

*Reference Proceedings for Almarhum  
Sultan Azlan Muhibbuddin Shah Al-Maghfur-Lah*

Federal Court, Palace of Justice, Putrajaya  
19 November 2014

## Tribute by Tun Arifin Zakaria

Chief Justice of Malaysia

The august gathering this morning to honour the memory of one of the world's outstanding jurists and one of Malaysia's greatest judges is testimony to the high esteem and affection that we have for Almarhum Sultan Azlan Muhibbuddin Shah Al-Maghfur-Lah who was a judge and our fifth Lord President of the Federal Court.

In this regard, we have heard from the Honourable the Attorney General Tan Sri Abdul Gani Patail and the Chairman of the Bar, Mr Christopher Leong. I wish to associate myself with what they have so eloquently expressed. Permit me, with Tuanku's leave, to add to that recitation.

Tuanku,

Ladies and Gentlemen,

It is indeed a rare privilege for me in the eminent presence of Duli-Duli Yang Maha Mulia Tuanku, members of the Royal family and distinguished guests, to speak about a judge and our former Lord President, Almarhum Sultan



Azlan Muhibbuddin Shah Al-Maghfur-Lah, whose life has profoundly touched us all and whose stature is beyond compare.

I would like to begin by expressing our deep sorrow over Almarhum's untimely passing on 28 May 2014. The sense of loss that hangs over us all, will be with us for a long time to come.

Speaking for myself and my wife and on behalf of the Judiciary, allow me to express our deepest condolence to Duli Yang Maha Mulia Tuanku and members of the Royal Family.

Almarhum Sultan Azlan Muhibbuddin Shah Al-Maghfur-Lah came from an illustrious Perak Royal family, born as he was, to greatness.

But Almarhum's greatness came not merely from an impeccable lineage; it also came from a man blessed with a brilliant mind, outstanding intellect, keen sportsmanship, great dignity, deep compassion and good humour, in equal measure.

That these attributes can be found in one man would seem to be too much of a good thing—but it remains true that Almarhum represents much that is good and great. Yet, he wears those distinctions lightly.

Distinguished guests,

Almarhum Tuanku Sultan Azlan Muhibbudin Shah had had an idyllic upbringing in Perak, lending himself wholly to the simple pleasures of childhood. Even as Almarhum was growing up, there were signs of the attributes of the man Almarhum would eventually become. He was an excellent student and a keen sportsman. Never more so than when Almarhum played as forward for the Perak State Hockey XI. He had no trouble battering down the defence of the opposing teams.

In the words of the then Attorney General, Wan Suleiman Pawan Teh, speaking at Almarhum's elevation to the Bench in 1965, Almarhum's formidable prowess for overpowering the opponent found wider expression when Almarhum assumed the more serious and highly contentious avocations of Deputy Public Prosecutor and Federal Counsel.

Given the above traits, it is hardly surprising therefore that Almarhum was elevated to high office, the High Court Bench, at the tender age of 37 years.

In fact a lot of things came early to Almarhum, due to his prodigious talents and notable intellect. Although Almarhum was a remarkable Monarch and Head of State and an excellent sportsman, but to us judges, it is Almarhum's standing as a Judge that stands out.



Coming as Almarhum did, after an illustrious line of Lord Presidents, beginning with Sir James Thompson, Tun Syed Sheh Barakbah, Tun Azmi Mohamad and Tun Suffian, Almarhum Sultan Azlan Muhibbuddin Shah's judicial progeny could not have been more honourable.

Almarhum Sultan Azlan Muhibbuddin Shah Al-Maghfur-Lah enjoyed a remarkable career in the Judiciary. In 1965 he was appointed to the High Court Bench, remaining one of the youngest judges in the Commonwealth to be appointed to the Bench. Eight years later, Almarhum was elevated to the Federal Court where he was appointed Chief Justice of the High Court of Malaya, followed by his meteoric rise in 1982 to the position of the Lord President of the Federal Court (the position is now known as the Chief Justice of Malaysia).

Of no other man can it be written with truth, that he contributed so immeasurably to the development of the law in the country, the reputation of the Judiciary worldwide, and who, as a great Monarch, performed the awesome duty of ruling his State and this country, with great wisdom and sensitivity.

His views and interpretation of the law in the extensive body of case law he wrote comprise the basis for the fundamental principles we adhere to until this day, as enshrined in our Federal Constitution.

Almarhum's matchless brilliance was widely acknowledged and he was often invited to speak and impart his learning. The remarks he made in his speeches were always scholarly and thought-provoking.

So much so that his work has been recognised in many ways, one of which was the establishment of an annual lectures series, The Sultan Azlan Shah Law Lectures, which is one of the most prestigious lecture series of the common law world.

Lord Saville of Newdigate, Lord of Appeal in Ordinary, House of Lords, probably summed up the sentiments of the eminent speakers in the series, when he said:

Your Royal Highness, to be invited to give this lecture which bears your name, is to be granted a great honour by a judge and jurist of international repute.

Almarhum's approach to the law and his judicial philosophy is almost always premised on his uncompromising regard for the Rule of Law and Independence of the Judiciary, which is apparent even from the inception of his career on the Bench. In his speech on the occasion of his elevation as a Judge of the High Court of Malaya in 1965, he stated his unwavering commitment to the cause of justice in the following words:



I shall endeavour to do justice, not only to the accused but also to the interests of the State. I would give the assurance that in the exercise of my judicial function I would uphold the absolute independence of judgment. The independence of the judiciary remains a cornerstone in the structure of our system of government today. It not only guarantees that justice will be done and judgments firmly based on truth; it is also an indispensable condition of the Rule of Law.

Almarhum's time on the Bench suited his talents and disposition. His commanding presence alone ensured that the Bench and Bar met his exacting standards. The highest decorum and refinement in all spheres were expected and complied with.

Patience is expected of every judge and Almarhum displayed such quality in abundance throughout his tenure as a judge. This stood out clearly on the occasion I appeared before Almarhum in a tax matter on behalf of the Inland Revenue Department. Needless to say the taxpayer/appellant in that case had a hopeless case and as such I had expected that the matter would be swiftly disposed of, but contrary to my expectation, the appellant's counsel was given full liberty to make his submission without interruption, at the end of which I stood up to respond; then Almarhum in his usual fashion signalled at me to take my seat. The appeal was of course dismissed. This is, by any measure, a true display of his patience in the conduct of matters coming before Almarhum. I am sure others who have had

the privilege of appearing before Almarhum could add to the list of such anecdotes.

His judgments were marked by disciplined research and preparation, focussing on both the facts and the law, coupled with economy and precision of language. This is perhaps Almarhum's gift to us all. He has the unique ability to write lucidly, such that complex problems appear simple by his clear exposition of legal principles. One of his greatest contributions therefore is his extraordinary ability to reflect the sense of justice to the public at large in a language they would understand. If Lord Irvine were to describe Almarhum, it would be that Almarhum's judgments were models of simple English, which ordinary people would immediately comprehend. However, Almarhum's facility for language is not just in the Queen's English.

He was equally at home in the National Language. Therefore it does not come as a surprise that Almarhum was recognised by Malaysia's National Language Centre, Dewan Bahasa dan Pustaka, as an expert in the National Language. I am sure that not many of us are aware of this fact.

Undoubtedly, Almarhum's clear understanding of law and legal concepts had in no small way helped the then Dewan Bahasa Committee to formulate terms for the clarity of which the courts and members of the profession will be eternally grateful.



Almarhum delivered some of the country's most erudite and decisive judgments that have considerably enriched our jurisprudence. His judgments span a wide range of subjects from administrative and constitutional law to contract, commercial, criminal and even in the recent area of environmental law. Notwithstanding his prolific output, the underlying theme that resonates throughout these judgments was always his emphasis on the twin pillars of the Rule of Law and the independence of the Judiciary.

As mentioned by the speakers before me, his seminal decision in *Loh Kooi Choon v Government of Malaysia* [1977] 2 MLJ 187 is best remembered, as are the high profile cases of *Public Prosecutor v Datuk Haji Harun bin Haji Idris (No 2)* [1977] 1 MLJ 15 and *Public Prosecutor v Tengku Mahmood Iskandar & Anor* [1973] 1 MLJ 128. In the latter case, Almarhum observed that:

... there is only one kind of law in this country to which all citizens are amenable. With us, every citizen irrespective of his official or social status is under the same responsibility for every act done without legal justification. This equality of all in the eyes of the law minimises tyranny.

In this, Almarhum has earned respect and admiration for his absolute impartiality.

When he was on the Bench, Almarhum was in the vanguard of the intellectual movement—the “Golden Age of the Judiciary”—as the Attorney General had put it.



Reflecting upon Almarhum's expansive judicial legacy, judges and members of the legal fraternity would certainly be reminded of cases such as *Dato' Menteri Othman Baginda & Anor v Dato' Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29, *Ketua Pengarah Kastam v Ho Kwan Seng* [1977] 2 MLJ 152, *Tan Swee Hoe Co Ltd v Ali Hussain Bros* [1980] 2 MLJ 16 and many more, which to this day continue to be followed by the courts.

In my view, Almarhum is best remembered for his important contribution to the development of administrative law in this country. In this regard, Almarhum would very likely agree with Lord Diplock, when the latter said that creating a system of administrative law was the greatest achievement of the courts in his judicial lifetime.

Thus when Almarhum uttered these famous lines: "Unfettered discretion is a contradiction in terms. Every legal power must have legal limits, otherwise there is dictatorship", he was actually expressing an essential premise of administrative law.

In saying the above, Almarhum was acutely conscious of the role of the Judiciary in a democracy. Plainly he was aware that in any modern democratic nation the powers of the Executive are significant, and that when the Executive strays beyond its lawful province, the courts must call it to account.



In the above and in all his other judgments, Almarhum had a sense of context, and the restraint of tradition.

It is common knowledge that Almarhum's love for the law was total and that he found fulfilment in his role as dispenser of justice. To Almarhum, being a member of the Bench was more than a job; it was a responsibility he took to heart and performed with great skill, excellence and integrity. His passion and love for the law is also evident from the fact that as a Ruler, Almarhum continued to act as the external examiner to the Law Faculty of the University of Malaya.

For the most part, I had the good fortune to see all these qualities at close quarters, for I was the Legal Adviser to the State of Perak when Almarhum was its Ruler.

As a Ruler, in everything that he did, Almarhum was meticulous to a fault. His training as a judge had in no small way shaped his bearing as a Monarch.

I can still remember the painstaking notes he made in the State Papers he was going through. Nothing is too small or too unimportant for Almarhum. His unfailing quest for detail meant that Almarhum had a total recall memory. These little notes manifest Almarhum's care and circumspection in things big and small.

Almarhum's unerring sense of justice, thoughtfulness and concern, plus his passion for the law meant that long

after Almarhum had left the Bench, he would still watch over us. He continued reading our judgments in the law reports such that he was able to give an informed view in the Conference of Rulers about any of the judges nominated for confirmation or promotion.

Almarhum was also very up to the minute with the development of the Judiciary and his concern was palpable, even as he tried to remain objective, as only he could be.

Thus, in his passing, the Judiciary has lost its faithful friend and guiding light.

The congenial atmosphere which prevailed in the courts then never waned when Almarhum was around. In fact, things were never more harmonious. Almarhum's judicial colleagues and officers of the court would be hard pressed to hear harshness of tone from Almarhum—for there was no need to—simply because Almarhum had an uncanny ability to invoke great awe and respect by a mere glance.

However, the court staff in Almarhum's days knew that despite his stern and majestic bearing, Almarhum had a heart of gold. So much so that a motley crowd of court interpreters, office boys, drivers, orderlies and Registrars, etc, would routinely wait outside Almarhum's chambers every morning, queuing up, just to speak to him, seeking his help and advice.



Sometimes they had big issues; sometimes they just wanted a sounding board, someone to listen to their troubles. He might not always have solved their problems, but they knew that they could unburden themselves to him. But most of the time, Almarhum's kindness and generosity of spirit saved the day. The court staff would usually come out from his chambers, happy and relieved.

It was routine too, for Almarhum to drop by the court canteen, to ensure that the food served to his staff was of a certain culinary standard.

And it was perfectly normal too, for Almarhum as a Federal Court Judge then to drop by the officer's rooms, including mine, when I was a Senior Assistant Registrar for a chat and a free cup of coffee!

Such was Almarhum's benevolence. It was contagious, I think, because most of the other judges too did not stand on ceremony and they flitted in and out of each others' chambers freely.

In short, the court in Almarhum's days was like one big happy family and it could only have been so because Almarhum himself set the tone.

Thus both professionally and personally, Almarhum had always remained compassionate and tolerant, tempered with his wry sense of humour, which could only emanate from his great wisdom. In this, Almarhum truly personified

Rudyard Kipling’s famous prose—for Almarhum could, with ease, walk with Kings and yet not lose the common touch.

One of my greatest regrets is that due to the exigencies of duties and circumstances, Almarhum was somehow unable to visit the Palace of Justice in his lifetime. Almarhum would have been pleased to see how the former glorious premises of the Supreme Court at the Sultan Abdul Samad Building, where he had spent many happy days, are now replicated in no less elegant an edifice in the Palace of Justice.

We may feel diminished by Almarhum’s passing. But we should take comfort in knowing how much Almarhum has enriched our lives in just being who he was and how much his legacy will endure.

Finally, I would like to borrow Christopher Wren’s epitaph in St. Paul’s Cathedral which he designed—it says this: “If you seek his memorial, look about you.”

Tuanku,

Distinguished Guests,

Ladies and Gentlemen.

By the same token, if you seek to remember Almarhum, just look around the courts and you will feel



his presence, because the words “Raja Azlan Shah” are almost a byword for the law itself.

It is only fitting therefore that we render this Reference in Almarhum’s honour, in a court of law—an institution which has always had a special place in Almarhum’s heart.

He is now amongst those who love him. He has come home.

Tuanku,

Ladies and Gentlemen,

Allow me to conclude by humbly praying in the hallowed tradition of the Judiciary that this Reference held in honour of Almarhum Sultan Azlan Muhibbuddin Shah Ibni Almarhum Sultan Yussuf Izzuddin Shah Ghafarullahu-Lah be entered into and be preserved in the court archives and that a copy of the same be extended to the family of Almarhum Sultan Azlan Muhibbuddin Shah ibni Almarhum Sultan Yussuf Izzuddin Shah Ghafarullahu-Lah.

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Duli Yang Maha Mulia Tuanku, may I now with the greatest of respect, invite DYMM Tuanku, to respond to the recitation above. 