ensure that complex trials are as short and focused as possible.

**SUGGESTIONS FOR EFFECTIVE PRE-TRIAL CASE MANAGEMENT:**

- Have one trial judge be allocated early as possible and have s/he does all the pre-trial hearings.
- Insist that a lead prosecutor is identified and that trial counsel on all side attend all pre-trial hearings. Try to create a good relationship with counsel before trial.
- Have the defendants attend all pre-trial hearings.
- Define and narrow the issue so that there is not a long series of charges.
- If the indictment is too long and unmanageable then try to persuade prosecution not to pursue all counts early on. If necessary, use power to order separate trials to keep trial within bounds.
- Direct prosecution so that a case summary is produced at an early stage.
- Have the defense obliged to say where they take issue with prosecution case and sanctions made if they do not. That prosecution can comment and jury can draw inferences. Hence make sure to explain directly to the defendant their obligations and sanctions if they're not met.

- Fix date and length of trial as early as possible and make an effort to stick with the fixture. Make sure that defendant personally knows that the trial can go ahead even in their absence and record the warning.
- Allow enough time for at least one full case management hearing which will save time at the trial stage.
- Deal with all interlocutory applications and legal issues well before trial.
- Have effective but not too many pre-trial hearings.
- In the aspect of disclosure, make sure prosecution is doing it properly but also limited to what is truly disclosable.
- Encourage defense to identify what they are really after in problems that are caused in contents of computer and mobile phones.
- Encourage prosecutor to serve draft agreed facts before trial and have defense to agree them unless sincerely in issue.
- Encourage prosecutor to produce and agree plans to make case presentable to jury (e.g. Diagrams, charts etc.).
- Have experts meet to agree or disagree on the evidence.
- With parties, consider which witness truly needs to make live evidence so that the jury can know and make links to make conclusion rather than having a whole bunch of individuals making a live evidence.
- Vulnerable witnesses must be given special measures so that confrontation in the open court cannot be made hence this should be organized in advance.

## 2. **Managing Complex Criminal Trials by the Honorable Madam Justice Alice Yorke-Soo Hon. J.A.**

### A. Addressing security issues:

- i. Identify the need – know if you would need security measures to be taken, i.e. if the defendant is a dangerous person or would the witness need special security measures.
- ii. Asses the security measures in place – evaluate your security measures such as how will the defendant be transported and are detectors present in these trials etc.
- iii. Determine what is requires- now that you have evaluated your current security measures, then compare those current security measures to what needed security measures should be present and from there you can determine other security measure should be done with the levels of risk foreseen.
- iv. Be part of the plan – judges would also be informed of the plan and the security measures so when the risk or situation arises the judge and/or jury knows what the next move should be.

### B. Dealing with media: scrutiny of the media usually comes when dealing with notorious crimes.

- i. Cooperation and accommodation with the media must be engaged rather than hostility.





- ii. The case should always be the priority and should be focused on always.
- iii. When a direct approach is done with the media, it should be spoken to with care.
- iv. No contact policy- have middle ground liaison between the media to give information to the media but at the same time protect the integrity of the trial.
- v. The judge is always considered responsible – therefore keep informed and copy of the rulings for general given publicity or forecast attention. Judge should also watch their demeanor, language and behavior during the proceedings.
- vi. Accommodate the media- allow space for the media so that the proceedings can be observed. Also know if the role would interfere or will justice media coverage needed.
- vii. Publication – have a warning on how to report.
- viii. DPP fairness of the trial – DPP must also secure the trial by overseeing the pretrial publicity.

C. Key Jury Issues:

- i. Jurors need to be protected- have them sequestered and if possible have a day to day sequestration. Jurors should not have direct public interaction hence they should be in careful watch of the marshals when it comes to notorious criminal trials. This process is costly.
- ii. Contamination- if allegations arises then it must be asked to the jury if it is true to stay on the consistency of fairness.
- iii. Depleted panels- Judge must make sure the jurors are protected to reduce the occurrence of depleted panels. At the same time the jury panels should be altered and fairness must be seen. Always update the jury of the key and caution warning to keep them in track and present during the trials.

D. Summing up:

- i. The jurors needs to be aware and cautions of the pre-trial publicity.
- ii. Keep jurors on track by having mid-trial instructions.
- iii. Assist the jury by relating relevant law and evidence rather than giving a whole 10 page worth of documents. Link the two so that the jurors are aware of the issue. This would then help in not having any re-trial.
- iv. Written directions- have a written directions so that the jurors can be focused and when explaining these directions orally be consistent.
- v. Always have a route to verdict to assist in the organization of the trial.
- vi. Repeat warnings- always repeat warnings to the jurors so that they can be kept in track.

**Questions and Responses:**

**Question:** How to deal with social media problems? When the situation arises of rank hostility of the defendants or witness and outrageous comments are created which may lead to secondary



allegations to the public.

Answer: If the judge steps in the problem then you are removing the right of free of speech from social media. Hence the advice give directions to the jury to not disclose anything to social media and focus themselves on the trial itself so that they do not disabuse their mind. Therefore constant care and caution needs to be kept in mind.

Question: What are some available sanctions when defendant is not present to make a statement?

Answer 1: In practice- very little, cost orders can also create problems; hence, it all goes down to human persuasion. Having human interaction and persuasion can achieve defendant being present in the hearing.

Answer 2: From the Criminal Procedure Rules you cannot impose sanction because they're taking time in creating an alibi; however, in Hon Mme. Justice Alice Yorke-Soo Hon's court, they practice this concept of "Naughty Caught" that occurs every week and it is a meeting with all members and the lawyer or jury that did not comply to the directions given are put on the spot and asked question.

Question: Is hearing a witness by an investigative judge considered custom or legality?

Answer 1: It's more custom due to witnesses being present at the event and it still requires the parties to cooperate so that statements can be agreed and reduce to factual. Moreover, the judge, council and defendant would all be present. Furthermore, during the actual court sittings, the criminal trial judge must be strong on their case and that is because the constituent's duty is to keep the trial short as possible.

Question: In the aspect of the jury exposing the jurors, should the faces of the jurors should not be published? And the importance of route to verdict.

Answer 1: In the aspect of jury identification, judges must protect the jurors and the matter is costly, however will be efficient because there will be less times that depleted panels would be seen. Judges can go to media and have a say on the case when the need arises or they state the need for jury protection. In the aspect of route to verdict, this is important when the means arises; and the need to verdict is a step by step approach that can be done in bullet points, charts, etc. for ease of reference.

Question: What can be done when the jury refuses to state the verdict?

Answer 1: The judge must give the jury an obligation when the verdict must be made; however, how the verdict is come upon cannot be stated due to discretion.

Question: How to address the jury and lawyers that are not present or do not comply with tasks given? How do you reign in such lawyers?

Answer 1: As a judge you have control and authority of the proceedings and hence you should use that authority to have an effective and efficient trial with fairness.

**Other information:**

The Hon. Mr. Justice Murray Shanks have provided relevant English material:

- A. Lord Chief Justice’s Protocol “Control and management of heavy fraud and other complex criminal cases” (updated 30/1/17):  
[http://www.justice.gov.uk/courts/procedure-rules/criminal/pd-protocol/pd\\_protocol](http://www.justice.gov.uk/courts/procedure-rules/criminal/pd-protocol/pd_protocol)
- B. Better Case Management Handbook (8/1/18):  
<https://www.judiciary.uk/wp-content/uploads/2016/06/Crown-Court-Compendium-Part-I-July-2019-amended-1-August-2019.pdf>
- C. Criminal Procedure Rules:  
<https://www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu2015>

Experiences and suggestions made during the question and answer period:

- A. An experience was shared that a bomb threat was done and re-trial had to be made. Hence, suggesting that a protocol must be made when such situations occur and an alternative venue must be used.
- B. Suggestion was made also in making a non-compliance list or adapting the Naughty Caught concept done so that jurors and lawyers can be addressed when not complying with directions.