

❁ The final court of appeal



“ The Court of Appeal serves a useful purpose in filtering appeals from the High Courts to the Supreme Court, thereby easing the pressure on the Supreme Court.

This will enable the Supreme Court, as the final court of appeal under our legal system, to be in a better position to hear and determine the more important cases, especially those which are of public interest. ”



—HRH Sultan Azlan Shah
The Judiciary: The Role of Judges

❁ Early disposal of cases



“Efforts must constantly be made to speed up the disposition of cases.

Litigants have the legitimate expectations to not only a just resolution of their affairs but also an expeditious resolution.

It is the responsibility of lawyers, be they members of the Bar, or the legal and judicial service, to help meet this expectation of society. ”



—**HRH Sultan Azlan Shah**
*The New Millennium:
Challenges and Responsibilities*



“ Globalisation of the economy inevitably means globalisation of the legal services. The next generation of lawyers will need to understand not only their own legal system but also the legal systems of other countries, and in particular, those of the nation’s trading partners. Legal problems will increasingly know no frontiers, and lawyers will have to acquire the requisite knowledge to cope with this. ”

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The New Millennium: Challenges and Responsibilities



Universiti Kebangsaan Malaysia

Bangi, Selangor, 23 August 1997

The next millennium is just round the corner. Many of you may have the privilege of practising law then. No doubt, some of you may venture into other professions and not become lawyers just as not all graduates in philosophy will become philosophers.

Law is a very versatile subject. It is relevant everywhere. Even though the law which a student reads at the university is too little, too superficial to be of much use in real life situations, the training—to research, to read, to understand, to apply, to distinguish—is a very useful training. That training is applicable to every decision-making process, whatever it may involve. Perhaps it is for this reason that even in a country where science and technology is very advanced, like the United States, most of her Presidents and Vice-Presidents have been lawyers. So, do not worry, if you are unable to obtain a job — be a politician!

By the time Malaysia enters the next millennium, the country would have celebrated 43 years of independence. Forty-three years is but a drop in the ocean of time. Yet during that period remarkable changes have occurred.

In 1957, independent Malaya was a nation of just six million people relying mainly on the export of primary products based on agriculture and mining. Our principal concerns then were the survival of the nation, threatened as it was by an insurgency, and the maintenance of inter-communal harmony. By the grace of God, the wisdom of our leaders and the efforts of each and every Malaysian, our nation has weathered those challenges.

If the defining idea for the first generation of Malaysians was “Merdeka” then the defining idea for you, the second generation of Malaysians is the creation of a Malaysian race, the “Bangsa Malaysia” in the context of Vision 2020.

The Malaysia you are inheriting is very different from what it was in 1957. The population now is close to 22 million. Instead of relying almost entirely on primary products, it now has a diversified industrial and manufacturing economy, ranging from textiles, electronics and pharmaceuticals, to petroleum products and automobiles. Malaysia is the 18th largest trading nation, and Malaysians have investments in many parts of the world. The nation’s development has been highly commended, and it is a role model for other developing countries. Malaysia now plays an active part in regional and international affairs and is an acknowledged leader of the developing world. This is the legacy that the first generation of Malaysians has bequeathed to you, its children.

If the defining idea for the first generation of Malaysians was “Merdeka” then the defining idea for you, the second generation of Malaysians is the creation of a Malaysian race, the “Bangsa Malaysia” in the context of Vision 2020.

The vision of a Malaysian race will be realised when each and every Malaysian thinks of himself or herself as a Malaysian, rather than as a member of a particular race, religion, culture, creed or class.

The vision of a Malaysian race will be realised when each and every Malaysian thinks of himself or herself as a Malaysian, rather than as a member of a particular race, religion, culture, creed or class. That ideal does not entail the eradication of these sectional sources of personal identity; rather it envisions these as being relegated to a secondary role.

Vision 2020 states the aims of our Nation and charts your future. Briefly stated, Vision 2020 has a single goal: the transformation of Malaysia from its present status as a “developing country” into a “fully developed nation” by the year 2020.

If a developed country is one which is at home with, and able to keep abreast of, the latest developments in all fields of human endeavour, then that must be the goal of Vision 2020. Yet, an integral component of Vision 2020 is the retention of our unique Malaysian identity. Malaysia must become a fully developed country by 2020 but not at the expense of those attributes which make us uniquely Malaysian. So while we adopt the useful elements from abroad, we must at the same time not abandon the valuable elements of our own rich and diverse heritage.

You must enter the next millennium confident of the nation's abilities and future. You must not allow that confidence to blind you to the challenges that the rapidly changing world thrusts upon you. The challenges have to be identified and the responsibilities fully assumed.

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As future lawyers, law students must strive to achieve at least two goals: first, the acquisition of knowledge and skills necessary to practise law in a rapidly changing environment; secondly and more importantly, the nurturing of their ethical being, so that even as they face the challenges of their profession, they accept the responsibilities which go with it.

Globalisation

More than three decades ago, communication guru Marshall McLuhan remarked that the world was shrinking into a “global village”.¹ Even McLuhan could not have anticipated how completely

¹
The Gutenberg Galaxy: The Making of Typographic Man, University of Toronto Press, 1962.

the world would be globalised. In this fast and changing world, with the greater acceptance of the oneness of man, countries are beginning to lose their individual importance, and are coming together in groups for economic and political reasons. It is envisaged that the countries of South East Asia are destined, as a region, to receive the largest influx of foreign capital and skill, which would in turn result in the region becoming a highly developed and industrialised one. The recent increase in the membership of ASEAN is a clear testimony of this.

I, therefore, foresee the coming into existence in this region of many multi-national and multi-purpose corporations that would bring in tow tremendous opportunities for lawyers to provide legal services on an international level.

Globalisation of the economy inevitably means globalisation of the legal services. The next generation of lawyers will need to understand not only their own legal system but also the legal systems of other countries, and in particular, those of the nation's trading partners. Legal problems will increasingly know no frontiers, and lawyers will have to acquire the requisite knowledge to cope with this.

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Lawyers should therefore be well equipped to provide advice on a global basis with respect to the many transnational transactions. I am confident that our lawyers will meet these challenges and achieve an international reputation for their services.

Information technology

The new millennium will undoubtedly be “The Age of Information Technology”. Malaysia has not lagged behind in the information technology revolution as the Government’s efforts to establish the Multimedia Super Corridor² (MSC) testify.

The MSC will permit Malaysians to gain access to the most advanced information and communication technologies and to apply those technologies in a systematic manner to Malaysia’s own economic, social and intellectual development. Amongst other things, the MSC will provide business opportunities for the creation of hardware, software and contents, the development of electronic commerce, the re-engineering of the public sector, and the fostering of a wide array of new services.

Making the new information technology (IT) available to all is one of the major challenges facing the Malaysian society. Mastering it is a major challenge for each and every Malaysian.

Developments in information technology will have a tremendous impact on legal education. IT will permeate all aspects of the law and even the very basis of the legal system. To give full effect to the implementation of the MSC, new cyber laws need to be formulated. Laws will have to be enacted to control computer crimes, illegal access, commercial espionage and theft. ...

In fact, new cyber laws, such as the Digital Signature Act 1997,³ Computer Crimes Act 1997,⁴ and amendments to the Copyright Act 1987,⁵ have already been introduced by the Malaysian Parliament.⁶

Richard Susskind in a recently published book entitled *The Future of Law*,⁷ considers the role IT might play in facilitating

²
Editor’s note:
See the Communications and Multimedia Act 1998, Act 588, and the Malaysian Communications and Multimedia Commission Act 1998, Act 589.

³
Act 562.

⁴
Act 563.

⁵
Act 332. See, for example, Copyright (Amendment) Act 1997, Act A994.

⁶
See also the Telemedicine Act 1997, Act 564.

⁷
1996, Oxford University Press. See further notes at the end of chapter.

change to the legal system so that they will work far more effectively. The author also explains the power of IT and the benefit it can and will bring to the practice of law and the administration of justice. The message in this book for lawyers is clear: in order to guarantee a stake in the legal system of the future, lawyers must adapt, and take responsibility for changing their working practices.

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I would recommend this book to you, as the book deals with the IT revolution and its impact upon law reform, upon the role of law in society, and upon legal practice in the new millennium. Is the law to be the linchpin of society, or is it destined always to be regarded as an ass?

To adequately prepare students for practice in the next millennium, law schools must adapt their curricula and their instructional and assessment modalities to take into account information technology and the enormous responsibilities that accompany its use. The law schools need to energize their students to keep pace with a global information society ...

Environmental degradation

It is also necessary that you be aware of the environmental crisis that besets the world.

Environmental degradation affects not merely human health, but the ecological and natural resource foundations of civilization as well. A major challenge Malaysia faces as it enters the next millennium is to make development sustainable and to ensure continued prosperity without jeopardising the prosperity of future generations.

Law is an essential component of every conservation strategy. Legal principles and rules help convert our knowledge of what needs to be done into binding rules that govern human behaviour. Law is the bridge between scientific knowledge and political action.

Law is an essential component of every conservation strategy. Legal principles and rules help convert our knowledge of what needs to be done to protect the environment and conserve biological diversity and natural resources into binding rules that govern human behaviour. In other words, law is the bridge between scientific knowledge and political action.

A legal adviser to a corporation can no longer afford to ignore his environmental duties as a responsible corporate citizen. You as law students can no longer ignore the study of environmental law.

...

Upholding fundamental rights

At the end of the Second World War, there were fewer than 60 countries gathered at the United Nations. Today the membership exceeds 160. Those nations that won their independence in the

past 50 years have reason to thank members of the legal profession. Lawyers were the vanguards for the struggle of independence in most countries. The newly emergent nations were often led by lawyers and in all, lawyers helped create a respect for law and justice. Where the law fails, nations disintegrate.

It was Aristotle who wrote, “At his best, man is the noblest of all animals: separated from law and justice, he is the worst.”

Justice, in particular, the achievement of social justice, is a basic and fundamental element of society that cannot be eroded or diluted, for to do so would demean the nobility of man.

The Malaysian Constitution guarantees certain fundamental liberties to its citizens. The architects of the Malaysian Constitution recognised the inalienability of certain basic rights and freedoms as being representative of a civilized society.

The Malaysian Constitution guarantees certain fundamental liberties to its citizens. The architects of the Malaysian Constitution recognised the inalienability of certain basic rights and freedoms as being representative of a civilized society. Hence, “No person shall be deprived of his life or personal liberty save in accordance with the law”;⁸ “No person shall be held in slavery”;⁹ “All persons are equal before the law and entitled to the equal protection of the law”¹⁰

These are some of the fundamental and inalienable rights that must be extended to all the members of any civilized society. Without these fundamental rights, without the ideals of justice,

8
Federal Constitution,
Article 5(1).

9
Ibid, Article 6(1).

10
Ibid, Article 8(1).

a society, no matter how technologically advanced, will remain arbitrary and barbaric.

As law students in particular, it is your obligation to ensure that the next millennium will not be remembered as one in which the rule of law is diminished in its application, and one in which the guiding principles of our Constitution are emasculated.

Civil society

You are, by virtue of your training and powers of advocacy, particularly qualified to uphold the rule of law. The rule of law calls for debate and the expression of all views, no matter how repugnant they may be to the majority of those in authority. Lawyers can and must play an important role in this exchange of views. By expressing all ideas without fear or favour, they contribute to the creation and maintenance of a civil society.

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Active participation in the creation of a civil society calls for a sense of restraint. Civility is an essential feature of a civil society, an indispensable ingredient of an ordered society under law. Each of you must endeavour to be a paradigm of civility. The law is a

healing profession; “to make whole” is more than a term of art. It is a standard of behaviour inspired by idealism and compassion, informed by rules of fairness.

Chief Justice Warren Berger of the United States Supreme Court¹¹ constantly urged lawyers to become “healers” rather than “gunslingers”. Never discourage debate and dissent, nor exceed the bounds of legitimate debates, counselled Warren Berger. To borrow his words, “Civility is indispensable, we cannot abandon it ourselves and expect it to be practised by others.”

Improving the justice system

In the next millennium, the administration of justice must keep pace with the needs of change. However, rather than attempt to predict the adjustments that must be made in response to change, I shall address you on an existing problem which is bound to persist.

It is an oft repeated axiom that “justice delayed is justice denied”. The problem of delay is by no means new or by any means confined to the Malaysian judicial system. As far back as the 17th century, Shakespeare’s *Hamlet* lists “the law’s delay” as one of the factors that weigh in favour of suicide.

Prolonged and often unjustified delay is the major weakness of the court system.

Shakespeare in his inimitable way crystallizes what is the major shortcoming of the justice system from the point of view of those who must use the court as litigants: “the law’s delay”. Since

11
Chief Justice of the
United States Supreme
Court, 1969–1986.

Shakespeare's time, numerous enquiries into the functioning of the courts in many countries, both developed and developing, identify the same flaw: the inordinate lapse of time between the institution of suits and their final disposition. Prolonged and often unjustified delay is the major weakness of the court system.

The caseload that the courts are expected to handle invariably grows faster than the population growth. Urbanisation, increased educational levels, and in particular, rapid economic growth tend to substantially increase the number of cases the courts are called upon to resolve.

Litigants have the legitimate expectations to not only a just resolution of their affairs but also an expeditious resolution.

Efforts must constantly be made to speed up the disposition of cases. Litigants have the legitimate expectations to not only a just resolution of their affairs but also an expeditious resolution. It is the responsibility of lawyers, be they members of the Bar, or the legal and judicial service, to help meet this expectation of society.

In the United Kingdom, certain recommendations have already been made in a report submitted by Lord Woolf¹² to the Lord Chancellor's office to reduce the elapsed time of the dispute resolution process by lessening unnecessarily combative behaviour by parties, by simplifying the court procedures, and by generally encouraging the cost of dispute resolution to be proportionate to the value of any claim at issue. These recommendations are worth considering in the Malaysian context.

12
Lord Woolf, *Access to Justice Final Report*,
Department for
Constitutional Affairs,
London, 1996.

Moral character

Finally, I address you on your greatest responsibility – the development of character.

It is far easier to develop intellectual qualities than to foster the moral virtues that are fundamental for the wholesome development of the individual and society.

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Integrity, justice, courage, temperance and prudence — these are virtues that constitute the moral character of a good professional, indeed that of a good man.

Integrity is a fundamental requirement of justice. Without integrity there can be no rule of law. It is the responsibility of every lawyer not only to have integrity but to strenuously ensure that the dishonest and corrupt do not have a place in our system of law and justice.

One of the most stinging indictments about American legal education was written by Professor Charles A Reich of Yale Law School. In his influential book called *The Greening of America*,¹³ Professor Reich wrote:

Finding themselves in law school ... (students) discover that they are expected to become “argumentative” personalities who listen to what someone else is saying only for the purpose of disagreeing;

13
Random House, New
York, 1970.

“analytic” rather than receptive people, who dominate information rather than respond to it; and intensely competitive and self-assertive as well. Since many of them are not this sort of personality before they start law school, they react initially with anger and despair, and later with resignation ... In a very real sense, ... the range of their imagination is limited, their ability to respond with sensitivity and to receive impressions is reduced, and the scope of their reading and thinking is progressively narrowed.

The educated individual is a wholesome individual, not merely knowledgeable, but mindful of duties and responsibilities, to God, the family, society, and the state. The educated person is respectful of other human beings and the environment.

Law students must not become “argumentative personalities” with an “adversarial turn of mind”.

Law and justice call for conduct between contending parties with stringent and meticulous observation of the rules and ethics of the game.

The educated individual is a wholesome individual, not merely knowledgeable, but mindful of duties and responsibilities, to God, the family, society, and the state. The educated person is respectful of other human beings and the environment. You must endeavour to become truly educated.

In conclusion, I believe that in the next millennium, the demands for legal services will be more intense and complex. That is your real challenge.

Editor's note

Richard Susskind: In 1998, Professor Richard Susskind was appointed IT Adviser to the Lord Chief Justice of England and Wales, then Lord Bingham and now Lord Woolf. In this capacity, he worked closely with the senior judges in England and Wales in helping them identify and articulate the most promising applications of IT for the judiciary

Over the years, Professor Susskind has advised on various UK government inquiries and initiatives, including Lord Woolf's *Access to Justice Inquiry* (1995-1996), the Court of Appeal (Civil Division) Review (1997-1998), the Review of Tribunals (2000-2001), the Criminal Courts Review (2000-2001), the Lord Chancellor's Department Civil Justice IT Strategy Group (1997-2001) and, since 1990, the Information Technology and Courts Committee (ITAC).

As well as numerous articles in the academic, trade and popular press, he has written five books: *Expert Systems in Law*, Oxford University Press, 1987; paperback, 1989; *Latent Damage Law—The Expert System*, Butterworths, 1988 (with PN Capper); *Essays on Law and Artificial Intelligence*, Tano, 1993; *The Future of Law*, Oxford University Press, 1996; revised paperback, 1998; *Transforming the Law*, Oxford University Press, 2000; paperback, 2003.

He has also edited two collections of papers: *Focus on IT in the City*, Worshipful Company of Information Technologists, 1995, (with John Carrington, Tricia Drakes, Brian Jenkins, and Mike Warburg); and *Essays in Honour of Sir Brian Neill*, Butterworths, 2003 (with Lord Mark Saville).



Certainty of law

“ ... Consistency makes for certainty, and this court being at the centre of the legal system in this country, is responsible for that stability, the consistency and the predictability of the administration of law. ”

—Raja Azlan Shah Acting LP (as he then was)
Land Executive Committee of Federal Territory v Harper Gilfillan Bhd [1981] 1 MLJ 234, FC at 237