

SPEECH BY

THE HONOURABLE CHIEF JUSTICE
DATO SERI PADUKA MOHAMMED SAIED

OPENING OF THE LEGAL YEAR 2005

THURSDAY, 1 MARCH 2005

Good morning, ladies and gentlemen.

Honourable Pehin Isa, Mr. Attorney, Your Excellencies of the Diplomatic Corps, members of the legal profession, ladies and gentlemen.

Before I start I should like to express my sincere thanks for the excellent Guard of Honour parade mounted by the Police contingent. As usual they performed immaculately and professionally. To all of them and to the Commissioner I say thank you very much.

On your way to this courthouse you will have noticed a new building coming up in between this courthouse and the Law Building. Obviously it will be a few more months before it is made available for occupation. I have it from credible sources that it will house some Government Departments, and will have no less than eight courtrooms for the Judiciary. This extra court accommodation is most welcome and it comes at a very opportune time when there is an apparent increase in the workload in the Magistracies and the High Court. Trying to find a courtroom every morning when all courts are in action, particularly when the Court of Appeal is also in session, is not dissimilar to a chess game. We hope that this almost daily morning hunt and chase for a courtroom will in the foreseeable future become a thing of the past, for which we are all very thankful to the authorities.

It is hoped that with the availability of this extra space we shall be able to see the initiation of the Small Claims Court. The jurisdiction of this court is evident from the title it bears. Notwithstanding the title, it is expected that these courts will have, when they start functioning, a mini-domino effect on the Magistrates' Courts in that they will take off some pressure from the Magistrates' Courts, and magistrates will then be able to devote a little more time to criminal cases.

During the past year criminal cases, which include the road traffic violations, registered in the four main centres were 2180 at the courts in the capital, 340 at Kuala Belait, 103 at Tutong and 15 at Temburong; and the civil cases numbered 872, 120, 7 and zero respectively. The Senior Registrar and Registrars of the Supreme Court dealt with 253 Chambers applications. 123 civil cases were registered in the Intermediate Court, whereas the number registered in the High Court was 316. The Intermediate Court disposed of 15 criminal cases, and the High Court 42 cases. The Court of Appeal, which sits twice a year, heard 15 criminal appeals and 13 civil appeals were registered during the last year. There were 281 bankruptcy notices filed during the year, 161 receiving orders and 41 rescissions were made, and 3 winding-up orders were issued.

Coming now to Revenue collection during the last year, the total in the three main centres of Bandar Seri Begawan, Kuala Beliat and Temburong amounted to \$3,278,546.91, \$411,227.93 and \$16,607.00, making a total of \$3,706,381.84

It is recognised throughout the common law countries that the mainstay of this judicial system is that courts enjoy the unique and distinct privilege of sitting in justice in accordance with the laws of the individual country without fear or favour or ill-will towards any party. Those claiming to have the moral strength and ability to sit in justice upon fellow citizens provide the powerful safeguard of the law to the less fortunate one who stands in tatters in the dock of the court the same way that they would to someone standing in the same dock in a Armani suit. This to my mind is a great

tribute to the criminal justice system, which requires that all manner of people shall be treated equally without any discrimination or bias based on colour, creed or nationality.

No one sitting in this august assembly needs reminding about what justice means. Justinian is reported to have said,

“Justice is the earnest and constant will to render to every man his due. The precepts of the law are these: to live honourably, to injure no other man, to render to every man his due.”

Socrates expressed the view that nothing was to be preferred before justice. It is a common saying that justice is blind. If it is accepted that justice is a commodity that cannot be rationed, it must equally be so that the pursuit of justice tolerates no hurdles or barriers of any sort and any moderation in the vigour of that pursuit would be a sure prescription to bring the entire justice process into disrepute locally as well as externally. Those whose duty it is to dispense justice will say that unadulterated justice is something very sensitive and brittle: let alone it thrives, touch it ever so lightly and it crumbles.

I came across this anecdote, which you may think is a rather extreme example of meting out justice. It is said to have happened in a County Court in Florida, USA, and is recounted in *The New Lawyer's Wit and Wisdom*, compiled by Kathryn Zullo. It is about a judge known for his unusual sentences, who made marriage a mandatory condition in a defendant's plea bargain. When the defendant was convicted of assaulting his live-in girl friend in 1992 the learned Judge told him, “You have a choice. Marry the mother of your children and get a year's probation or never see her again and get a year in jail.” The defendant not surprisingly chose to be sentenced to marriage rather than the hoosegow! That is a quaint little word one seldom hears of. The context in which it's been used does indicate what it means, but to assure myself I had to consult some dictionaries, at least three, before I found one which states that it is slang for a jail.

Those of us who have had some court experience will have no hesitation or qualms in vouching for the absolute truth of what is attributed to Horace, the poet and satirist, cited in the same little book, “Though justice moves slowly, it seldom fails to overtake the wicked.”

If fairness be justice then the fundamentals of justice must be that, in the words of Cicero, no one shall suffer wrong and the public good be served.

Before I leave this topic, let us remind ourselves of the Arab proverb, “One hour of justice is worth a hundred of prayer.” And of course it goes without saying that the guiding principle in our system of justice is best described by Cicero who said, “It is better to risk saving a guilty man than to condemn an innocent one.” Indeed so, and that is what justice is all about. How easy it is to determine it though is quite another matter!

The singular status of the courts to which I have just referred is in common parlance known as the independence of the judiciary. The importance of this unique judicial system is felt in all spheres of human existence, for it is an attribute which, in common with all other nations, reflects the ultimate goal, that being the attainment of an untarnished and pure decision, reached on the basis of the available evidence of both sides and in accordance with the laws of the country.

Some doubters may say that the achievement of such untarnished and pure justice is simply beyond human wisdom, foresight and capacity, that it is a Divine attribute. I have no quarrel with that, and it is because we lack that particular quality or attribute that governments have promulgated various laws, rules and regulations to enable their judicial officers execute their duties in a fair, just and equitable manner.

Likewise, I should say that strict compliance with the laws in an atmosphere and surroundings that the courts and the legal practitioners enjoy in this country is, as in other countries having similar systems of justice, of such quality and standard that an independent observer would be able to say without any hesitation that the singular and much sought after pursuit of unadulterated justice has not been, in the context of the laws of the country, in vain. Therefore the belief held by some that rather than untangling or solving a problem the courts make it all the more unsettled, does not in my opinion apply to our system of justice.

An independent and unaffected decision is reached on the basis of the evidence of both sides, which is, as I have said earlier, truly a reflection of untarnished and pure justice on the basis of what both sides have, in their best endeavours on behalf of those instructing them, put before the courts. To accomplish that end has always been and will forever remain the cherished aim of our judicial system.

Ladies and Gentlemen, that is what is expected of your courts and the judicial officers. While we all readily accept that we humans are not infallible, we do our best within the limits of the wisdom, integrity and comprehension that our Creator has so kindly and mercifully bestowed upon us, and persevere in the pursuit of the untarnished and pure justice in accordance with the local laws of the country, with confidence, and without fear or favour from any quarter, keeping in mind always the principle that is ascribed to Cicero, buttressed in our efforts by the safeguard that the appellate courts will ensure on appeal that no one who had not been proven guilty beyond reasonable doubt and had been wrongly convicted and his liberty snatched away from him, would be set free.

The foregone refers to different tiers of court, that is, the magistrate's court, the second tier being the Intermediate Court, the third tier High Court whose jurisdiction is two fold: the original jurisdiction and the appellate for appeals from the lower courts; and last tier being the Court of Appeal dealing with appeals from the Intermediate and the High Courts. These various tiers in the judicial system bring to mind an incident narrated in the same book referred to earlier that occurred in the Hong Kong Court of Criminal Appeals, where a lawyer reportedly gave three reasons why he felt his client's conviction should be overturned. Addressing the lawyer, one of the Judges said, "the first tier of your case is that the identification was wrong, the second tier that the statements should have been disregarded, and the third tier is that the conviction is against the weight of evidence in any event, is that right?" The lawyer could not resist a clever reply: "If I have reduced your Lordship to tiers, should I really continue?" It just goes to show how careful one has to be with his choice of words!

That goal which is so dear to us all, that of attainment of the untarnished or unadulterated and pure justice to all manner of men, does not in my opinion simply start and end with the mere perception that the people within as well as outside the country have of their judicial system. It is a matter that requires a distinct and clear separation of the judicial system from the administration.

I understand that my predecessor had mentioned this topic some years ago, but I see no harm in reminding ourselves of it yet again. This separation can be seen in operation in almost all common law countries.

May I be permitted first of all to assure the audience and those outside, that the justice system currently in practise in our courts is no different from any other common law nation, without any hint or trace of interference or intervention from any source in the process of decision making. Nevertheless brows are raised occasionally and questions asked about the separation of the judiciary from the administration.

This concept necessarily calls for two things: first the setting up of a Judicial Services Commission, quite distinct and apart from the already existing Civil Services Commission; secondly, the judiciary be allocated a separate budget.

This demarcation and severance of the judiciary from the civil service would quite logically lay to rest any misperceptions or misunderstandings that may exist locally or abroad regarding the complete independence of the judiciary, thus sealing for good the utter impartiality of the local courts in dealing with matters that are brought before them.

I should recall the words ascribed to Cicero, the Roman statesman in the 2nd century B.C., that the fundamentals of justice are that no one shall suffer wrong, and that the public good be served. It becomes essential in the furtherance of those fundamentals that, firstly, it is appreciated by all that their judiciary is singularly the only one institution which administers justice according to the laws of the country and, secondly, that to enable the judiciary to execute its responsibilities and duties without fear or favour or ill-will the courts of the nation have to be without any question or doubt completely apart from, the most appropriate word in this context is, independent of, the administration.

In simple and straightforward terms what this demarcation is all about is that the judiciary anywhere, whether concerned with the civil common law or laws of any other description and or title, having the unique distinction of being the only institution sitting in justice, ought to be able to project an image of independence in the sense that their decision making is not affected by any external influence of whatever source in material or abstract terms, directly or indirectly, thus burying for ever any 'perception', false though it may well be, doubting the honesty as well as the integrity of those involved in the entire justice system from the time of the inception of the proceedings right through to the announcement of the judgment.

It may be argued by some that such demarcation would place the Judiciary on a higher pedestal and quite apart from the rest of the departments of the administration. That may be but I shall respectfully submit that the argument is only illusory.

It will undoubtedly, and rightly so, project the total impartiality and independence of the Judiciary in the execution of its onerous functions, one being to ensure that all manner of persons brought to the bar of the courts are dealt with by a judicial system which instills confidence in the minds of not only those on trial but also of the people at large that those sitting in the seat of justice will give them a judicious and fair hearing, unaffected or influenced by any outside over-bearing of

any sort and in accordance with and in the execution of, the local laws; in short, that they should remain confident that they shall receive an impartial, patient and just hearing.

The reality being that that those concerned with interpreting and enforcing the local laws would forever remain under the close scrutiny of the community and with a vigilant Judicial Services Commission, we shall be satisfied that only appropriately qualified persons with sufficient experience both of life in general and of human qualities, foremost of which being honesty and integrity, are appointed as judicial officers.

A close and critical scrutiny of the common law countries which have this distinct demarcation in the two arms of the government would indicate the undeniable advantages of such demarcation: not only does it lend to full and profitable enjoyment by the civilians of their lawful rights without any let or hindrance, it enhances the image of the courts locally as well as internationally, and so too of the governing authority in all aspects both locally and beyond the international borders, thus projecting the true worth of the country in the commercial, financial and investment spheres similar to other countries which already have such distinct separation of their judicial systems from the civil side of the government.

For these reasons I should think that it is past time that serious consideration be given to the possibility of establishing a Judicial Service Commission.

With regard to computerisation of the courts I understand that the responsible body has reached the stage of tendering out the project. Hopefully we should expect work to start in the not too distant future.

Similarly concerning interpreters the State Judiciary Department and the Chief Registrar are considering the best training programmes overseas. I trust that their endeavours in this regard will soon bear fruit.

About the setting up of the much heralded and awaited Law Society, a year has gone by and I confess I do not have any clue of the reason for the hold up. The last thing I know of is that draft rules were forwarded to the Honourable Attorney General's Chambers. I am afraid this is all I can say about it.

I am grateful for your patient listening to my dissertation on one topic only, which I think is important for the maintenance and enhancement of the good image of the Judiciary and the judicial system of Negara Brunei Darussalam.

I shall now call upon the Honourable Attorney General for his views followed by the representative of the legal practitioners

After we are done with the various speeches, we shall all proceed to the main lobby on the ground floor for some refreshments.