

Confidential

Supreme Court

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OPENING OF THE LEGAL YEAR, 1976  
(ATTORNEY-GENERAL'S SPEECH)

Mr. Tan Broun Teik A.G. at the opening of the legal year, 10am  
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My Lord Chief Justice, my Lords:

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In January of each year it is the practice, which has crystallised into a felicitous custom, for Members of the Bar and Law Officers not only to offer our good wishes to your Lordships, but also to renew our joint pledge to uphold the conventions and traditions of our profession and co-operate and assist in the administration of justice. In so doing, we sometimes survey the past year, or take stock of ourselves, or ponder awhile on some aspect or other of judicial administration or the judicial process.

This morning, with your Lordships' permission, I would like to touch on the work of judges and make some observations on the mechanics of judicial decisions. My Lords, if I may cite Earl Warren, a former Chief Justice of the United States, judges are "participants in the living stream of our national life". Yet when judges are viewed against the populations which they serve, they are in every country numerically a very tiny body indeed.

If we were to pause for a moment and ask ourselves what function the judiciary plays, the brief answer would, I think, be: to provide reasoned and impartial decisions viewed, where the nature of the case makes it possible, with human understanding.

My Lords, Mr Justice Blackburn, a Judge of the Australian Supreme Court, described law as a series of rational principles expressed in words, each judicial decision requiring the application of some of those principles to the facts of a specific case. He went on to say that every such application of principles must necessarily involve the making of value-judgments as well as a submission to the discipline of words in which the principles are expressed. The whole process, therefore, requires the utilisation of acquired skills and experience, in which the gift of clear and lucid expression, both in speech and writing, plays a not unimportant part. It is sad to say, my Lords, but the process of framing a judicial decision is not always assisted by the advocacy which judges hear before them, particularly where there is a failure to present in an orderly manner the precise issues to which they should be addressing themselves.

The judicial process, it would seem, does not consist merely in the application of logic to precedents. Professor Goodhart, in his "Essay in Jurisprudence and the Common Law", demonstrated how crucial, in the application of the existing law to a particular case, is the inevitable process of selection between relevant and irrelevant facts. In this connection it would be pertinent for me to quote

Mr Justice Megarry who, in an article published in 1967, said: "Put as a proposition, law as taught is mainly law, whereas law as practised is mainly facts ..... In a reported case, the report reveals all the relevant facts as found by the judge, as concisely as possible, and then turns to the delicious problem of law with which the court had to wrestle. In daily practice, the position is usually the reverse. So often the law is perfectly clear; the only question is what happened .... Once find the facts, and the law gives little enough trouble; but the facts are the devil".

Judicial responsibility, my Lords, is an awesome thing, whether in the aspect of drafting a reasoned, impartial decision, the pronouncement of judgment, or the exercise of the discretion involved in sentencing accused persons within the limits of the punishment enacted by the Legislature for the particular offence. On the subject of sentencing it seems that in most cases the wisdom and experience of the judiciary would be the soundest and most obvious guide. But there are crimes which society regards as being so grave, so abhorrent, that the Legislature has set down minimum sentences or mandatory sentences. At first sight such a step might be seen as an infringement of the judge's discretion. However, in regard to these dangerous anti-social crimes, the possible redemption of the offender might be regarded as a

4

consideration secondary to the need to deter other possible offenders of that ilk. The mandatory sentences for grave social crimes then need not be viewed as an infringement on the judge's traditional discretion in matters relating to sentencing but may be regarded as a reassurance to the community as a whole that any such offender would be dealt with in a definite manner; further, such certainty of consequences might afford additional deterrence to would be offenders.

And now, my Lords, before I conclude, may we for a moment take a very brief look at the world outside the court-room? 1975 has been a year of travail and trauma for most countries, occasioned by the economic recession which has touched all our lives to a greater or lesser extent. As the cycle takes its course, let it be our hope that this Year of the Dragon, traditionally associated with prosperity, will live up to its name and bring with it a resurgence of economic activity. ( It behoves all of us who are concerned in any way with the administration of justice to contribute to the health of the nation -- in which economic prosperity is a highly desirable factor -- by doing our own individual part in maintaining the integrity of our legal system. As unswerving faith in our legal system and in the administration of justice, is a sine qua non for a nation that prides itself on

being an efficient financial industrial and trading centre. My Lords, if I may say so with respect, in such high regard are your Lordships rightly placed that your wisdom and impartiality have contributed in no small measure to the well-being of our nation, economic and otherwise. Might I also add, my Lords, that our respective roles need to be complementary, that is to say, your Lordships on the one hand, and on the other the Law Officers and Members of the Bar, so that it may be truly said by all, that we of the law do indeed sincerely strive to achieve the standards of fairness and excellence rightly expected of us.

My Lords, it is with the greatest pleasure that I observe, seated with you in other than his usual robes of office, your brother Judge, Mr Justice Tan Ah Tah. I am sure that Members of the Bar and Law Officers alike share my pleasure in this act of courtesy on your Lordships' part. I shall not say anything further today touching on Mr Justice Tan's long and distinguished career, since my colleague, Mr M Sundram, as Acting Solicitor-General, ably spoke for us all in this court-room on the occasion of the formal reference to Mr Justice Tan on 19th November, 1971. I would, however, like to bid Mr Justice Tan a final farewell and in so doing express the wish,

in which I am sure the whole profession gladly joins, that he enjoys many happy years of retirement which he so richly deserves after almost 35 years of administrative and judicial service. Our best wishes for every happiness also go to Mrs Tan Ah Tah.

Finally, my Lords, on behalf of the members of the Legal Service, it is my privilege to extend to your Lordships as well as to all Members of the Bar our very best wishes for a happy and prosperous New Year.