

SPEECH BY

THE HONOURABLE CHIEF JUSTICE  
DATO SERI PADUKA MOHAMMED SAIED

OPENING OF THE LEGAL YEAR 2008

TUESDAY, 17 MARCH 2008

Your Royal Highness Paduka Seri Pengiran Anak Puteri Hajjah Muta-Wakillah Hayatul Bolkiah, Honourable Guests, Ladies and Gentlemen, good morning and welcome.

It is the time of the year when not only the Judiciary but almost all other establishments pause for a while to take stock of their activities, achievements and the missed opportunities in the previous year.

It is at this time that people in all fields of operation, be they in the private field or the government, resolve to do better in the New Year and chalk out the ways and means to achieve their aspirations.

Nigel Cawthorne in his book *The Strange Laws of Old England*, under the heading "No Fun", made this observation at page 42,

"One of the purposes of law is to limit fun and lead people into the paths of righteousness. This seldom works, however, for when it comes to pleasure, people will sooner or later find a way to indulge themselves, and no one has ever succeeded in legislating for virtue. But still they keep trying."

But first as usual the figures of the various type of cases for 2007, starting with the Magistrates' Courts, and criminal cases first, the Court in Bandar Seri Begawan had 3364 cases, that being 702 more than 2006; for Kuala Belait the figure was 321, that is, 11 less than the previous year; Tutong Court had 144 registered in 2007, that being 61 more than in 2006; and Temburong Court had 12 criminal cases registered compared with 6 in 2006.

The figures for civil cases registered in the Magistracies were: in Bandar Seri Begawan 1979 suits were registered in 2007 as against 1926 filed in the previous year; Kuala Belait Court had 95 registered in 2007, that being 9 less than the previous year; Tutong Court had 11 registered in 2007, that is 6 more than in 2006, and in Temburong Court no civil matter was registered as in the previous three years.

The Intermediate Court had 135 civil matters registered in 2007, this being 58 less than 2006; and 21 criminal matters were registered in the past year, that being 2 more than the previous year.

There were 8 civil appeals from the Magistrates' Courts filed in the High Court in 2007, the same as in 2006; and 31 criminal appeals were filed in 2007, this being 8 more than in 2006.

Coming now to the criminal cases heard in the High Court, the Court dealt with 11 cases as against 22 in 2006, and 161 civil cases were filed in the High Court in 2007 as against 174 in the previous year.

Civil appeals from the Intermediate Court to the Court of Appeal in 2007 numbered 20, that being 3 more than in 2006; and criminal appeals to the Court of Appeal in 2007 were 17 in number, this being 3 more than the previous year.

Chamber hearings before the Senior Registrars and Registrars dropped to 454 from 554 in 2006.

There are six capital cases awaiting trial of which four are of drug trafficking, one murder and one of possession of firearms without authority. Trial dates have been given for three drug trafficking cases and the firearms case.

We have encountered difficulty in getting a Bajau interpreter in one of the pending drug cases. We hope that this problem shall be solved soon.

Lastly, the total revenue collected during 2007 amounted to B\$7,425,571.41 as compared to B\$5,037,939.80 during 2006.

The Legal Profession Act [Cap. 132] is about Advocates and Solicitors, this because the profession is fused. For the sake of brevity I shall refer to the advocate and solicitor as lawyer, the nomenclature by which he is commonly known to the common man and not as 'counsel', as defined in the Supreme Court Act (Cap.5, R1).

Perhaps everybody knows about lawyers in very general terms. They are revered for their knowledge of the law, fully appreciating the fact that they, the lawyers, solve such problems for their clients as relate to the law and the courts.

An American lawyer is quoted to have said, "Being a lawyer is about serving justice. That's not only our greatest calling, it's our only calling"[1]. The emphasis there manifestly is on "serving justice".

Lawyers are considered as men and women of great knowledge, more so perhaps as "skilled in circumvention of the law"[2].

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[1] Lawyer's Wit and Wisdom compiled by Kathryn Zullo, page 38.

[2] Ibid., page 52.

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That may be but in Court lawyers stand at the Bar facing the judge, the sole arbiter of the proceedings upon whose shoulders rests the heavy burden of ensuring that justice is done according to the law.

Attempts by lawyers at circumventing the law with the sole purpose of winning the case, whether civil or criminal, seldom if ever succeed. Such circumvention may go past unnoticed or even applauded by a novice but seldom by an experienced judge whose duty it is to hold the balance fairly between the combatants before him.

During my research into this topic of fairness I came across the presidential address given by Sir Roger Ormrod, a Lord Justice of Appeal, on 7th March, 1980 at Holdsworth Club, published in the Jubilee Lectures, University of Birmingham at pages 183-197. Much water has passed under the bridges since, but the principles that the Lord Justice expounded during his address are to

this day regularly applied by decision makers in these courts. I shall refer to some pronouncements from his speech. At page 184, he said,

“The popular demand today seems to be not so much for ‘justice according to law’ as for ‘fairness’, for some way of holding the balance evenly between the parties to a dispute, controlling the powerful and protecting the weak. ... Moreover, the capacity of individuals or tribunals to make a succession of value judgments without, consciously or subconsciously, constructing stereotypes is limited, a process which is powerfully stimulated by the proliferation of specialized law reports, recording large numbers of decisions of fact which quickly come to be regarded as precedents, that is, stereotypes. Nothing destroys flexibility so quickly as precedent. Parallel with this longing for fairness and flexibility there is another yearning, for what is called the Rule of Law. The objective is the same – protection from powerful oppressors – but by the strict application of the law, which inevitably means rigidity and injustice to individuals.”

This concept of the Rule of Law is administered by the judges in accordance with the judicial oath by which they are bound during the currency of their service. Come hell or high water judges are bound by that oath and never shall they take a step backward from compliance with it, whatever the circumstances in which they perform their various judicial functions. Judges are known to have stuck to their seat of office in times of political upheaval and turmoil in their country and assisted in maintaining the Rule of Law whenever and wherever circumstances so required.

It has been recognized that in the development of the various stages of a nation and, as people become steadily aware of their rights, both social and legal, not only has the law to keep pace with those changing circumstances and wider aspirations of the citizens, but it becomes imperative for the government of the day to look ahead and make sufficient provision in its laws to meet the changing circumstances of the country and the aspirations of its people for the foreseeable future, and for the peace and security of the nation.

These last two attributes, peace and security, built upon and sustained by a sound legal system, form the bedrock that provides adequate protection for foreign participation in the development of the country.

Sir Roger Ormrod takes up this matter at page 191, where he says:

“The fact is that the law is in a state of continuous evolution, both in the Lammarkian and in the Darwinian[1] sense. It changes in response to changes the environment, just as Lammark postulated that giraffes grew long necks because the leaves they ate became progressively scarcer at the lower levels. It also changes by a process akin to mutation, and the survival of the fittest, that is, by legislation. In other words, Parliament produces the ‘macro’ changes, while the ‘micro’ changes are the cumulative effect of judicial decisions, responding to the tensions I have described. It is a misleading dichotomy to say that ‘Parliament makes the laws, the judiciary interprets them’. This is an example, and there are too many in the law, of the process which the late Mr. Justice Frankfurter described in these words, ‘A phrase begins life as a literary expression, its felicity leads to

its lazy repetition; and repetition soon establishes it as a legal formula, indiscriminately used to express different and sometimes contradictory ideas.’ ”

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[1] Jean-Baptiste Lamarck and Charles Darwin proposed two different views of evolution. Lamarck proposed a romantic theory of evolution based on an individual's striving towards perfection; whereas Darwin noted that there were large variations in a species and that these variations were largely heritable, concluding that not all individuals in a population reproduce and that not all progeny mature to produce.

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As I said earlier law is not static and it grows and develops to satisfy the ever growing needs of the society. Sir Roger Ormrod closed his discourse with these words of advice which, in my opinion, are just as applicable to any common law jurisdiction,

“The fact is that if the law of England is to retain its capacity to respond wisely and quickly to changes in the social and economic environment, it needs both Lammark and Darwin. If the giraffes are eating the leaves off the trees too quickly, the remedy is not to chop their heads off!”

Replacing the name of the country in that passage, the advice there is just as apposite to any Common Law jurisdiction.

The other allied matter which has always attracted attention is judicial independence. It did not come easily but had to be wrested by force and after some bloodletting from those who had considered themselves as high and mighty and whose understanding of justice was no better than the law of the jungle.

Over the years this principle of judicial independence has matured and is now firmly established and highly respected in the Common Law world, which includes the jurisdiction of Brunei Darussalam.

I should like to share with you one paragraph from *The English Judges, Their Role in Changing Constitution* by Robert Stevens, 2002 edn. The author deals briefly with this topic of judicial independence, and says,

“How absolute, however, is judicial independence? Like academic freedom, it has to defer to judicial accountability, although it is a balance which has never been effectively analysed. To take most extreme example, Lord Eldon's delays in the Chancery Court, said in 1820 to be close to twenty years (see *Bleak House*), would not be acceptable in terms of judicial accountability today. No matter how strong judicial independence is, the situation is obviously a delicate one. When Lord Mackay, Lord Chancellor from 1987 to 1997, was faced with a situation, as he saw it, of inefficiency and considerable waste of public money in the Employment Appeals Tribunal he required the High Court judge then serving as President (Wood J), to follow certain administrative procedures to clear backlog

of cases. The judge resigned from the bench rather than accept the directive.[1] A debate in the House of Lords alleged a serious breach of judicial independence (Mackay had apparently invited Wood to 'consider his position'); the matter, however, petered out without any discussion of where independence ended and judicial accountability began. The potential conduct remains to be solved, but may well remain unsolved while the relationship of parliamentary sovereignty and judicial independence remains unclarified."

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[1] The behaviour of Lord Mackay, in suggesting to Wood J. that 'he consider his position,' has led some to believe that Lord Mackay, normally the most temperate of men, had been provoked by Wood's reference to the Lord Chancellor's parsimony.

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At the home front, I should perhaps remind the advocates and solicitors that the capacity of a lawyer is not to be measured by his looks, his height or girth or how thunderously loud or sickly low his voice is or the amount of fees he charges in any single case or how well he's dressed and groomed, rather the proper and acceptable measure would be his professionalism and conduct in Court. Throwing around highfaluting phrases as embellishment of the lawyer's submission or repeating the same argument garbed in slightly different wording is no indication of the man's intelligence or his capacity as a lawyer, and is not as impressive as simple, straightforward argument, completely shorn of such embellishment that takes comparatively much shorter time.

Nevertheless, there are some who perhaps hold high opinion of the level of their knowledge of the law and the art of advocacy but which, to an independent observer, is such as to force his blood pressure up a notch or two.

I think that it is time that the Law Society took the initiative of establishing some means of keeping such advocates under tight rein. It is not for me to suggest what they should do, but it goes without saying that associations and societies such as our Law Society are known to hold seminars, discussions and such like events beneficial to the profession as a whole.

It is my pleasure to welcome to the High Court Bench our former Chief Registrar Awang Haji Hairolarni bin Haji Abdul Majid. He has served well as Chief Registrar and I have no doubt that he will further strengthen the High Court Bench.

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Dayang Lim Siew Yen, formerly Deputy Chief Registrar will now become full time Judge of the Intermediate Court.

Dk Hajah Rostaina binti Pengiran Haji Duraman, formerly Chief Magistrate is now the Chief Registrar.

It has been enormously comfortable this morning talking to this august congregation without having to keep up my voice loud enough to reach the last row of seats in this Court. The audio system was provided a short while ago and has been such a relief in not having to strain our ears or raise our voices to shouting level. The Judiciary is extremely grateful to the State Judiciary Department for their kindness and generosity, as indeed for the paved footpath and more reliable steps leading to the Law and Justice Building.

On behalf of the Judiciary I should thank the police authority for the Guard of Honour, the prosecutors and police institutions concerned with crime detection and prevention and the prison authorities for their arduous task. The courts appreciate and applaud their efforts in this regard.

Lastly, on behalf of the Judiciary I express our thanks to you all for sparing some of your valuable time to grace this occasion. I am particularly grateful for your patience in listening to what I had to say.

I shall now call upon the Honourable Attorney General to address this gathering, and he will be followed by the President of the Law Society.

At the conclusion of all the speeches and thanksgiving prayers, would you please proceed to the ground floor for refreshments.