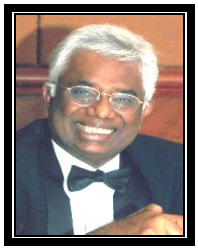
JUDGMENTS GLORIOUS JUDGMENTS

- By S. Balarajah -



S. Balarajah

The glory of judges lie in their judgments. Long past his hour upon the Bench, a judge will be quoted and cited. Judges, lawyers and students of the law generation after generation will quote the wisdom of the judge. Glorify his findings and seek to uphold his judgment.

Glorious judgments do not fade. They do not lose their shine. Their power. Their wisdom. Their rationale. They do not eclipse into the annals of legal history. But they will be searched. And researched. They will be rejuvenated. To illumine the dark paths of litigants and lawyers who seek their light.

Lord Denning's judgments are easiest to follow. To understand. And to digest. Denning studied Mathematics at Oxford. When he read for the Bar, he became proficient with words. Words are the lawyer's tools of trade. And so he said in his book, *The Discipline of the Law*. And he went on to add that to succeed in the profession of the law you must seek to cultivate the command of language.

In his other book *The Closing Chapter*, Lord Denning, that master of words and simplicity, gave some worthy advice. He advised the following:

(1) Use plain simple words which all your readers will understand.
(2) Present them well. Think of your readers.
(3) Split them up - break your pages into paragraphs and paragraphs into sentences.

Lord Denning reckoned that:

> *... a massive unbroken page of print is ugly to the eye and repulsive to the mind. A long broken paragraph is indigestible. Split it up into sentences. If you find that you must have long sentences break it up with a punctuation. Sometimes a dash. At other times a colon or semi-colon. Often a comma. It enables the reader to get the sense readily.*

Lord Denning in the same book claims:

> *I with, I think, the first to introduce a new system. I divided each judgment into separate parts: first the facts; second the law. I divided each of those parts into separate headings. I gave each heading a separate title.*

In exemplary judgments are facts distilled. Laws made clear. And judgments given in favour of the righteous.

A judge by his previous training in the law is bestowed with lucidity and clarity of thought. He has endowed in him the ability of expression. And the art of compression. An art which is said to be utterly lacking in lawyers.

A well-presented judgment will show the facts of the case neatly recited, arguments for both sides justly and fairly presented and the reasons for the judge supporting one side properly laid out and adumbrated.

It is perhaps desirable for a judgment to list all authorities presented or cited even though they may have not been referred to in argument by counsel. It might be useful at the appellate level.

Judgments at times are written and handed down after impassioned pleas by counsel. This was so in the case of *Esso Petroleum Malaysia Inc v Kago Petroleum Sdn Bhd*[1] where Peh Swee Chin SCJ said:

> *We were not going to write a judgment on this case, but at the conclusion of hearing obit, learned counsel for the appellant seemed to have made a somewhat impassioned plea for it. We have decided to accede to it and we hereby do so.*

In appellate courts generally, the judgment of a dissenting judge will see force of argument and language. A dissenting judge being in the minority will seek to justify his dissent in powerful language. And employ powerful arguments.

Literary excellence is profound in dissenting judgments. The opening salvo of that most distinguished and learned judge to adorn the Bench of the Courts of Malaya comes to mind. The late Tan

[1] (1995) 1 CLJ 286.

Cont'd ...

Sri Dato' Dr Eusoffe Abdoolcader SCJ in the case of *Government of Malaysia v Lim Kit Siang*[2] opened his dissenting judgment thus:

> *In delivering oral judgment ex tempore at the conclusion of argument giving reasons for my decision to dismiss these two joint appeals with costs, I declared at the inception that I was entering a vigorous dissent. It now only remains for me to register and reflect in this judgment the force of my dissent revolving primarily around the crucial question of law as to standing to sue in public law litigation and endeavour in doing so to translate the sting of the thing into language as mild as I can mobilize and muster without mincing words.*

The Judge, now in the Grand Courts above was renowned for his learning and literary forte, prided himself in holding that all his judgments were literary works. And they were indeed.

A judgment might well betray a judge's grasp of the salient facts, law and the remedies sought by the litigant.

A perfect judge is defined in the October 1976 issue of *The Magistrates*[3] thus:

> *A person who –*
> *listens to both sides;*
> *treats both sides fairly;*
> *judges only on the evidence;*
> *recognises his own prejudices;*
> *recognises what is relevant;*
> *reasons logically and impartially;*
> *seeks information when needed;*
> *has unlimited patience and courtesy;*
> *then, applying these principles reaches a decision firmly, excluding all other considerations and consequences –*
> *this is, of course, perfection.*

The late Tan Sri Dato' Dr Eusoffe Abdoolcader

Whilst it is perfectly legal and acceptable to permit one to give vent to his literary zeal and energies it must be of utmost consideration that the primary aim of a judgment is a serious functional purpose, ie to mete out justice and to justify the findings and the rationale behind the findings. To justify justice.

For a study of literary encroachment in judgments of our High Courts one cannot but recall the glorified works of the late Justice Tan Sri Dato' Dr Eusoffe Abdoolcader.

The judgment in the case of *Merdeka University Bhd v Government of Malaysia*[4] began thus:

Exordium

> *Merdeka, proclaimed Tunku Abdul Rahman to the resounding echo of the populace, and so it came to be. But the cry for Merdeka University has not achieved the same response and result. And thus the matter comes before the court.*

And the 12-page judgment concluded thus:

The Result

> *For the reasons I have given the plaintiffs claim for the declarations sought must fail and I accordingly dismiss it with costs.*
>
> *Let me just add this. Neither victor nor vanquished as such emerges as a result of my decision. It reflects the triumph of the rule of law - a fundamental effect of the National Ideology.*

In the opening remarks of his judgment His Lordship tuned his mind to the matters before him and in so doing expressed judicial duties eloquently. He said, inter alia:

> *Let me immediately reiterate what I said in court at the outset of these proceedings: I am not concerned with the political undertones or overtones or whatever that may affect the questions raised in this action, and in this trials am moved by no considerations other than that of determining the issues involved purely and strictly within the confines of the Federal Constitution and the law, abjuring any concomitant political or emotional offshoots springing like Athena from the head of*

[2] (1988) 2 MLJ 41.
[3] Reproduced in (1976) 2 MLJ cvii.
[4] (1981) 2 MLJ 357.

Cont'd ...

Zeus in its wake. The Attorney General, meaning well no doubt, presents a vision of doom when he speaks of the grim consequences that might ensue if grave circumspection is not exercised in weighing the respective interests involved, but my short answer to this is, as I said in court in anticipating Mr Beloff for the plantiff, fiat justitia, ruat coelum - let justice be done, though the heavens should fall. I said in Mak Sik Kwong v Minister of Home Affairs Malaysia (1975) 2 MLJ 168 (at page 171) and I say again, the courts constitute the channel through which His Majesty's justice is dispensed to his people and are accordingly the bastion of their rights and the courts must therefore necessarily be the ultimate bulwark against the excesses of the executive, though I should add that unconstitutionality and illegality of administrative action and not the unwisdom of legislation or executive discretion is the exclusive and narrow concern of judicial review and control of adminstrative acts.

In the Federal Court case of *Chong Kok Lim & Ors v Yong Su Hian*,[5] Abdoolcader J (as he then was) in delivering oral judgment commenced his judgment with the following interesting words that would captivate even a lay reader:

This case, which, like the papacy of Pope John Paul I, lasted 33 days in the hearing, involves the question of the validity of the respondent's expulsion from membership in the Perak Chinese Association ...

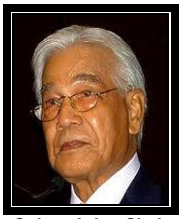
At times judgments begin with subtle wit as in the case of *Mookapillai & Anor v Liquidator, Sri Saringgit Sdn Bhd & Ors*.[6] The same judge began thus:

Sri Saringgit Sdn Bhd no longer reflects if it was ever intended to and has certainly fair outgrown its humble and perhaps even cherished origins if that was indeed the case as suggested by the literal Malay connotation of its name as a revered one-dollar entity.

There are judgments that at times subtly chide counsel and display the judge's own scholarship. One cannot do better then quote verbatim Abdoolcader J in the penultimate paragraph of his judgment in the case of *Re Tan Boon Liat*:[7]

I must express my appreciation to counsel on both sideshow the careful arguments addressed to me and it is no indication of disrespect to them that I have not in this judgment dealt with the cases they cited to me but I have thought it necessary however to consider and discuss other authorities not cited by either side but which appear to me to be pertinent to the crux of the contention raised in this matter. If I may seem to have quoted authority overmuch, this was to satisfy the desire to manifest the comforting sentiment that my decision on the issue involved is reinforced by the sanction of something stronger than my own unaided thought.

To appreciate the literary expertise of Abdoolcader J, one must read his judgment in *Yeng Hing Enterprise Sdn Bhd v Liow Su Fah*,[8] with which Raja Azlan Shah CJ (Malaya) and Chang Min Tat FJ concurred, wherein appears a single grammatically flawless sentence of 361 words. It reads thus:


Sultan Azlan Shah

I need only add that it follows that the order of August 5, 1977 should not have been granted as the respondent had no right in the circumstances to the temporary injunction sought by him as, if there is no cause of action against the appellant, there can be no serious question to be tried between them, nor was he entitled in any event to the interlocutory order in respect of a sum of at least $1,200, 000 out of the proceeds of sale on a summons that was not merely interlocutory but also ex parte and made previous to service of the writ and before appearance was entered and seeking a mandatory order that in the event of a sale of the Perak land for the highest bid by public auction the appellant should keep undisposed of and unencumbered at least that amount out the proceeds of any such sale, and I would refer in the latter respect to Felton v Callis (1969) 1 QB 200 (at pp 218-219) which held that even where a cause of action subsists it would require an exceptional case to justify making a mandatory order in such circumstances and the court should be most reluctant to make an order for the mere payment of a sum of money, and, I would interpose and add parenthetically, for that matter, for freezing a person's assets, in this case the appellant's funds to the extent of some $1,200, 000, as this would virtually amount to circumventing the provisions of Order 14 of the Rules of the High Court and, quite apart perhaps from also raising the spectre of undue preference in the light of the resolution of the appellant for the sale of the Perak land disclosing its indebtedness to

[5] (1979) 2 MLJ 11 at p 20.
[6] (1981) 2 MLJ 114.
[7] (1976) 2 MLJ 83 at p 88.
[8] (1979) 2 MLJ 240 at p 244.

Cont'd ...

other creditors for a substantial sum, in effect giving the appellant in liming only the equipollent of conditional leave to defend the action - and all this all the more so when the respondent had lent the moneys in question not to the appellant but to the first defendant for the latter to purchase shares in the appellant and the respondent has accordingly no privity with or claim against the appellant in respect thereof.

Judges in their judgment also pontificate on the trials, tribulations and turbulences of life. And also the law as a profession (job) and the ingredients to succeed in the law.

In the case of *Sabrina Loo Cheng Suan v Eugene Khoo Oon Jin*,[9] Vincent Ng J said in conclusion as follows:[10]

In postlude, I am constrained to say that I couldn't help noting with regret and distaste, the venom spat out at each other by both the parties, more so by the plaintiff, in the course of their evidence during the trial. I am sure that both of them started their relationship in joyous though surreptitious circumstances, no less contributed by the fact that their entirely adverse, disparate and dissimilar needs happened to coalesce and dovetail and were mutually met at that material time. On the one hand you have the plaintiff, then only 19 years old, a veritable beauty queen with only a Standard Six level of education - who had won the Miss Penang beauty contest and soon thereafter became Miss Malaysia but was otherwise quite deficient on the monetary factor needed to live up the life of her newly acquired status and to make the trip to attend the Los Angeles Beauty Pageant. On the other hand you have the defendant, then 47 years old, a basic man of a lawyer (a member of a profession confined only to a select few at that time) who ran a successful legal practice, replete with ready funds to provide the financial back up needed, but who among his other needs, had also succumbed to the stirring of his loins. For a few years this relationship worked admirably well until the expectation of one fell short of his or her needs.

At the end of the day, the parties herein would still have to reckon with the fact that, though perhaps their initial encounter may have been a transient dalliance or frolic with a beauty queen on the part of the defendant, yet their subsequent union - confirmed by marriage under Chinese rites - had produced a daughter who, in the natural order of things, is expected to outlive both of them and who shall bear witness to how one party treats the other in the aftermath of this mutually bruising trial. The defendant, who had ceased legal practice many years ago, is now 72 years old and plagued with ill-health. The plaintiff has also now apparently lost the vibrancy and glamour of her youth, with scant future prospects, as the result of this platonic relationship which eventually turned sour.

Nice words. Nice thoughts. Nice ending. Could well have been from a Mills & Boon paperback.

In the case of *Chang Ah Moi @ Chan Kim Moy (f) v Phang Wai Ann*,[11] Abdul Malik Ishak J, who is a prolific writer and who writes with great profundity, began his judgment thus:

This case is yet another example of how a battered housewife goes through life in a nightmare - the nightmare of being brutally assaulted by her own husband. Marriages are said to be made in heaven, with lots of love and affection and, in the context of this case, it culminated in violence.

In the course of his judgment but obiter dicta His Lordship defined a mistress as 'where the relationship may be said to be casual, impermanent, fleeting and secret'.

In the case of *T v 0*,[12] Mahadev Shankar J (as he then was) said as follows:

In other words this was not a voidable marriage but one which was void ab initio. We cannot refer to a void marriage as a monogamous marriage because both in flow and fact it is no marriage at all. It may sound like a contradiction in terms to consider the child of such a union as legitimate but in these circumstances the policy of the law is that the child should not be bastardised.

Lau Zhan Chen (an infant by his mother and next friend Lau Fatt Wan (f) v Makoto Togase & Ors[13] is a paternity petition. In the course of the judgment, the judge said as follows:

Elated at the arrival of this bundle of joy, Makoto Togase named his son Noriake Togase and informed his parents in Japan about the latest development and again repeatedly begged for their

[9] (1995) 1 MLJ 115.
[10] Ibid at p 134.
[11] (1995) 2 AMR 2030.
[12] (1994) 4 CLJ 593 at p 596.
[13] (1995) 1 AMR 283.

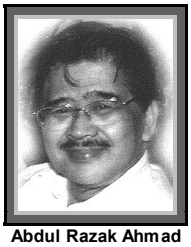
Cont'd ...

consent. His parents finally relented and gave their consent and blessings to the marriage between the two love birds. Both parties duly registered their marriage in Johor Bahru on February 28, 1993. Now, they want to render their son legitimate.

As at the date of birth of the petitioner, the petitioner's natural mother Lau Fatt Wan (f) was not lawfully married to the petitioner's natural father This means, in blunt language, that the petitioner is a bastard.

In the case of Abdul Razak Ahmad v Majlis Bandaraya Johor Bahru,[14] the Court held:

To give locus stands to a rate-payer like the Plaintiff would open the floodgate and this would in turn stifle development in the country. There was no genuine private interest for the plaintiff to protect. He was more concerned about the publicity that went along with this case. As a lawyer that kind of publicity must have been good to him. The Dato' Bandar aptly described him as busybody. I venture to describe him as a trouble shooter, a maverick of a sort out to stir trouble.



Abdul Razak Ahmad

The erudite judge in upholding that justice transcends all other factors and feelings in the case of *Jaya Kummar a/l Ayadurai v Hj Aman Shah b Hj Abdul Rashid & Anor*[15] is reported to have said as follows:

A scoundrel like the applicant is now free to re-enter public service as a police constable notwithstanding his conduct of irresponsibility. There is a gross miscarriage of justice in quashing the decision of the first respondent as this might inculcate the thinking that scoundrels like the applicant could easily misbehave and get away with it triumphantly. If this is the likely result of this decision, I hasten to add that the courts are they to right the wrong and to adjudicate on matters brought before it solely on the available evidence and nothing else. An unscrupulous scoundrel, a mean rascal like the applicant too is entitled to leave with the feeling that he has been fairly treated. It is with a heavy heart that certiorari was issued …

The scathing remarks of NH Chan JCA in the case of *Ayer Molek Rubber Co Bhd & Ors v Insas Bhd & Anor*[16] have gained international notoriety. His Lordship who sat with Siti Norma Yaakob JCA and KC Vohrah J in the Court of Appeal referred to the High Court which is situated in Denmark House, Kuala Lumpur concluded his famous judgment with the words of Shakespeare in *Hamlet*:[17]

These observations are made so that people will not say, 'Something is rotten in the state of Denmark'.

The Federal Court in the *Ayer Molek* case[18] said that 'judicial pronouncements should be judicial in nature and not depart from sobriety, moderation, and reserve'.[19]

The Court quoted an indian authority which held that that '(judges) cannot misuse their authority by intemperate comments, undignified banter or scathing criticism of counsel, parties or witnesses'. Timely advice. Personal altercations cannot be tolerated. They may be an affront to the state and its citizenry. It may well border on disservice. And people have a right to be indignant. People are more wary of their rights now.

There are judgments where judges commend counsel, chide them and hope that their decision will be tested by a higher tribunal. In the case of *Boonsom Boonyanit v Adorna Properties Sdn Bhd*,[20] Vincent Ng J said:[21]

This court would also wish to place on record its appreciation to all the four counsel on their research (though it drew a blank in terms of case law on forgery); to mention in particular, Mr Ghazi's lengthy written submission and his further written reply, though in both his written submissions he was somewhat at sea on the question of immediate and deferred indefeasibility pertaining to forgery. Admittedly this case seems tailor-made to draw the sweat out of counsel and judge alike. However, if only for development of the law it is hoped that this decision is taken up for consideration by a higher tribunal on three points ... It is to this end that this written judgment would be made available to the parties today, immediately after it is read. And, for the same reasons this

[14] (1995) 4 CLJ 342.
[15] (1992) 3 AMR 2823.
[16] (1995) 2 MLJ 734.
[17] Ibid at p 744.
[18] (1995) 2 MLJ 833.
[19] Ibid at p 841I.
[20] (1995) 2 MLJ 863.
[21] Ibid at p 887.

Cont'd …

court will be ill-inclined to place any impediment on the plaintiff should she be minded to appeal against my judgment.

At times judges touch on the profession. In *KS Chua & Co v Chui Miang Chew & Ors*,[22] Abdul Malik Ishak J said as follows when upholding the majesty of the rules:

'Lawyering' is not an easy job. It requires handwork, skill, patience, knowledge of the law, and above all, good health and some measure of luck. Ill health is nothing more than an occupational hazard. Ill health can never bring success and there is no short cut to success either This court is not a court of morals but a court of justice. Breaches of the rules will not be lightly taken.

Judicial felicitations are fair. But over-felicitation may be taken or construed to be a show of partiality. It has been said that a judge, like Caesar's wife, should be above even an iota of suspicion or partiality.

Legalese is said to be the learned language of lawyers. It is noted that judges nowadays have begun to use mundane language in their judgments.

In *Houng Hai Hong & Wee Choo Keong v MBf Holdings Bhd & Anor*,[23] Lamin bin Hj Mohd Yunus PCA said as follows:

It is amazing that in the context in which the letter was written, a professional could use the word 'rumour'. Firstly, why the need to write to the other side merely to say that their information was only a 'rumour'. He could simply telephone. He was in Jalan Raja Laut while the other in Jalan Yap Kwan Seng. From Jalan Raja Laut, he could even walk to the High Court registry to enquire. He could have got a clear-cut answer. Again the news about the case including the issuing of the order appeared in The Star the same day (10 February 1993). For a politician especially one residing in a city, and for that matter almost anyone, the first item on the breakfast menu is the morning papers. We were more than convinced that the second appellant knew about the case and the existence of the order in the morning of 10 February 1993. By employing the word 'rumour' we could not equate the mind of the writer of the letter to the innocent mind of a newly born babe. By that we simply mean that the second appellant was not honest.

In *Chung Khiaw Bank Ltd v Hipparion (M) Sdn Bhd*,[24] Edgar Joseph Jr J (as he then was) made the following opening remarks:

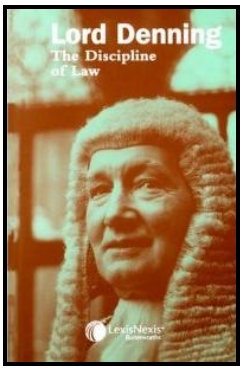
This is yet another one of those cases where a borrower is attempting to avoid repayment of money he has borrowed on purely technical grounds. However as I have said before, this is not a court of morals but a court of law and so if the borrower is right in its contentions then it is entitled to succeed.

The master of simplicity in language and presentation was the greatest English judge of our times, Lord Denning.

Lord Denning in his book, Due Process of Law, at p 59, narrates a little story. No one can better Lord Denning's language. His simplicity is to be admired. If at all it should be emulated. This is what he wrote:

Once upon a time there was a judge who talked too much. He asked too many questions. One after another in quick succession. Of witnesses in the box. Of counsel in their submissions. So much so that they counted up the number. His exceeded all the rest put together. Both counsel made it a ground of appeal.

He was the Honourable Sir Hugh Imbert Periam Hallett whose initials gave him the nickname 'Hippy' Hallet. He had been a judge for 17 years. He earned a big reputation as a junior at the Bar; and in silk for his knowledge of the law. He used to appear in the Privy Council where Lord Maugham appreciated his talents and appointed him a judge in 1939. He started his judicial career quietly enough but - as often happens - as his experience grew so did his loquacity He got so interested in every case that he dived deep into every detail of it. He became a byword.



[22] (1995) 3 AMR 2618.
[23] (1995) 3 AMR 3087.
[24] (1988) 2 MLJ 62.

Cont'd …

The climax came in an ordinary sort of case. It is Jones v National Coal Board (1957) 4 QB 55. The roof of a coal-mine had fallen in. A miner had been buried by it and died. The widow claimed damages. The case was tried by Hallet J at Chester He rejected the widow's claim. She appealed on the ground, among others, that the judge's interruptions had made it impossible for her counsel to put her case properly. The Board put in a cross-appeal including among others that the Judge's interruption had prevented the Board from having a fair trial. The appeal was argued before us by Mr Gerald Gardiner QC (afterwards Lord Chancellor) for the widow. He was the most able advocate I have known. On the other side was Mr Edmund Davies QC (afterwards Lord Edmund-Davies). He was the most resourceful. We usually in such a case give judgment straightaway at the end of the argument. But on this occasion we reserved it for just over three weeks. We realised that it might lead to the end of the judge's career; as it did. So we took special care. This is what I said, speaking for the whole court:

Lord Chancellor Gerald Gardiner

'We much regret that it has fallen to our lot to consider such a complaint against one of Her Majesty's judges: but consider it we must, because we can only do justice between these parties if we are satisfied that the primary facts have been properly found by the judge on a fair trial between the parties. Once we have the primary facts fairly found, we are in as good a position as the judge to draw inferences or conclusions from those facts, but we cannot embark on this task unless the foundation of primary facts is secure.

…

No one can doubt that the judge, in intervening as he did, was actuated by the best motives. He was anxious to understanding details of this complicated case, and asked questions to get them clear in his mind. He was anxious that the witnesses should not be harassed unduly in cross-examination, and intervened to protect them when he thought necessary. He was anxious to investigate all the various criticisms that had been made against the Board, and to see whether they were well founded or not. Hence, he took them up himself with the witnesses from time to time. He was anxious that the case should not be dragged on too long, and intimated clearly when he thought that a point had been sufficiently explored. All those are worthy motives on which judges daily intervene in the conduct of cases, and have done for centuries.

Nevertheless, we are quite clear that the interventions, taken together, were far more than they should have been. In the system of trial which we have evolved in this country, the judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of society at large, as happens, we believe, in some foreign countries. Even in England, however, a judge is not a mere umpire to answer the question 'How's that?' His object, above all, is to find out the truth, and to do justice according to law; and in the daily pursuit of it the advocate plays an honourable and notable necessary role. Was it not Lord Eldon LC who said in a passage that 'truth is best discovered by powerful statements on both sides of the question'?: see ex parte Lloyd. And Lord Greene MR who explained that justice is best done by a judge who holds the balance between the contending parties without himself taking part in their disputations? If a judge, said Lord Greene, should himself conduct the examination of witnesses, 'he, so to speak, descends into the arena and is liable to have his vision clouded by the dust of conflict': see Yuill v Yuill.

Yes, he must keep his vision unclouded. It is all very well to paint justice blind, but she does better without a bandage round her eyes. Should be blind indeed to favour or prejudice, but clear to see which way lies the truth: and the less dust there is about the better. Let the advocates one after the other put the weights into the scales - the 'nicely calculated less or more' - but the judge at the end decides which way the balance tilts, be it ever so slightly. So firmly is all this established in our law that the judge is not allowed in a civil dispute to call a witness whom he thinks might throw some light on the facts. He must rest content with the witnesses called by the parties: see In re Enoch & Zaretzky, Bock & Co. So also it is for the advocates, each in his turn, to examine the witnesses, and not for the judge to take it on himself lest by so doing he appear to favour one side or the other: see R v Cain, R v Bateman, and Harris v Harris by Birkett LJ especially. And it is for the advocate to state his case as fairly and strongly as he can, without undue interruption, lest the sequence of his argument be lost: see R v Clewer. The judge's part in all this is to hearken to the evidence, only himself asking questions of witnesses when it is necessary to clear up any point that has been overlooked or left obscure; to see that the advocates behave themselves seemly and keep to the rules laid down by law; to exclude irrelevancies and discourage repetition; to make sure by wise intervention that he follows the points that the advocates are making and can assess their worth; and at the end to make up his mind where the truth lies. If he goes beyond this, he drops the mantle of a judge and assumes the robe of an advocate; and the change does not become him well. Lord

Chancellor Bacon spoke right when he said that: Patience and gravity of hearing is an essential part of justice; and an over-speaking judge is no well-tuned cymbal.'

Such are our standards. They are set so high that we cannot hope to attain them all the time. In the very pursuit of justice, our keenness may outrun our sureness, and we may trip and fall. That is what has happened here. A judge of acute perception, acknowledged learning, and actuated by the best of motives, has nevertheless himself intervened so much in the conduct of the case that one of the parties - nay, each of them - has come away complaining that he was not able properly to put his case; and these complaints are, we think, justified.

Courts and judges should be ever mindful of the aforesaid dictum of Lord Denning in the case of *Jones v National Coal Board*.[25]

Tun Salleh when launching the books *Law, Justice and the Judiciary: Transnational Trends* by Prof Dato' (Dr) Visu Sinnadurai (now one of His Majesty's judges serving in Muar) and *Malaysian Law* is reported to have said,[26] inter alia, as follows:

To say that the law is buried deep in the heart of judges and will only manifest itself according to the emotional and psychological attitude of judges is, to say the least not only a misconception of what the law is but also an unfair criticism.

Tun Mohd Suffian in the book *Lord President Suffian: His Life and Times* said:

First and foremost judges who accept responsibility of judicial functions should avoid the use of the Bench as a platform to make derogatory remarks on any person or make comments unrelated to issues involved before them.

The learned Tun went on to give a word of advice:

Junior members of the Bar deserve special consideration. They don't have enough experience. They are eager to learn to do the best they can for their clients. If I find it necessary to tick them off do so in the privacy of my chambers.


Tun Mohd Suffian

He also said:

Judges should not make themselves obnoxious to counsel by chiding or ridiculing them, for the task of an advocate is a difficult one. Lawyers too have a duty to their clients and a duty to the court.

Lord Chancellor Bacon said that 'patience and gravity of hearing is an essential part of justice and an overspeaking judge is no well-tuned cymbal'.

In *Morality and the Law*, Gerald Abraham writes that judges of the High Court were called 'lions around the throne' in the days when they were the King's men. He says that 'history is full of their roarings and their rapine. And they left a literature, full of bloody morsels from the ovens of Coke and redolent with the odours of Bacon'.

The book *Roses in December* is an autobiography. It is an autobiography of a great indian judge, MC Chagla. He was a judge in the l940s.

Chagla took the view that:

... it is the business of counsel to tell me what the pleadings contain. My job is to decide after hearing them. I followed throughout my judicial career. I think it a mistake for a judge to go to court after studying the case that is coming up before him. Inevitably one makes up one's mind one way or other after having read the papers. I agree the decision is tentative and one might change it after hearing counsel. But it requires a very strong mind to change an opinion once formed.

Chagla claims that he never reserved judgment. He says:

Throughout my career as a judge, I have never reserved judgment except, I think, in one case; and God knows, I have delivered hundreds of judgments. I remember the first occasion when an important point was argued by Munshi and Taraporevala on opposite sides. I hesitated for a moment, and wondered whether I should reserve judgment, or deliver the judgment straightway and whether I would be equal to the task. I said to myself: 'I have delivered several speeches as a politician, but it is one thing to make a political speech; it is quite a different thing to write a judgment, laying down the law with precision and conciseness.' But I thought again. If I had allowed my fear and hesitation to prevail, I should have been lost. So I took courage in both hands, called the stenographer immediately and dictated the judgment then and there.

[25] (1957) 4 QB 55.
[26] (1988) 1 MLJ xxii.

Cont'd ...

I cannot understand why, after a judge has heard both sides, has appreciated all aspects of the matter, has cleared his doubts by putting the right questions to counsel, he has still to think over the matter before he can decide the case one way or the other. It is much better to get the matter off your chest immediately. Your mind is full of the case, of the arguments you have heard, of all the facts that have been recited before you. Everything is fresh. Reservation of judgment very often leads to judges forgetting some of the facts, and also the arguments advanced before them. How often have we been told that a point was argued in the High Court but has not been mentioned in the judgment. A further advantage is that as the judgment is being delivered in open court, any mistake or misstatement that a judge nightmare while delivering the judgment, can be immediately corrected by counsel in court.

Judges like Chagla will be a source of inspiration and consolation to young or junior members of the Bar. This what Chagla says:

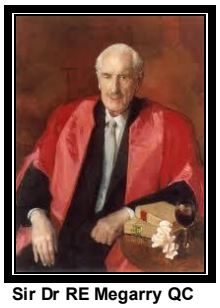
I should also like to say a word about the patience or the indulgence that may be called for when a junior lawyer is arguing a case. Senior lawyers do not need protection from the court; they can look after themselves. A junior arguing his first case, or one of his early cases, needs all the sympathy and understanding that a judge can show him. He may not be able to put his point properly. The judge should overlook such deficiencies and actively help the man to formulate his points more accurately. If he has succeeded in arguing judge shoulder out of his way to pay him a compliment in the judgment. Judges do not realise what a great matter of pride it can be to a junior lawyer to be complimented in a judgment. One can imagine his elation and his optimism about his future at the Bar. I have seen with regret judges accepting a proposition from a senior while brushing aside the same proposition when advanced by a junior. Looking back, one great satisfaction which I have about my life on the Bench is that I have rarely lost an opportunity of extending a helping hand to so many junior lawyers many of whom have made good and some even adorn the his case well, the Bench.

A judge is a lawyer by training.

Sir Dr RE Megarry QC (as he then was) - delivering the 'Hamlyn Lectures' entitled 'Lawyer and Litigant in England' in 1962 said:

In the layman's eyes a judge is almost by definition a profound lawyer.

Frankfurter J was an eminent American judge. In a letter to a 12-year-old who wanted to be a lawyer, he said as follows:



Sir Dr RE Megarry QC

My dear Paul

No one can be a truly competent lawyer unless he is a cultivated man. If I were you, I would forget all about any technical preparation for the law. The best way to prepare for the law is to come to the study of the law as a well-read person. Thus alone can one acquire the capacity to use the English language on paper and in speech and with the habits of clear thinking which only a truly liberal education can give. No less important for the lawyer is the cultivation of the imaginative faculties by reading poetry seeing great paintings, in the original or in easily available reproductions, and listening to great music. Stock your mind with the deposit of much good reading, and widen and deepen your feelings by experiencing vicariously as much as possible the wonderful mysteries of the universe, and forget all about your future career.

With good wishes,
Sincerely yours,
(Signed) Felix Frankfurter

Master M Paul Claussen Jr

Wounding or hurtful use of words and adjectives in judgments in reference to parties or witnesses cannot be mitigated even by an appellate court. In expunging the offending words, the order to expunge often reproduces the offending words and repeats the damage.

In The English Judge, Henry Cecil says:

The British Legal Association complains about oppressive practices on the part of some judges.

'From time to time', the Association writes, 'solicitors fall below the high standard of behaviour required of them and it is necessary for judges to reprimand them in public. Far too frequently certain judges reach hasty conclusions without having heard any explanation from the solicitor concerned. It is submitted that, if a solicitor is about to be criticised, he should be notified privately in advance by the judge, he should be requested to explain his conduct and given an immediate right of reply either in person or by counsel. The Association entirely agrees that judges should be entitled to reprimand solicitors as and when necessary and is simply asking for fair play.

The learned author who himself was a retired judge says:

> *Every sane person abuses his power from time to time, but a judge has many more opportunities of doing this than most other people. One unfair remark by one judge can bring the judiciary as a whole into disrepute, just a few unruly and bad-mannered students can give the young people of today a bad name. In each case the percentage is tiny but the harm is done just the same.*
>
> *The judge is in a unique position. Not merely is everything said by him during a case absolutely privileged, but he cannot be shouted down as in Parliament, or even answered back if he refuses to allow it. He can cause great misery and frustration to parties, witnesses and advocates. The harm that a judge can do is not merely in actual injustices, that is, wrong decisions, but in sending litigants (and advocates) away with a feeling that their cases have not been properly tried.*
>
> *The public puts great trust in our judges and, on the whole, this trust is not abused. But a few judges do occasionally say wounding and hurtful things to or about witnesses, counsel or solicitors and the person concerned usually has no remedy. Such remarks may have a permanent effect upon a man, who may be so upset by the unfair strictures upon him that he proceeds to take it out on the next person available, probably his wife. It is hardly too far-fetched to say that the possible chain reaction from bad behaviour by a judge could be a divorce.*

Further support is found in the Hamlyn Lectures of 1952 by Sir Dr RE Megarry QC (as he then was). This is what he said:

> *I am concerned with incidental comments which do not affect the result of the case yet which may be deeply wounding. Perhaps it has emerged that someone connected with the case has changed his name or nationality or both; perhaps he has been bankrupt, or a patient in a mental hospital. These facts may have no possible bearing on the result of the case, and yet the judge may more than once refer slightingly to them. To the judge these remarks may be of little moment, to be forgotten soon after the case is over; yet the litigant or his witness has been seared.*

It is a fervent prayer that judgments will have language that is temperate civil and sober without the pain of uncalled for adjectives, wounding and cantankerous language. Litigants and lawyers use the courts. To seek justice and solace. And relief. Let's not abuse them.

It is been said from time immemorial that the halls of justice are hallowed places. Not only the Bench but the Bar table and the witness boxes and the precincts of the court should be accorded hallowed treatment.

Whosoever who treads these hallowed precincts should be treated with respect, courtesy and care. After all we are all mere servants in the Temple of Justice.

In concluding, a quote from Lord Hardwicke (1742) would be quite in order:

> *There cannot be anything of greater consequence than to keep the streams of justice clear and pure, that parties may proceed with safety to themselves and their characters.*

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