

SPEECH AT THE OPENING OF THE LEGAL YEAR 2010
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POSTPONEMENTS AND DELAY IN THE DISPOSAL OF CASES: THE
CHALLENGES AHEAD

by

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(Added on the spot: Today, I am speaking with the full bench of the Federal Court behind me, literally though not directly. The irony is that it only happens after my retirement.)

I thank Y.A.A. Tun Zaki Tun Azmi for inviting me to deliver this speech. There is no doubt that this is an important occasion since this is the first time that we are having the ceremony to mark the opening of the legal year since the establishment of the new Federal Court and since the Federal Court moved to Putrajaya.

Actually, I was quite reluctant to accept the invitation because I thought that I was too familiar a figure in and around the court until very recently and that you had had enough of me that you would like to listen to someone else, instead. But, Y.A.A. Tun Zaki, still very much an advocate that he was, was very persuasive and he prevailed. So, you can blame him for it.

Ladies and gentlemen,

You have heard three speeches, delivered by the respective heads of the three institutions involved in the administration of justice, namely the President of the Bar Council, the Attorney General and the Chief Justice himself. That alone would make one more speech by a retired Chief Justice quite irrelevant. In fact, it can be said that what need and should have been said have been said. However, given the task, I will say what I would like to say on this occasion. Coming from me, you can expect not to hear what Omar Khayyam described as "brave music of distant drums" if I remember and understand him correctly. Instead, I will only briefly compare the situation of forty years ago when I joined the Legal and Judicial Service and the present position, look at one main problem and invite everyone involved to work together to overcome the problem.

I joined the Legal and Judicial Service in May 1969. Hardly two weeks after I reported for duty, the May 13th incident broke out. I was caught in the hot spot of Kampung Baharu. Fearing for my life, I took the first available flight back home to Penang. Then I received a letter saying that I was transferred to Kangar, Perlis as a Magistrate. I arrived at Kangar Magistrate's Court, driven by my brother in his old Austin 8. I was told that I had to sit in Jitra that morning. We went to Jitra. That was how I started without any training whatsoever. At that time I was the

only Magistrate, indeed the only legal officer in the State of Perlis, and I was covering Jitra and Langkawi as well. Now, there are two Magistrates in Kangar, besides a Sessions Court Judge, one Magistrate each in Jitra and Langkawi, not to mention the State Legal Advisor, the Deputy Public Officer, and the Assistant Director of the Legal Aid Bureau.

In mid-seventies, when I was a Deputy Registrar in the High Court Malaya, there were only five judges of the High Court in Kuala Lumpur. There was no High Court in Shah Alam yet. The total number of officers in the Legal and Judicial Service was about one hundred. Once in three months, on a "fixing day", I would fix civil cases for all the five courts. The "fixing list" would contain about 120 civil cases and that was considered "long". I should add here that the cases on the fixing list were only civil suits which were ready for trial. They did not include criminal cases, Originating Summons, Petitions etc.

The pressure to dispose of cases was not as great as it is now. Quite often lawyers would get the amount of time they asked for but, most of them were reasonable in their estimates of the time require, by the standard then. However, there was one lawyer who was well known for being long-winded. Normally, I would ask lawyers how many days they wanted. But when I came this lawyer's case, I would asked him how many weeks he required. While everyone in court laughed, he would stand up and seriously replied "only two weeks, your honour." The other lawyers laughed again.

There were no photostating machines then. Law reports and law books were carried in a rattan basket. One day, while the Federal Court was in session, two assistants of this same lawyer entered the court room each carrying a basket of books on his head. The late H.T. Ong (C.J. (Malaya)) looked up and asked. "What is going on? Is it a safari or something?"

There was no computer yet. Partly because of it, I believe, judgments used to be shorter comparatively because one could not "cut and paste". One good thing about it is that a judge would make a point to read the whole judgment, digest it, extract the principle and reproduce it, may be in one sentence when referring to the case. You would see this particularly in the judgments of the late Justice Eusoffe Abdoolcader.

There were only about 1,000 practicing lawyers then in Peninsular Malaysia. Those days it was not unusual to find a judge and lawyers sitting together having a drink at the club bar. Yet there were no complaints, no questions in Parliament, no video clips, no blogs and so on. Judges too had no statistics to prepare or to worry about and no KPI to achieve. At the same time, that period also produced many good judgments which are being followed until now.

Now, things have changed tremendously. In the High Court at Kuala Lumpur alone there are 32 Judges and in Shah Alam 16, making a total of 48, an increase of 960% . Tun Zaki is asking for more which is understandable as the number of pending cases in Kuala Lumpur now stands at 12,416 and in Shah

Alam 15,000. Of course the two last-mentioned figures include appeals and special powers' cases of 2,332 in Kuala Lumpur and 1,698 appeals in Shah Alam. I am mentioning these figures just to give you a picture, a rough one, as to how the number of cases in courts have increased over the years.

At the same time, cases are getting bigger and more complicated. When Dato' Haji Harun Idris was charged with corruption of RM140,000.00 in late seventies, everyone thought that that was a huge amount. Now we are talking about hundreds on millions. Merely by reading the pleadings and looking at the bundle of documents one would know the complexity of the cases. Judicial review was unknown in sixties. Now not only judicial review is applied for in all kinds of cases, the grounds for granting the orders have increased too. You know the rest.

We have greater problems and greater challenges at hand. However, these are not new problems. They are the same problems that exist all the time and in any country that offers fair trial, but the magnitude varies. In our case, they have increase tremendously and they have to be addressed before they get out of control.

Postponement is perhaps the oldest and the greatest evil in the administration of justice. It causes delay in the disposal of cases. It causes a waste of the time of the court and of everybody involved in the case.

We know that in every case, civil or criminal, usually, it is in the interest of one party, the accused person in a criminal case and the defendant in a civil case, to delay proceedings. The longer a case is delayed, the more likely it is for the witnesses not to be available (some may even die) or to forget the details of the story. At the very least, "the day of judgment" is delayed. But, the accused persons and the defendants are not the only cause of postponements. The prosecution, counsel and even the courts are responsible for it too. Some postponements are unavoidable, but others could be avoided. We should focus on those postponements which are avoidable if the judges are more efficient in managing the court's time provided the support staff and the infrastructure are adequately provided, if the Prosecution is more efficient in tracing their witnesses, if the famous lawyers do not take too many cases and so on.

There is a vicious circle, really. Because of the possibility that a case may have to be postponed, the court fixes more cases per day than it can hear if all were to go on with the trial. Since more cases are fixed than the court can dispose of, the lawyer (including the DPPs) would not take the hearing of their cases seriously.

Y.A.A the Chief Justice and Y.A.A. Chief Judge (Malaya) have made available to me statistics on postponements from various courts in the country. I am not going to trouble you with them. However, looking at them, I have no doubt that postponement is one of the main cause of delay and backlog.

As far as the reasons, you all know them too well. I shall not repeat them.

Neither, on this auspicious day do I want to mention who, the court, the prosecution or the advocates and solicitors is more responsible for the postponements. I am pleading to everybody to play his part, honestly, and to cooperate to reduce, if not to overcome this problem.

Y.A.A. Tun Zaki and his team are doing their best to arrest this problem and improve the situation.

I hope that the Attorney General's Chambers and the Bar Council will cooperate and assist the court in it. Besides, I also urge the Attorney General to study the causes of postponement and delay caused by the prosecution and try to reduce postponements at their request. They may have to sit down and discuss with the Police and other Government Departments with regard to service of summonses to witnesses, execution of warrants, preparation of chemist reports and so on.

To the Bar Council, I hope that it will spare some time and look into this problem from its side. What are the main causes of postponements caused by the lawyers: are there too few criminal and litigation lawyers? Are those lawyers taking far too many cases than they can handle? Are some lawyers assisting their clients to purposely delay proceedings by making all kinds of applications and appealing against every order made by the court. We all know that under our system, no matter how frivolous an application is, it has to be heard by the court and even though an appeal is without merit, it has to be heard. All take time and cause delay. If so, how to overcome these problems. How to improve compliance with the Advocates and Solicitors (Etiquette) Rules? And so on.

At individual level, I urge prosecutors and lawyers to play their part in handling this problem too. After all, lawyers (including prosecutors) are also "officers of the court". Certainly, that term is more than a reason for the provision of free parking lots at the court complex which, for the smooth administration of justice, should be provided where and as far as possible. They should remember (and practise) that they owe a duty not to mislead the court, not to delay proceedings and not obstruct the administration of justice even if it were in the interest of their case or clients to do so.

Enforcement of etiquette rules is difficult. But, lawyers, if they still claim themselves to be members of "an honorable profession" should conduct their affairs honourably not merely out of fear of prosecution or disciplinary action. They should set good examples as a matter of pride of their profession. And those who expect very high standard from other people should themselves set a high standard for themselves.

It goes without saying that Judges too have a role to play. Whenever there is a postponement or delay in a case, the first reaction of the public is to blame the court, even though it may not be the cause of it. However, let me make one point. From my own observation, I dare say that, by and large, judges of today are working harder than their predecessors of thirty years ago. I am not saying that the judges of thirty years ago were not hard-working. The pressure of work was

less then.

However, regrettably, there are a few judges who are not performing well enough. As a member of the Judicial Appointments Commission, perhaps, I may be allowed to say that, from my observation, the members of the Commission are unanimous that Judicial Commissioners who do not perform will not be confirmed and judges who do not perform will not be promoted.

Let me make it clear that I am not championing speedy justice at the expense of justice itself. I agree that while “delayed justice” may lead to injustice, “quick justice” is no better. It may lead to even greater injustice. It is important to ensure that there is fair trial without unnecessary delay and protraction.

Ladies and gentlemen,

I believe that whatever system, whatever law, whatever rule we have, in the final analysis, it is the people who are involved in its implementation who will determine the result. And it all begins here (Action: point to the heart) and in each and every one of us. You get it right here, you get it right all the way. You get it wrong here, you get it wrong from the beginning to the end. So, let us pause for a moment, look into ourselves and ask ourselves just one question and let our own conscience answer it honestly, to ourselves: Am I honestly contributing as I should (as a judge, a prosecutor, or an advocate and solicitor, as the case may be) towards a better administration of justice?

Ladies and gentlemen,

Let today, the 16th of January 2010 not pass merely as a day of ceremony. Otherwise we might as well spend this beautiful Saturday morning playing golf, going for a walk or just sleeping. Let this day be the beginning of an era of co-operation, an era when judges, prosecutors or advocates and solicitors give their utmost contribution towards a better administration of justice even at the expense of their own personal interests.

Thank you.