

SPEECH BY

THE HONOURABLE CHIEF JUSTICE  
DATO SERI PADUKA MOHAMMED SAIED

OPENING OF THE LEGAL YEAR 2006

TUESDAY, 28 MARCH 2006

Your Royal Highness Paduka Seri Pengiran Anak Puteri Hajah Muta-Wakkilah Hayatul Bolkiah, the Honourable Dato Attorney General, President of the Law Society of Brunei Darussalam, your Excellencies of the Diplomatic Corps, members of the legal profession, ladies and gentlemen.

Welcome to this annual function, which marks the close of the past legal year and heralds in the new legal year. Very many hold special joyful functions and sumptuous feasts for bidding good bye to the previous year and welcoming the arrival of the new year with rich fruits for their labours; others are more constrained due perhaps to their faiths; nevertheless they too join in the prayers that the incoming new year will bring an era of peace and happiness for the mankind. We, in the judiciary, too have this tradition that, as you just saw, starting with our prayer.

The endeavours of the judicial officers are all geared towards faithfully upholding and practicing, in full view of the public, each and every word of the judicial oath that each one of us took at the time of our appointment.

Appreciating the fact that justice on this planet is what the peoples of different faiths and countries think what it is, which I must say is not uniform throughout, and that the process of achieving that goal is through the means and procedures adopted to meet the needs and requirements of each country to keep the peace, we should not be surprised to notice the divergent ways and procedures through which that goal is achieved. A more sagacious person whom I am unable to identify right now described the process as being an attempt to “domesticate the natural ferocity of the species.”

To give one instance, our jurisdiction practicing the common law system of jurisprudence, which provides the corner stone of criminal justice as proof beyond reasonable doubt for the simple reason of the different type of punishments starting at the lowest with a warning or binding over or probation or a monetary punishment, or various terms of imprisonment with or without corporal punishment prescribed by the law for certain offences and the ultimate punishment of death for some offences, whereas in other countries, which do not practice our system of criminal jurisprudence, the burden is reversed, that is, it being the burden of the accused person to discharge, that is, to prove that he is innocent. That burden on the prosecution in our system is onerous and heavy as it involves proof of each and every element of the offence. It follows, as no doubt every one knows, that a defendant is entitled to the benefit of lack of proof on any constituent of the offence, the sum total of which is described as the benefit of doubt. This system of criminal jurisprudence has stood the test of time and come out unscathed through some very rough and uncertain phases of its history in some countries.

It is quite easy to understand that no human being, no matter how wise or learned he may be in the law, can claim that the brand of justice practiced in any kind of jurisprudence is capable of achieving the ultimate justice, meaning that it is infallible in every respect. We, as human beings, are fully conscious of this shortcoming in our nature and no matter how intelligent and learned a judicial officer may be, it must be accepted that we can neither aspire nor hope for attaining that ultimate justice which is a Divine quality.

The famous 16th century English philosopher and write, Francis Bacon, is recorded as having said, “A judge is one more learned than witty, more revered than plausible, and more advised

than confident. Above all things, integrity is their portion and proper virtue." Decision-making never comes easy, not even in our daily domestic affairs. Making judgment in a court of law is quite clearly a monumental task. I am reminded of the comment that Joseph A. Warner, a judge of the television show 'The People's Court', said, "The ability of a judge to put himself into the shoes of the men and women who appear before him is the heart of being a decent judge."

What about the practicing lawyers? I should imagine that people who have had dealings with such professional honourable men and women, would be pardoned for thinking that, according to a Japanese proverb, only painters and lawyers can change white to black; and a Russian proverb says, "When God wanted to chastise mankind, he invented lawyers." Remember Oliver Goldsmith, the 18th century write, he saw lawyers "always more ready to get a man into troubles than out of them." As against all that, consider what Louis XII of France thought of them He said, "Lawyers use the law as shoemakers use leather: rubbing it, pressing it, and stretching it with their teeth, all to the end of making it fit their purposes." And what about the recently qualified young lawyers. According to an 18th century writer, "Young lawyers attend the courts, not because they have business there but because they have no business anywhere else." Some lawyers consider that their skill likes in the circumvention of the law. H. James Thomas, an American lawyer, had this to say of his brethren in law, "Most lawyers, it seems to me, simply can't balance their energies: the goal of success and more money chips away at them until they have succumbed to a dangerous kind of myopia."

Those utterances by individuals as well as those belonging to the Honourable profession cannot be dismissed as merely witty remarks, which perhaps do not apply to all members of the profession.

To regulate the conduct of advocates all common law countries have a disciplinary body known as the Law Society, whose main function is to maintain discipline in the profession. I am happy to say that we now have in exercise the Law Society of Brunei Darussalam. The Society now bears the burden of ensuring that its members, who are not massive in numbers, behave and conduct themselves in a manner which, while not tarnishing the image of the profession and bringing it into disrepute both outside in their treatment of their clients and inside the courthouse, is such that it reflects the true and recognizable reflection or face of the honourable profession to which they claim to belong This is not as easy a task as it looks, particularly in a comparatively small community of lawyers and, as such, it will call for absolute adherence to the principles of the Society, including above all their ability to absolutely erase from their minds the slightest remnant of friendship or any other relationship of any sort or any inclination of considering the complaint as being minor deserving outright rejection. Their function is to thoroughly investigate any complaint against a member of the fraternity, and deal with it on the basis of the evidence that is placed before them by both sides in a detached, forthright and independent manner in arriving at their decision. The gauntlet has been thrown, the ball is in its court and it is for the Law Society to prove its worth to the citizens. Let me remind them also of the natural comprehension mixed with suspicion of the community that a Law Society, comprising as it is of members of the same profession, is "notoriously reluctant" to adequately deal with one of their own by suspending him or disbaring him. It is a challenge to the Law Society, and it can rest assured that their conduct will be under close scrutiny.

On behalf of all those assembled here this morning I wish our Law Society success in their endeavours to keep the profession off limits to any 'rogue' elements against whom any member of the public makes a complaint.

However, with our limited mental capacity, no matter how wise one may be, yet his mental reach is nevertheless restricted to a certain extent and not beyond, we have formulated our system, that is the adversarial system, to the extent, as I explained earlier, of the prosecution's burden being proof beyond reasonable doubt for a conviction, thus providing the corollary that the burden of the accused is much lighter of creating a doubt about the prosecution allegations and evidence. And to make doubly sure that the prosecution has proved the guilt of the accused person to the full satisfaction of the law and the conviction was proper and fully justified according to the law, we have a well established appellate system, which scrutinizes the evidence and the judgment of the convicting court very carefully. Nevertheless, the question is often asked, do our rules of evidence and the criminal justice system provide us with a definite, flawless and error-free system of justice?

Keeping in mind the human frailties generally, including the mental and intellectual deficiencies and limitations, the answer must be a resounding 'no'. Besides this being quite obvious because of our deficiencies, which must be accepted that we do have them, the proof of which, if any is required, lies in cases where in some jurisdictions which boast of having the most perfect criminal system and the most eminent jurists and the appellate system of various tiers, some people convicted of capital offences have been executed after the whole lot of appeals and pleas for clemency were dismissed, evidence surfaced which proved that the convicted person who had been sent to the gallows was after all an innocent person. In order to avoid this unfortunate occurrence some jurisdictions have done away with capital punishment.

The well-known American writer and director, Mr Woody Allen, is reported to have expressed his view about capital punishment in these words, "Capital punishment would be more effective as a preventive measure if it were administered prior to the crime." This is not, I can assure you, a mere jocular comment fit to be brushed aside, but is something serious to ponder over and compare to what extent has capital punishment in any jurisdiction helped reduce time, let alone eradicate it altogether, other than reducing the population by one.

I have touched upon this topic in a general way just to show that no matter what sort of judicial system we may endeavour to have, it cannot be said to be perfect and it will be perfect only to the extent of our intelligence and our shortcomings, and that is all we can expect and hope for. In other words, we should all be thankful and hold our head high in the realization that our legal system, despite its shortcomings, has performed and continues to work as well as it does. That is a great feeling of satisfaction that any judicial officer can have in the execution of his task of decision-making.

It goes to the credit of the judicial officers who have the misfortune of seeing their decision in criminal cases upset by a superior court, that they accept it as part of the system to which they belong; otherwise it might be well nigh impossible for them, were they to be affected by the higher court's ruling, to carry on with their chosen profession.

This brings to mind the encouragement that the lead counsel for the prosecution Ms Marcia Clark gave to her fellow attorneys in the notorious O.J.Simpson trial on his acquittal. She is reported to have said, "Please do not let this [not guilty verdict] make you lose faith in our system. Please don't let this deter you from doing a job you're so well equipped to do." Some of us will still remember Voltaire's exhortation, "It is better to risk saving a guilty man than to condemn an innocent one." Therefore, repeating the words of Stephen Landsman, Law Professor of the Marshall College (USA) that "the adversary system has served as a guardian of individual liberty since its inception." And we as judicial officers, sitting in these courts of justice, not only affirm that statement but also resolve to be vigilant to ensure that we are not lacking in the proper application of the adversary system of justice and thus can rightfully claim to be the guardians of individual liberty.

The duty undertaken by any class of judicial officer remains constant and does not vary according to the weather. Experience has shown that the justice system has immense resilience in that no matter what the situation or the circumstance: political or social, public or private, the system is not affected and the officers manning the system carry on with their judicial functions regardless of what might be happening around them, thus upholding the supremacy of the law, remembering always the words of David Frost, a British television journalist, about the law. He said, "This is what has to be remembered about the law. Beneath that cold, harsh, impersonal exterior there beats a cold, harsh impersonal heart." That indeed is a proper codification not only of the law as such, but of the character of those entrusted with the task of enforcing the laws of the country in whom 'there beats a cold, harsh impersonal heart,' for only then would the enforcement of the law by the courts provide the foundation of peace, tranquility and stability for the citizens. Thus, and this is the other side of the coin, if the justice system fails for any reason and grinds to a halt, anarchy would take over with disastrous consequences.

The new beautiful and attractive building nearby indicates by its outward appearance that it is almost ready for occupation. The Judiciary is fortunate in being allocated sufficient accommodation for the magistracy. Space will be available for the setting up of the Small Claims Tribunal. Whereas now the accommodation is available the manpower required does not seem to have been provided for. It may also require training for the adjudicator and sufficient staff will be required. This Tribunal will be of great assistance as the process will be shorter and simpler. Our emphasis now is for the appropriate authority to consider the issue of trained staffing for the Tribunal and providing the extra staff required for the smooth launching of this Tribunal. The Chief Registrar will discuss the details of the requirement with the relevant authorities.

I am happy to say that with the cooperation of the police, there has been a marked improvement in the disposal of traffic cases. Whereas formerly traffic matters were dealt with only once a week, now the court deals with traffic matters four times a week. This marked improvement is due to the cooperation of the police prosecutors as well as the magistrates, which is greatly appreciated.

With regard to the criminal cases there too some progress has been made with the assistance of police prosecutors and other government agencies. The problem of lack of sufficient courtrooms, which has been a stumbling block to speedier trials will hopefully be a thing of the past when the magistrates move into the new building, thus the bottleneck created by the shortage of courtrooms

will disappear. This however is only a partial remedy in this regard because the problem of the availability of sufficient trained interpreters still persists.

Generally speaking our courts must have adequate number of interpreters proficient in the local language and dialects. It is obvious that without the availability of properly trained and qualified interpreters some courts are put on hold until another court finishes its business for the day. This is an unacceptable situation and I must emphasise that it is a problem that has to be solved as soon as possible for the smooth functioning of the justice system. The significant importance of the availability of trained interpreters to courts cannot be over emphasized, as they form an important constituent in the entire process of having a fair trial in the sense that it is fair not only to the State as prosecutor but also to the defence and, what is often forgotten or overlooked, also to the witness whose testimony may be presented to the court by an untrained and inexperienced interpreter in a different manner putting on the evidence an interpretation that was not what the witness had said or meant.

I submit therefore that this is an area which is of such importance not only to the Courts but also to the reputation of the entire justice system that there should be no hesitation or argument for the provision of sufficient funds as well as for training facilities to be made a matter of top priority if the courts are to function smoothly and efficiently in the disposal of cases at a quicker pace, much to the satisfaction primarily of all those involved in the entire process of the trial, particularly the defendant or the accused person. As the old adage says, justice delayed is justice denied. Perhaps it is not fully or properly appreciated that an early trial to the satisfaction of all concerned in the entire exercise is something that enhances the confidence of the people in our justice system, which ought to be properly understood so that no hurdles, be they budgetary or the order of priority or any other reason, would be an acceptable excuse for denying the courts their fair, just and pressing requirement. I hope and trust that the responsible Department will now be able to comprehend this problem fully, which I stress is of immediate concern, and provide adequate means for the training of the interpreters locally, if possible or, in the alternative, sending them elsewhere having similar judicial system for training. I should like to stress that this is a pressing and urgent need of the Judiciary and the sooner it is attended to the better for the efficient and speedy resolution of cases. The alternative to ignoring this call for immediate action is to face a backlog of criminal and other type of cases increasing by the day, which to any sensible person is horrendously implausible.

We now have two new laws awaiting implementation, these being the Offenders (Probation and Community Service) Order, 2006 (No.S 6), and the Children and Young Persons Order, 2006 (No. S 9). A lot needs to be done by way of staffing by properly trained and qualified personnel before these laws come into force. I consider these laws absolutely necessary and useful in the general interests of the community, and particularly the young people. I should suggest that the sooner the plans are worked out and training facilities etc provided for those who are to supervise such offenders, the better will it be all round. The intention of having these laws on the statute book is certainly not to let them like dormant in the Laws of Brunei Darussalam gathering dust, but the very fact that they have now been promulgated is proof of the realization that they are considered to be important in the general interests of the public, more so for the training of the unfortunate young persons who now see in these two laws the distinct probability of them

becoming useful citizens. Hence I should say that it is in the general interests of the community as well as the young folk that the preliminary requisites are completed as soon as possible to enable the early enforcement of these two Acts.

It is always the last item that is the most important. The burden of a judicial officer as set out in the judicial oath is not visible or apparent for people to see. Therefore it may be difficult, if not impossible altogether, to compare it with any other of the many services for the well being of the society. For this profession of the judicial officer to succeed requires absolute compliance of and adherence to, the judicial oath. This is well recognized in all common law jurisdictions, which understand fully that the nature of the burden, if properly executed, is such that some unscrupulous people or their relatives may be persuaded by the nature of the crime faced by the accused and/or the sentence prescribed by the law that they dare tempt the judicial officer with awards beyond the contemplation of the judicial officer, who may consequently fall prey to such temptation. Such instance of the existence of a weak link in the chain of the process of justice is not uncommon. In order to maintain the independence of the judicial process as well as the integrity of the judicial officer, governments have devised various means to counter such temptations, including the provision of special and exclusive terms of service quite distinct and apart from the rest of the civil service, to ensure that the judicial officer who, after all like any other human being, suffers from, if not all, at least some of the weaknesses of character, does not succumb to any temptation in the process of decision making so that his decision, rather than being an independent decision, instead becomes one contaminated by the dictates of the award that he has accepted for so doing.

Whereas I do not doubt that our judicial officers conduct themselves in strict compliance not only of the judicial oath but also by the dictates of their individual beliefs in the discharge of their duties, I do consider that the judicial officer, being an imperfect human being, is just as much prone to character weaknesses as is the next human being, despite his resolve to always act in accordance with the judicial oath. That weakness of human character is fully recognized and some governments have made special provisions peculiar to the judicial service, including the pay structure which is distinctly separate and apart from the rest of the civil service, in order to maintain the rule of law above any other consideration. I should add that in other jurisdictions this distinction between the civil service and the judicial service has not drawn any criticism or disapproval from any arm of the government or understandably from the citizens, and has worked out to the benefit of the judiciary as well as the public, the latter resting assured that their judicial officers were beyond any sort of temptation in the discharge of their duties as judicial officers.

I should nevertheless say that in the discharge of their functions, the judicial officers have conducted themselves in a commendable manner such that their honesty and dedication to their professional duties has remained constantly beyond any reproach or criticism, for which I am most grateful to each and every one of them. We are of course assisted in our endeavours by the other staff within the judiciary, who have always done their best in making this institution proud of their achievements, and I thank them wholeheartedly for their devotion and commitment to their respective duties.

I see no reason not to recommend to the appropriate authority, as I now hereby do, to consider that it is about time, as I had suggested in my address at a similar gathering last year, that consideration be given to the possibility of establishing an independent Judicial Service Commission. In the meantime, I humbly pray that the distinction to which I have referred is considered and the pay structure of the judiciary reviewed, which will provide further impetus to the judicial officers in the discharge of their unique and onerous function of doing justice in accordance with their judicial oath.

I am grateful to the Police Commissioner and the Police contingent that participated in the march past, and I am indeed happy to appreciate their performance, for which I am most thankful.

Some persons accused of any serious criminal offence may not be allowed bail and have to be remanded in custody; and there are others who are unable to meet any bail condition and have to be remanded in custody. The duty of producing such persons held on remand in court on the date stated in the remand warrant, is of the prison authorities. It is manifest that generally speaking, a criminal trial cannot proceed without the presence of the accused person. Our thanks are due to the Director of Prisons for ensuring that the remand prisoners are always produced in court according to the date and time stated in the warrant, thus enabling the court proceedings to be conducted punctually and smoothly.

My thanks go to the audience also who have so patiently listened to my hopes and aspirations for the Judiciary.

Apart from myself, an old foggy now, the other judicial officers, ladies and gentlemen, can look forward to a long career in the Judiciary, with opportunities for promotion. I owe them a special vote of thanks for their cooperation and commitment to their respective functions which will, I am certain, stand them in good stead in the future.

To the qualified prosecutors, the police prosecutors and prosecuting officers from other Government law enforcement agencies, namely the Anti-Corruption Bureau, the Customs and Excise Department, the Immigration Department, the Narcotics Control Bureau, I say that all the judicial officers are indebted to them for their devotion to their task. There may be areas of improvement which I am sure are pointed out to them either during the trial or in our judgments.

While on this topic one particular section of the judiciary has not had any mention in the past years. That is the office of the Coroner. I am informed that there has been a steady flow of cases and magistrates in their capacity as coroners have been called out, irrespective of the time, be it night or day, to the scene to assist the police in determining the cause of death. The post-mortem follows subsequently. This is a useful service to the society as a whole. I know that a Coroner's Manual is in the process of being compiled for the assistance of the police investigators, the coroners and the pathologists in general and more particularly in cases where doubt may arise concerning the procedure and practice. I take this opportunity of wishing this venture which I am sure will go a long way in making this important area of investigation that much clearer all the best.

I shall now deal with the statistics, starting with criminal cases. Figures for 2005 show an increase in this area in all the magistrate's courts: in Bandar Seri Begawan the number of criminal cases registered had gone up from 2180 in 2004 to 2415 in the year 2005; Kuala Belait showed an increase of 92 to 432, Tutong Court showed an increase of 16 to 123 and Temburong an increase of 15 bringing the total to 32. Criminal cases registered in the Intermediate Court were 22 and in the High Court 29 cases. There were 41 criminal appeals from the Magistrates' Courts to the High Court and 15 criminal appeals in total from the High Court and the Intermediate Court to the Court of Appeal.

With regard to the civil cases in the Magistracies the figures from Bandar and Kuala Belait courts showed some decrease: in Bandar 784 were registered in 2005, indicating a decrease of 88 cases from the previous year; in Kuala Belait for the same period the total civil cases registered numbered 100, a decrease of 20 from 2004. In Temburong no civil cases have been recorded since 1996. 190 civil cases were registered in the Intermediate Court, which was an increase 67 from the previous year 2004.

Civil appeals to the High Court from the lower courts numbered only 3 in 2005, a decrease of 4 from the previous year; whereas the number of criminal appeals from the Magistrate's Courts to the High Court in the same year remained constant at 41 compared with 2004.

Criminal cases filed in the High Court in 2005 totalled 29, showing a decrease of 13 from the previous year. 21 civil appeals went to the Court of Appeal in 2005, an increase of 5 from the previous year, and 15 criminal appeals were filed in the Court of Appeal during 2005, a decrease of 5.

Whereas the total criminal cases filed in the last year showed a decrease compared with the previous year, there are of today no less than 8 capital cases pending trial as of 7th March 2006. This is a disturbing factor, particularly considering that two judges are required to hear such cases, thus affecting the other court cases, be they criminal or civil or whatever. In some jurisdictions capital offences were tried with the assistance of lay assessors. Their opinion or decision was not binding on the trial judge, who had the discretion of not accepting their decision. After some time this system was scrapped and a single judge would hear such case. Trial with a jury has different considerations, and has survived in some Commonwealth jurisdictions outside the United Kingdom. I would suggest that serious consideration be given to reconsider the trial system in capital offences, which, in my view, can just as conveniently and efficiently be done by a single judge in rotation, thus sparing the other for other cases. I can say with some conviction and confidence that this will not adversely affect the standard of justice in capital cases in any manner or form, for the simple reason that legal aid is made available in such cases and secondly, we have a Court of Appeal composed of three Justices to deal with the appeals which, in capital cases are automatic. It has succeeded in other jurisdictions and I see no reason why we should be any different in that regard.

We are happy to have one additional judge for a fixed term. He is our Chief Registrar doubling up as a judge of the High Court. His assistance in helping clear up the back log is greatly appreciated.

Legal aid was provided in 7 capital cases in 2005, an increase of 6 from the previous year.

Applications for Letter of Administration in 2005 totalled 318, an increase of 24 over the previous year, whereas 264 Letters of Administration were issued in 2005 compared to 206 in the previous year.

9 probate matters were registered in 2005 compared to 5 in the previous year; and 6 Probates were issued in 2005 as against 2 in the previous year.

Coming now to Bankruptcy matters, bankruptcy notices totalling 350 were filed in 2005, an increase of 69 from previous year; 220 receiving orders were made, being 59 more than in 2004; 56 Adjudication Orders were made showing an increase of 33 from 2004; there were 19 Recission orders made compared to one in 2004; there was one discharge of the Adjudication Order compared to 3 in 2004 and there 3 winding-up orders made, there seem to have been none made in 2004 and 2003.

There were 158 court marriages registered in 2005 compared to 140 in the previous year; and 16 divorces registered showing a decrease of 4 from the previous year.

The Revenue figures for 2005, those for 2004 are shown in brackets, are as follows: (i) Revenue : \$4,790,759.70 (\$3,706,381.84); (ii) Miscellaneous: \$4,300.00 (\$22,088.09); (iii) Estate Duty: \$381,485.52 (\$122,783.23); (iv) Stamp Duty: \$1,772,858.57 (\$1,051,265.32). The total comes to: \$6,949,403.79 (\$4,902,518.48).

I am hugely grateful for your patience listening to my talk this morning, and I hope that I have brought out some areas in which you may agree that there is room for improvement. Insha-Allah, we shall strive to do better during the year.

I now call upon the Honourable the Attorney General to address us, followed by the President of the Law Society.