

SPEECH TO LAW SOCIETY OF INSTITUTE PERKIM-GOON
TUESDAY, 21ST DECEMBER 1993

Thank you for inviting me. It is a pleasure to accept your invitation and to be able to meet you and talk to you. It makes me feel younger, being in the company of young people.

I don't intend to make a speech about a serious subject, because, first, this is our first meeting and we should get to know each other first. Secondly, I am not an academician. Thirdly, as a student, you should first know what the law is, before talking about changing it.

I have been given a number of topics to choose from. I am not choosing any particular topic. Rather I shall talk about my experience from my early school days until now, of course with emphasis on what I consider might be of relevance to you, as a student. Then I shall touch on some of the topics given to me. Here again I shall be speaking mainly from experience. Of course I shall say what my views are on some of them. Never mind if we can't agree, so long as we can agree that we can't agree.

I am sure, not all of you come from very well to do families with fathers, brothers or sisters who are established lawyers to guide you. If you are, most probably, you would not be here – rather you might now be in England or Australia.

But no matter what kind of background you come from, I don't think you can beat me. You know how I went to school on the first day? A few days before the school term opened, I remember telling my parents that I wanted to go to school. I told my two closest friends, who are my brothers, about it. They also agreed. So the next day we followed the elder boys to school – barefooted because we had no shoes, and, anyway we could not wear shoes because we had to walk through the rice fields. Later on by another accident, I found myself in Special Malay One Class at St.Mark's Branch School, Prai. You know how I went to school every morning? I would get up at 5.30 a.m., cycle two miles to Kepala Batas, take a bus to Butterworth, walk one mile to Ujung Batu, cross the Prai river by sampan and walk another quarter mile to school. Of course things got easier in later years when I attended St.Mark's Secondary School, at Bagan Ajam. Of course from there I went to St. Xavier's Institution for Form VI. You know where I was staying then? At 113 Presgrave Street, Penang. A few of us rented the first floor of an elderly Chinese man's house at \$10 each per month. So there we lived including during the "hartal riot". By another accident, I found myself in the law faculty of the University of Singapore together with another 180 students. I will always remember the first lecture. That lecturer said, "Look to the

right, look to the front, look to the left. Of the three persons you see only one will come back next year.” Well, it turned out to be true.

I would not say that it is by sheer accident that I became a Judge. I think I can fairly say that, since joining the legal and judicial service in May 1969, I worked for it for 22 years.

I tell you all these one simple reason. If you are having a difficult time, financially or otherwise, remember that you are not the only one and you are not the first and definitely not the last to have such problems. Do your best. God willing and you working, you will be a lawyer or a judge one day.

You know, since it takes four years to get a law degree, we tend to think (or at least I thought) that after passing the first year examination, you know one-quarter of the law. When you pass the second year examination, you know half the law. And, when you pass your final year examination you know all the law. Please don't allow yourself to be so deceived. Wait till the first client walks up to you to consult you. Then you know how much you don't know.

I will tell you about my early experience. I joined the Service on 2nd. May 1969. On 13th. May 1969, May 13 incident broke out. I was caught in the curfew. Anyway, the moment the curfew was lifted I took the first available flight home.

I was instructed to report for duty at Kangar Magistrate Court on the 1st. of June. I arrived there in the morning. Then I was told that on that day I was supposed to sit in Jitra. I had never been to Jitra in my life. Anyway when I arrived, I found a huge crowd outside the court house, and many lawyers inside the Court house. The interpreter brought a bundle of “charge sheets” – something I had never seen before. He said these cases are for “mention”. (I did not know what it meant) and these are for hearing (I had a vague idea about it). To cut it short, during the first few weeks I had to seek the advice of my interpreter, as to what to do, where to sign, what sentence to impose and that kind of thing.

The moral of the story is: never think you know everything; never be shy to learn from anybody, even though he is your most junior staff. There is always something which he knows that you don't.

Now, let me say something about what I think you should be concentrating on now. My advice is try to understand the main principles of the law first. After you have got an overall picture of the subject, then you can go into greater detail regarding a particular aspect of the law. At this stage you should try to learn what the law is first, not to start criticising the judgments. I learn from experience that we tend to criticise a thing more when we don't know very much about it. The more we know about a thing, the more we tend to understand it, the reasons why it is so, and we find less fault with it. But it does not mean that you should

just accept things as they are. We should always seek to improve things. Otherwise human civilisation will come to a standstill.

Even though it is often said that the legal profession is saturated, that there are too many lawyers in town, I still believe that there is room for everybody to earn a decent living honestly, as a lawyer, practising or not. I think the ratio of lawyers as to the population in Malaysia is still lower than in developed countries even as compared to the Philippines. Of course, it is much higher if you compare with Japan, China, South Korea, Vietnam, Cambodia and such countries.

One thing we should bear in mind is that not every law graduate would end up being a practising lawyer. How many graduates in history are produced every year? Not all of them become historians. Universities also produce graduates majoring in philosophy. Imagine if all of them were to earn a living as philosophers!

One thing about a law degree is that it is very versatile. You can almost fit in any organisation, private or public. My observation is that practising lawyers get into trouble because they want to get rich quickly and because of high living. I know of one lawyer who, when he started his practice boasted that he would be a millionaire in two years. I don't know whether he did achieve his target. But what I know for sure is that he was suspended within about that period of two years. Compare on the other hand with what Lord Denning (if I am not mistaken) said in one of his books that in his days during the first two years of practice they would be happy if they earned enough to buy two hot meals a day.

I don't think it is that bad here. The trouble in this country is that everybody wants to drive a BMW, carry a hand-phone and spend the evenings at a Karaoke lounge! That is where the problem starts.

I believe, in legal practice, as in any trade or profession, it is important to establish a good reputation. Of course it takes time. But at the end of the day I think it is worth-while.

Remember what Abraham Lincoln said: "You may fool someone sometimes, but you can't fool everyone all the time." You may mislead the court in a case once. But very soon you would be found out. Once it is found out it would not be easy for you to win the confidence of the court after that. I believe that it is the same in your relationship with your clients. You may bleed one client to death. But word will get around. It will scare potential clients, except if you are really good, and the clients would not mind paying you. But the point is that you have to prove your value for money first!

I think I should say something about the use of bahasa Malaysia in Court.

First we have to accept the fact that Bahasa Malaysia, by virtue of the National Language Act 1967, is the language of the Court. Of course English will be used partly, if the interest of justice requires.

We must bear in mind that the use of English in the Courts in this country goes back to not more than 100 years. Professor Hickling in his book "Malaysian Law" says so at page 35. Even as late as 1940's lower courts were taking down the notes of evidence in Malay, especially in the Malay States. I remember, when I was a President of the Sessions Court in Kulim in 1971, I saw a few volumes of Kulim Magistrate Court's notebook. The Magistrate was no other than Tunku Abdul Rahman. The notes were wholly in Jawi. I remember reading the notes of evidence given by a doctor giving medical evidence. The doctor was an Indian. I particularly remember one phrase which read "luka di siku kiri sedalam kulit" which means skin-deep abrasion on left elbow. I thought that was cute.

I find from my experience that when it comes to recording evidence given by a local witness of what happens here under local conditions the untranslated language of the witness sometimes gives the best description. Consider this. A witness, an old Malay lady from the kampong was asked about the height of a certain thing (I have forgotten what). She replied "lebih kurang sama tinggi dengan pokok bunga tahi ayam." You try to translate that! Those of us who know "pokok bunga tahi ayam" would know roughly its height. Consider this: When a witness was asked how the deceased died, he replied: "Jatuh pokok geti naik tahan burung." I can't think of a better summary.

But of course when it comes to complex legal argument, it is easier to do it in English, because the texts to be referred are in English and because we are trained in English. The Court always allows it.

But if we know the language it is not difficult to argue in that language. The problem is not a language problem. It is a human problem. If you don't know enough English, you can't argue in English. It is as simple as that. When I was the state legal advisor in Kelantan in 1981 and 1982, I used to see Indian and Chinese lawyers in Kelantan cross-examining witnesses in Kelantan Malay! Nowadays I see many young non-Malay lawyers who prefer to argue a case in Malay – especially if their opponents are old-timers who are, not very proficient in Malay!

You will be surprised if I were to tell you that almost all shopkeepers in Mecca and Medina (whether they are Arabs, Central Asians, Pakistanis, etc) speak Malay –not much but sufficient for the purpose of their trade. These central Asians are a very interesting people: They look like Kublai Khan, their skin is that of Alexander the Great and they speak the language of Suleiman the Magnificent of the Ottoman Empire. Imagine these so descendants of Kublai Khan, Alexander the Great and Turkish Generals, selling prayer beads made in

Japan to Malaysians and Indonesians in Arabia, using Bahasa Malaysia. Why can't Malaysian who practice law in Malaysia know enough of the language of the Court of Malaysia for the purpose of their profession?

I don't advocate that texts in English be translated. It is impossible. You can quote the English texts in English and go on to argue in Malay. That is what I do in my judgments.

A word about jury trials.

First, jury trial is not something traditional in this country. I remember former Chief Justice Gill telling me (I confess that I have not checked the facts), he told me that jury system was introduced in Malaya in 1957 (when we attained independence) the same year that India abolished it."

Now we only have jury trials in murder cases.

In practice, every time we have a jury trial we have a lot of problems getting the jurors. We issue as many as 20 subpoenae. Some cannot be served, for whatever reasons. Those served would try to be excused. The Buddhists say it is against their religion to take life. Others who could not avoid, attend court, under the threat of a warrant of arrest. While their names are being read out, many would pray that somehow the accused or the Deputy Public Prosecutor would object. The unlucky 7 are chosen. So they sit in the jury box, in an unfamiliar surrounding and for two weeks or so, listening to one witness after another being examined, cross-examined and reexamined. Then they listen to the opposing submissions of counsel. Then comes the summing up by the Judge.

They are not lawyers. That was their first experience. They are expected to understand the difference between culpable homicide not amounting to murder and murder. I ask you, how many of us, after all the years, can draw a clear line dividing the two? Then they have to evaluate the opposing evidence and come to a conclusion.

The result, quite often is that they would come up with a middle of the road decision – culpable homicide not amounting to murder. There was a case where members of the security forces shot dead 5 villagers with AK47 in a rubber estate in bright daylight. After months of trial, the jury returned the verdict of culpable homicide not amounting to murder!

In another trial, the foreman of the jury mistook the word "haemorrhage" for "hammer-head". He wondered why the pathologist at first in her evidence said that the cause of death was "hammer-head" (actually "haemorrhage") but later on said the injury could have been caused by a parang.

Making decisions, even of facts need training and experience. I remember during my first week as a Magistrate I felt as if I was drifting at sea. Everybody seemed to be telling the truth. Experience makes the difference.

My question is this, if minor cases are heard and decided by people who are specially qualified, trained and experienced to make the decisions why in a murder case which carries a death sentence, we want to leave the decision making to "laymen"?

I don't wish to bore you any longer, especially at our first meeting.

Let me conclude by once again thanking you for your invitation to speak to you and also to be your patron. In fact I asked your president to defer my appointment as your patron until you have heard me speak. I did not want you to regret. I hope you have not regretted.

I shall do whatever I can which may be of assistance to you. For a start I will make available to you my Court room for you to hold your moots. I don't mind sitting as a judge if you want me to.

Thank you.