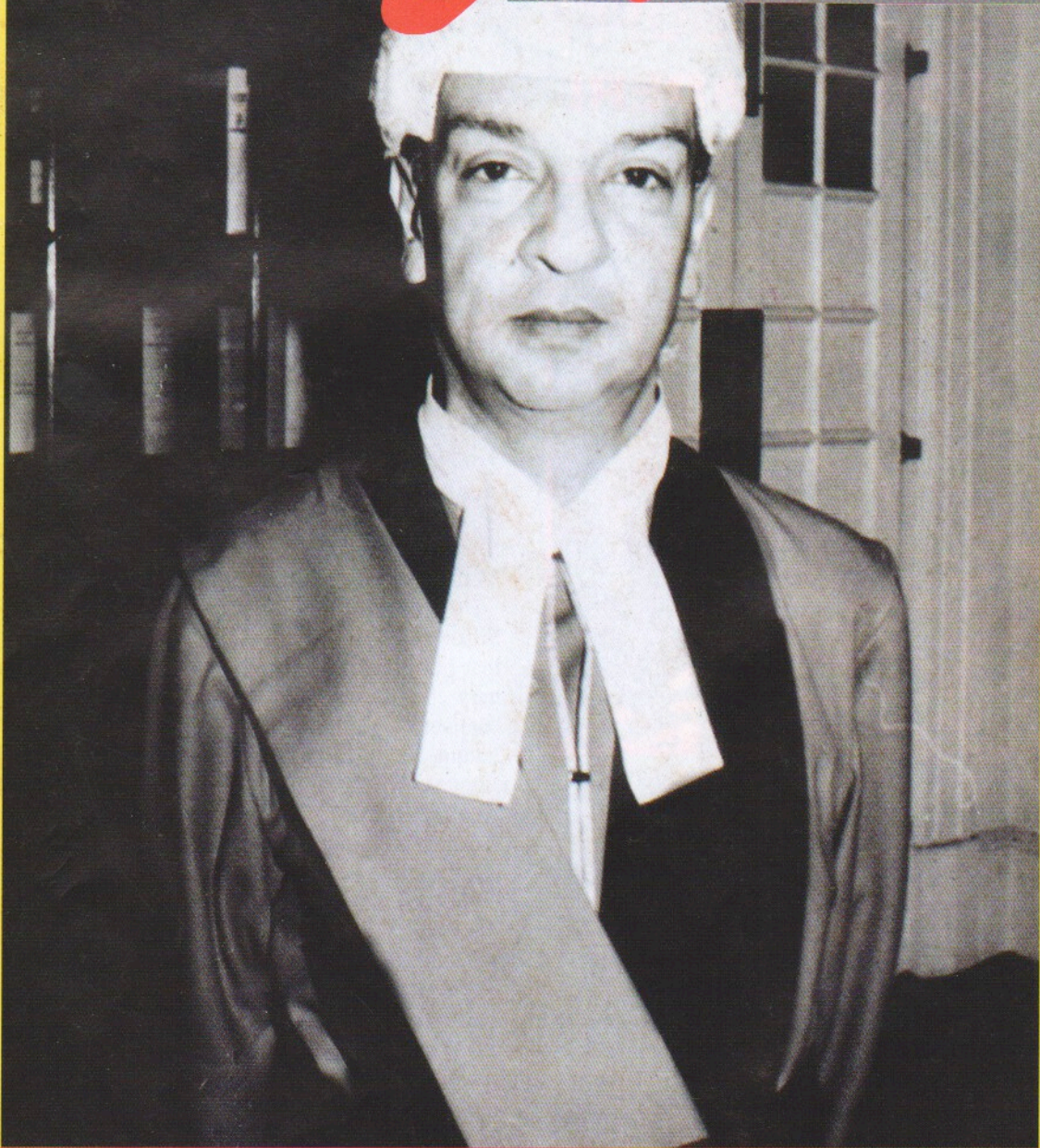


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## FAREWELL TAN SRI EUSOFFE ABDOOLCADER!



*Pro-Chancellor USM : 4 Oct. 1983 - 3 Oct. 1993*

**T**he tragic death of Eusoffe Abdoolcader was a sad way to begin 1996. Those who knew and respected him were deeply grieved at the passing of this extraordinary legal and judicial giant. Not a few too were convinced that he was the last of the great romantics, a man who literally died of a broken heart. That's true, but one is inclined to believe that Eusoffe's passing at this particular juncture in Malaysian judicial history also marks the last of the great judges. His death comes at a time when the integrity of judges is being questioned by the business community, lawyers, politicians and, of course, the public.

Eusoffe must have been sickened to read of the infamous "Ayer Molek" scandal which has become a catchword for all that is not right with the administration of justice in the country. He must have been scandalised

at allegations of judges who behave more like politicians than honoured members of the bench.

Eusoffe led a lonely life and some thought that pitiful for a man of his stature. But the fact that he led a lonely life is all the more to be admired for that is precisely how judges ought to live. Some say it is unreasonable to expect judges to live like monks, but we beg to differ. Those who cannot resist being seen at any old function in town, or playing golf with any bigshot Tom, Dick and Harry, should perhaps consider careers other than in the Judiciary. The Judiciary is not for party animals.

How his heart must have ached to know that some of the most senior judges of the Court of Appeal and Federal Court cannot string together a decent sentence of English. And who can forget the Chief Justice's outburst when asked to comment on the Bar's protest regarding the Ayer Molek case? Instead of explaining how the fiasco had happened, or assuring the public that such a fiasco would not recur, he chose to show his temper with the Bar. It was unbecoming behaviour by the highest judicial figure in the country.

Eusoffe must have cringed too had he lived to learn that judges must now clock in and out like any ordinary civil servant. Judges have also been ordered to "deliver the goods promptly, efficiently and in great volume." Well and good, except there was not a word about the quality of judgements. Judgements are hardly like instant mee - fast to cook, good to eat. A sound judgement that will stand the scrutiny of the appellate court and the test of time cannot be sacrificed to this thing known as productivity.

Judgements cannot be reduced to statistics which are, however, useful in making the boss look good. The quality of judgements, say lawyers, reflect far better on the quality of judges and the judiciary than the speed at which judgements are delivered and penned. Malaysian judgements were at one time cited in great volumes by law journals in this region and elsewhere in the Commonwealth. But no longer. That alone, says a great deal about the state of the Malaysian judiciary. Let's pray that we will not end up with "instant mee judges"; they may be fast, but not necessarily good. □

**Rest in peace, Tan Sri Eusoffe!**

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# THE LEGAL LION



**Eusoffe Abdoolcader is a man with a passion for the law.**

*by S Jayasankaran*

**N**ew Entrants to Kuala Lumpur's legal firm of Shearne and Delamore are quickly made aware of their Penang-based consultant. It might have to do with a story that's been circulating around the office for some time now. In the anecdote, a partner of the firm had decided he solicit help from the firm's consultant for an impending case.

The partner did the needful. He faxed over details of the case and was told to come over to Penang. He took the next flight out and, mindful of the consultant's formidable penchant for punctuality, spent a good 30-minutes plaintively hanging around Shearne's plush Penang offices waiting to be summoned.

The audience came punctually. And lasted, apparently, all of four minutes.

'You see that book,' Tan Sri Eusoffe Abdoolcader observed, pointing to one in his generously endowed library. 'Look between pages 374 to 378 and the answer is there. Good day.'

Apocryphal or not, the story serves to illustrate the manner of the man who rose to become one of the country's most eminent judges, a jurist once described by a leading British newspaper as 'a legal lion'. Says High Court Judge, Datuk V C George, 'He's a jurist of as high a calibre as can be found anywhere in the Commonwealth.'

A seemingly imperious perfectionist, Eusoffe Abdoolcader's passion for the law often made him an object of terror among lawyers who had to appear before him. 'He was fussy about small things like margins on an affidavit and he'd ridicule us for small

mistakes in open court,' recalls one lawyer. Others say the former Supreme Court Judge was often irascible and seemed to take delight in putting others down, the better to display his erudition and quick-wittedness.

Unfortunately for his detractors, there was no denying that he was, indeed, quick-witted. Agrees a senior lawyer, 'He was very good at thinking on his feet and he was very sharp. The problem was that he knew it.' Indeed, Eusoffe would actually go through the material before him, a trait largely unshared by his brethren, who preferred hearing the opposing arguments.

Thus, there were instances where counsel, trying to illustrate a point, would thumb through voluminous documents looking for a particular document, only to be unnerved by His Lordship who would remark that 'the thing you're looking for is on page 201.' Recalls the senior lawyer, 'It was quite scary.'

Still, it was manifest that Eusoffe was easily impatient with lawyers whom he considered ill-prepared or slipshod in their research. Says counsel Tommy Thomas, 'He does not suffer fools at all. So if you're not prepared, you'd get it.' Eusoffe himself is impatient with such talk. 'I don't believe in mollycoddling lawyers. Perhaps my way of putting things across was a bit forceful. But if it was construed as intimidating, then it's just as well.'



Indeed, the judge often found himself in the position of teaching counsel the law and had no qualms about carrying out his own research, to the chagrin of numerous attorneys who felt that it was not a prerogative of the Bench. In one particular case — *Yeap Hock Seng vs Minister of Home Affairs* — both counsels were unable to cite authorities to back their submissions, much to Eusoffe's sorrow and surprise'. So he did it himself and his final judgement 'regretted that counsel ... would probably not recognise substantial parts of this judgement as having any relation to the submissions they addressed to me.'

Lawyers have mixed feelings about the literary quality of Eusoffe's judgements. While a review by the Law Faculty of the University of Singapore was admiring, calling his use of the language 'majestic', other lawyers are less impressed. Says one, 'You have to read his sentences three times to get its meaning. It's neither simple nor clear.' Another lawyer puts it this way, 'He sits with thunder in one hand and a thesaurus in the other.'

There was no doubting Eusoffe's facility with the language. He could come out with the stylish metaphor — '... a teasing illusion like a munificent bequest in a pauper's will' — or the vivid one — 'this case ... has aroused as much excitement as Lady Godiva perhaps would in riding down Gurney Drive on Chap Goh Meh'.

And he could indulge in some dry asides. Introducing an Indian case — *Israil Khan vs the State of Assam* — Eusoffe could not resist commenting that the petitioner had 'a delightfully incongruous formation of a name, remarkably suggestive of a semitic and saracen admixture and an ideal solution to the Middle East conflict'. And in another case, he began his judgement thus ... 'This case, like the papacy of Pope John Paul 1, lasted 33 days in the hearing ...'

Even so, there was also no doubt that Eusoffe occasionally indulged in verbiage as dense as any thicket in an impenetrable forest. In a famous 1978 case — *Teoh Teik Huat vs Lim Kean Siew* — he carried a sentence grammatically through numerous commas and mind-numbing alliterations to its bitter end — 282 words later. Lim Chong Eu, then Penang Chief Minister, later remarked that it was 'the longest sentence I've ever heard in perfect English'.

The former Judge, however, has no doubt of where he stands. 'Bombast?' he huffs disbelievingly. 'Stuff and nonsense! No one can say that of my language.' Continues Eusoffe, 'A judgement should not only be explicit in the law but should also be a piece of literature. I'm proud to say that every judgement of mine was like that.' Agrees a senior partner in a legal firm, 'His judgements were often a cut above the rest.'

The majesty of the law was supreme to Eusoffe and, in that

sense, he held out no favours to anyone, friends included. One story holds forth that when he was a judge in the Ipoh High Court, a long time friend and lawyer appeared before him in chambers. Unfortunately, the lawyer was 10 minutes late and Eusoffe is said to have given him a tongue lashing in front of the client and opposing counsel. The story spread swiftly around Ipoh, complete with tongue-clucking and general disapproval. It didn't seem like the Malaysian way.

'You have to be seen to be impartial,' says Eusoffe. 'Even if it were my father or mother in a position of pleading before me, it would hold no water.'

... It would have been unlikely. Dr Sir Husin Hasanally Abdoolcader, a Gujarati-Muslim, was an eminent lawyer and a member of the legislative assembly to boot. Eusoffe, born in 1924, was the third son in a family of seven. 'Ever since I could speak, I wanted to be a lawyer,' he recalls and went about trying to achieve that in double quick time.

At the age of 15 plus, he'd already passed his Senior Cambridge with more distinctions than seemed necessary but he was too young to gain access to Raffles College, which stipulated a minimum age of 17. He repeated his SC and sailed through yet again, this time 16 and a bit. Fatherly influence won him a seat in Raffles and he was extolled in the then *Straits Echo* as 'Raffles' youngest'. This brought him to the attention of his

seniors who 'ragged' him unmercifully — one of the chief protagonists was, apparently, one Lee Kuan Yew.

The Second World War interrupted his studies and he went back to Penang only to pick up enough Japanese to become interpreter to the governor within a year. He was sent to Japan on scholarship and within a year, won acceptance to Kyoto's Imperial University to study law. But the war's end brought that to a close and he was shipped back to Penang on a British destroyer. 'For a while, I was drawing NAAFI rations as an ex-prisoner of war,' recalls Eusoffe.

The end of the war finally gave him a shot at law and he came through with flying colours. Eusoffe obtained a first class honours in Law from London University, winning a £250 fellowship in the process. He was called to the English Bar in 1950 and the Malayan Bar the following year.

His passion for the law was quickly recognised and, according to some sources, he was invited to become a Judge as far back as 1959. As a lawyer, he was considered a deadly opponent. In the words of Salleh Abas, then Solicitor-General, 'Although I have never had the honour of appearing in court against you, on reflection I consider myself lucky for being spared the opportunity; otherwise I might have lost my cases'.

V C George remembers Eusoffe

as 'merciless and deadly' in cross-examination. Another senior lawyer agrees, having witnessed it first-hand. He remembers one case where Eusoffe was leading a hapless accountant through receipt after receipt that the accountant had signed. Having thoroughly confused the witness, Eusoffe then let fly with a lengthy question.

Witness (timidly): Could you repeat the question, please?

Eusoffe (roaring): What's the matter with you? Can't you understand the simplest of questions? Do you want me to repeat it in Tamil?

#### **Eusoffe won that particular case.**

It did not escape the attention of the authorities and in 1974, Eusoffe finally accepted a Judgeship. Four years later, he was sitting regularly in the then Federal Court although he had yet to be officially elevated. That came in 1982 and, three years later when the Federal Court was scrapped, Eusoffe Abdoollader was made a Supreme Court Justice.

Did he help shape the law? Most observers unhesitatingly reply in the positive. 'Any number of his judgements can be regarded as precedent,' says Justice George. The NUS review went further: 'He has in his own relentless fashion set about upholding the rule of law, checking the burgeoning powers of the executive when necessary, and unhesitatingly striking out legislative enactments which he found to contravene

constitutional provisions.'

Still, local lawyers found him largely conservative. 'In his earlier days, he seemed pro-establishment,' says Thomas, 'although in his last few years he had less reluctance ruling against the executive.' The dichotomy — pro and anti — is a recent buzzword and part of the inherited bitterness arising from the 1988 sacking of Lord President Tun Salleh Abas. Judges have little truck with it. 'There is a feeling among some quarters that if you're not pro-establishment, you must be anti-establishment,' says George. 'That's a load of rubbish.'

Even so, the dichotomy seems vague. Boiled down to its essence, some lawyers ascribe Eusoffe's pro-establishment views to his ruling on Merdeka University and his anti-establishment stances to his rulings on the John Bethelson case, his UEM dissension and his own impeachment. Eusoffe holds no truck with any of those views. 'It never occurred to me to think in those terms,' he says. 'I merely applied the law. If you don't like my judgements, you should change the law.'

Despite 15 years on the Bench, however, it is something of an irony that Eusoffe Abdoollader is best remembered for what former Chief Justice, Tan Sri Hashim Yeop Sani once described as 'a revolution'. In what many lawyers thought was a courageous act, Eusoffe, together with four other Supreme Court Judges, banded together to issue an injunction against the 1988 tribunal that was

hearing the Salleh Abas case.

All five were promptly sacked for 'gross misbehaviours.' Why did he do what he did? 'I only did it because I thought it was right,' says Eusoffe. 'It wasn't because it was Salleh Abas. As far as I was concerned, he was just another litigant.'

Eusoffe conducted his own defence at the impeachment — 'I've always felt I could do things better than anyone else' — and together with two other Judges, was acquitted and reinstated to his

in 1989. That relations were cool was evident from the fact that when Eusoffe and Tan Sri Wan Hamzah Wan Salleh, another Judge who was impeached and acquitted, retired simultaneously, no farewell bash was thrown for them — *de rigueur* by judicial standards. By all accounts, both Judges were said to be deeply hurt.

Today, Eusoffe Abdoolcader lives in Penang and keeps busy as Shearn's legal consultant. According to Shearn's lawyers, he is 'as sharp as anything and tremen-

gested a major change. It struck the lawyers as so novel that they submitted it to court as a supplementary affidavit. The Judge threw out the first affidavit and accepted the second in toto.

If the Judge ever revealed a human side, it is said to have been his devotion to his late wife. Indeed, he was deeply in love with Haseenah Abdullah, who passed away more than a year ago after a lingering illness. It still affects him greatly — 'It was a great personal tragedy' — and the first anniversary of her death was commemorated in moving fashion. Eusoffe took out full page advertisements to his wife with poem dedicated to her, one of which he penned in Latin.

Latin has become something of a passion for the man. Already quite conversant in the language, much of his free time is spent reading up on Latin authorities. 'It is a beautiful language,' he says. 'And the British would not be half as bright as they are now if they hadn't been conquered by the Romans years ago. English is mainly Latin.'

Familiarity with the language has often enabled him to have the last word. When friends approached him wanting to know why he wasn't given a rousing send-off from the Supreme Court, Eusoffe Abdoolcader SCJ preferred to answer in Latin. '*Res Ipsa Loquitur*,' he said. (*The thing speaks for itself*). □

Source: *Malaysian Business*, March 16, 1994.



Eusoffe : I merely applied the law.

former position on the Bench. 'I was never worried about the outcome,' he insists. 'Not in law, anyway.'

Still, his relationship with some of his superiors could not have been as cordial as it once was. Legal observers note that Eusoffe was no longer given the landmark constitutional and administrative cases that he was used to and they say he retired a disillusioned man

dously useful'. Indeed, Eusoffe's capacity for lateral thinking was what, apparently, made the difference in the lengthy receivership proceedings involving the Co-operative Central Bank.

Working flat out for a month, lawyers in two firms had come up with an affidavit which they finally submitted to court. Dissatisfied with it, they turned to Eusoffe who, apparently, sug-





### THE MOST EMINENT JURIST

**There couldn't have been a more  
able, more impartial and a more  
just man**

He upheld the supremacy of the constitution and the rule of law without fear or favour

There couldn't have been a more able and more impartial and a more just man than the late Supreme Court Justice Tan Sri Dato' Seri Eusoffe Abdoolcader. You can therefore imagine how shocked and shattered he must have been when accused of misbehaviour when all he had been doing was his duty to uphold the supremacy of the Constitution and the rule of law to dispense justice without fear or favour.

Despite the trauma he must have suffered during the period when the Judiciary was being brutally assaulted by the higher authority in the land with the enthusiastic support of some judges who should have united to defend the independence of their brothers, he had the love and support of his beloved wife suffering from a long lingering illness to whom he was utterly devoted. And when the Tribunal that tried him cleared his name, he soldiered on despite the wounds and public humiliation inflicted on this man of the highest integrity.

When his wife eventually died after her illness he must have suffered another cruel blow. But he appeared to have been strong enough to go on alone. He was a very private person and for three years he continued to put up a brave face and successfully hid from family and friends the great grief that we now know he must have suffered in silence.

Those who have worked with him will long remember with pleasure and envy his command of the issues before the Court and of the law.

His sudden departure shocked the Bench and Bar who have lost probably the most eminent jurist the

country has ever produced.

*Tun Mohamed Suffian*  
*Former Lord President*



### AN OUTSTANDING JUDGE

**His love for law knew no bounds**

Eusoffe, as we fondly called him was undoubtedly one of the great judges who ever lived in this century in a common law jurisdiction country. His love for law knew no bounds and his knowledge and deep understanding of its philosophy was simply superb. This insight enabled him to write landmark judgements during his tenure as a judge. He often surprised English judges and lawyers visiting Malaysian Courts then with his up-to-date knowledge of cases recently decided by English Courts — cases even the visitors themselves were not aware of.

He started his career as a legal practitioner whose main concern was mostly in the field of private law. But upon joining the Judiciary he soon developed an interest in the field of public law. He wrote many outstanding judgements in this branch of the law — an example is the case of Merdeka University.

Anyone who is interested to know more about the development of public law by the Malaysian Judiciary before the judicial crisis in 1988 should read Malaysian law journals covering the period between 1980 and 1988. At that time the Malaysian Judiciary, following the pattern of the English Judiciary and the Indian Supreme Court, was well respected and held in high esteem especially after the case involving a Wall Street journalist, which later became the starting point of the Executive's assault on the Judiciary.

The contribution by the late Tan Sri Eusoffe in



this direction was immeasurable. The Court was concerned with the liberty of subjects and with the independence of the Judiciary as a bastion of liberty.

However, after the 1988 judicial crisis, this branch of law was practically annihilated. I think the episode in which Tan Sri Eusoffe who was suspended from the bench together with four others was one of the lingering memories from which he never recovered. Although he was later reinstated as a judge, the law was never the same.

Eusoffe had no other interest than his law, his late wife and his pet dog. I remember that on a number of occasions I wished to take him to participate in international conferences overseas with me but he always declined because of his concern for his pet dog and of his love for his wife from whom he could not bear to be separated.

After his pet dog died, he devoted most of his life to the care of his beloved wife who was then an invalid. His concern for her health was such that he kept from his wife's knowledge the fact that the Judiciary was under great assault by the Executive, lest her illness might be exacerbated.

When his wife passed away, serving the law whose spirit and mission had become empty was, to him, no longer a fulfilling occupation and was thus devoid of any purpose. It is sad that he had died in such tragic circumstances.

We all mourn the death and the passing away of this great and brilliant man, whose substitute will not come by easily, or who possibly will not even be replaceable.

*Tun Salleh Abas*  
*Former Lord President*



**A FIRST RATE  
LEGAL MIND**



**... and a deep seated reverence for the Rule of Law**

We have of course known the late Tan Sri Eusoffe

Abdoolcader for a long, long time. It did not take us a long time to discover in him a first-rate legal mind whose single-minded ambition was to excel in the profession of his choice, and excel he certainly did.

It is common knowledge that Eusoffe took a First in the LL.B. London University examination, and in addition he topped the First Class list as well. Back home he took the Courts by storm. His astounding memory enabled him to draw upon a large array of legal authorities with which to dismay and confound his opposite number.

As a Judge, this legal learning has been preserved for posterity in the various Law Reports judgments fortified by a generous measure of Latin. Word has it that when many of his Judgements were published, practitioners, both young and old, would rush to consult their Latin Lexicons.

A deep seated reverence for the Rule of Law is manifest from his judicial pronouncements, and was abundantly in evidence when he volunteered with the other four of us to pass the Order on that fateful afternoon of 2nd July 1988 restraining the Hamid Tribunal from submitting its recommendations in the Enquiry on Tun Salleh to the *Yang di Pertuan Agong*.

Though we failed to save the embattled Tun Salleh, our action was not in vain. The banner of the Rule of Law and of Judicial Integrity is still held aloft with pride by the Bar Council, we must admit, with courage and distinction.

We sorrow at the tragic circumstances surrounding the passing away of a dear friend and colleague.

*Tan Sri Wan Suleiman and Tan Sri Wan Hamzah*  
*Former Supreme Court Judges*



**ONE OF FIVE FEARLESS  
JUDGES**

**He had a deep  
understanding of the law**

He stood up without fear or favour when the Judi-

ciary came under assault

Tan Sri Eusoffe and I were appointed to the then Federal Court at the same time. I learnt a great deal from him.

Many who did not come up to his expectation considered him a tyrant but he had a deep understanding of the law and an ability to analyse facts.

He would read appeal records thoroughly and understand the crux of the appeal — a quality not relished by those appearing before him, especially if they were unprepared.

Those who were ill-prepared or said the wrong thing would be in hot soup as he would dismiss the appeal. An unprepared lawyer took a great risk appearing before him.

Tan Sri Eusoffe had a natural passion for the law and he was always reading and keeping up with the law. He might have irritated some but I always appreciated him and I try to emulate his high standards. I feel that all lawyers and judges should maintain his high standards.

It is ironic that the two things he loved so much — his wife and the law — would appear to have contributed to his untimely death.

The two of us were among five judges who were suspended for doing our work.

Three of us were later cleared but I don't think Tan Sri Eusoffe ever overcame the Executive attack on the Judiciary in 1988. I feel honoured to be in that panel of five, which allowed Tun Salleh's application for stay in order to challenge the legality of the Tribunal chaired by Tun Hamid.

I learnt a great deal from him — about the meaning of law and justice and about dispensing justice without fear or favour. To me the greatest test was in 1988 and I feel we passed the test by upholding the principle of natural justice for Tun Salleh — although the relief Tun Salleh sought was short-lived.

Tan Sri Eusoffe was a product of Malaysia. He

brought strength to the law. Human rights and constitutional guarantees are mere words. Tan Sri Eusoffe enlivened the provisions by putting them into practice.

*Tan Sri Mohd Azmi*

*Federal Court Judge*



### **FAITHFUL DEFENDER OF THE CONSTITUTION**

**He did not forget his  
judicial oath in 1988.**

It was with a tinge of sadness that I learned of the death of a former colleague.

The late Tan Sri Dato' Seri Eusoffe Abdoolcader was one of the five senior judges of the Supreme Court (the others being Tan Sri Wan Suleiman (the presiding judge), myself, Tan Sri Mohamed Azmi and Tan Sri Wan Hamzah) who were suspended from the exercise of our functions — following the issue of an interlocutory injunction restraining a Tribunal from submitting its recommendation to the King pending the determination by the High Court on the validity and constitutionality of the composition of the Tribunal.

The Tribunal was set up to hear the representations against Tun Salleh Abas, the then Lord President of the Supreme Court of Malaysia. It consisted of the Acting Lord President and Chief Justice of Malaya, Tan Sri Abdul Hamid Omar, the Chief Justice of the High Court in Borneo, Tan Sri Lee Hun Hoe, the Speaker of the Dewan Rakyat, Tan Sri Mohamed Zahir Ismail, Tan Sri Abdul Aziz Zain and two other judges (one from Sri Lanka and the other from Singapore) — albeit at the relevant time, there were two retired Lord Presidents and two former Chief Justices living in Malaysia.

The late Tan Sri Dato' Seri Eusoffe Abdoolcader had no doubt whatsoever that Tan Sri Wan Suleiman was correct in his interpretation of section 9 of the Courts of Judicature Act 1964 and had acted properly and constitutionally in the cir-



cumstances when he convened an emergency meeting of the Supreme Court to hear Tun Salleh Abas's urgent appeal. It may be well to reproduce section 9 which reads:

**9(1) Whenever during any period, owing to illness or absence from Malaysia or any other cause, the Lord President is unable to exercise the powers or perform the duties of his office (including his functions under the Constitution) the powers shall be had and may be exercised and the duties shall be performed by the Judge of the Supreme Court having precedence next after him who is present in Malaysia and able to act.**

**(2) Whenever during any period, owing to illness or absence from Malaysia or any other cause, the Chief Justice is unable to exercise the powers or perform the duties of his office the powers shall be had and may be exercised and the duties shall be performed by the Judge of the Supreme Court or the Judge of the said High Court having precedence next after the said Chief Justice who is present in Malaysia and able to act.**

At the time of the suspension of Tun Salleh Abas the hierarchy of the judges of the Supreme Court under section 8 of the Courts of Judicature Act 1964 was as follows:

- 1) Tun Salleh Abas, Lord President
- 2) Tan Sri Abdul Hamid Omar, Chief Justice, Malaya
- 3) Tan Sri Lee Hun Hoe Chief Justice, Borneo
- 4) Tan Sri Wan Suleiman, Judge
- 5) Datuk George K S Seah, Judge
- 6) Tan Sri Mohamed Azmi, Judge
- 7) Tan Sri Hashim Yeop Sani, Judge
- 8) Tan Sri Eusoffe Abdoolcader, Judge
- 9) Tan Sri Wan Hamzah, Judge
- 10) Datuk Harun Hashim, Judge

The Acting Lord President and Chief Justice of Malaya, Tan Sri Abdul Hamid Omar was appointed Chairman of the Tribunal and the Chief Justice of the High Court in Borneo was also a member of that Tribunal. It was the unanimous opinion of the five senior judges of the Supreme Court that both

Chief Justices would be disqualified from acting under section 9(1) of the 1964 Act and that Tan Sri Wan Suleiman, being the most senior judge of the Supreme Court, was the proper person to assume the powers under section 9(1) thereof.

A recent event in the United Kingdom has demonstrated that an emergency sitting of the higher court is not uncommon or extraordinary. In 1995 the BBC planned to televise a political broadcast by the Prime Minister, Mr John Major, on the eve of the Scottish local elections despite objections from the opposition parties. When it was clear that the BBC was not going to back down, legal action was filed in the Scottish court.

The court of first instance allowed the application and granted a temporary order restraining the BBC from broadcasting the Prime Minister's speech until after the Scottish local election was completed. An immediate appeal was launched and the appellate court heard and rejected the appeal the same afternoon.

An attempt to appeal to the House of Lords in London proved abortive inasmuch as there can be no appeal to London without leave of the Scottish court. This case has proved that if necessary, a restraining order could be issued and an appeal heard and disposed of all in about the same day and time.

The late Tan Sri Dato' Seri Eusoffe Abdoolcader was devastated by the suspension of 1988 as it was tantamount to an attack on the Supreme Court as six out of the ten judges were suspended from exercising their judicial functions under the Constitution.

The late Tan Sri Dato' Seri Eusoffe Abdoolcader was also greatly disappointed that the Authority seemed to accept the view of a single judge in deference to the unanimous opinion of five senior judges of the Supreme Court on the proper construction of section 9(1) of the Courts of Judicature Act 1964. This appears to run counter to section 41 of the 1964 Act that 'Proceedings shall be decided in accordance with the opinion of the majority of the Judges composing the Court' or Convention.

In 1988 the late Tan Sri Dato' Seri Eusoffe Abdoolcader did not forget the judicial oath of high office which he invariably took when he was elevated to the High Court Bench in 1970 that as a Judge he would faithfully discharge his judicial duties to the best of his ability "and will preserve, protect and defend the Constitution."

*Datuk George K S Seah*  
Former Supreme Court Judge



**UNSURPASSED IN  
KNOWLEDGE ...  
UNMATCHABLE IN  
ADVOCACY**

**... awed by his brilliance and  
intellectual prowess**

The late Tan Sri Eusoffe Abdoolcader read law at the University College, University of London, graduating with L.L.B. First Class Honours. He was called to the English Bar by the Honourable Society of Gray's Inn on 26 January 1950 (and had the distinction of being made Freeman of the City of London on 31 May the same year). He was admitted to practise as an advocate and solicitor at the Malayan Bar on 30 March 1951, and to the Singapore Bar on 12 November 1969.

He practised at the Bar for twenty-four (24) years and was appointed as Judge of the High Court of Malaya effective 1 December 1974. On 1 October 1982, he was appointed Judge of the then Federal Court.

As an advocate at the Bar, the late Tan Sri Eusoffe was unsurpassed in his knowledge of the law and unmatched in his advocacy, earning him a reputation as a formidable opponent. Lawyers and laymen alike were awed by his brilliance and his intellectual prowess, which he defused only by his dry sense of humour.

Notwithstanding his busy practise, he gave of himself to many public office and associated himself with the academia and the development of higher

education. To the legal profession, he gave his service to the Penang Bar Committee, served as its Chairman in 1968 and 1969, and was a member of the Bar Council of the States of Malaya from 1963 until his elevation to the Bench in 1974.

He created a vacuum in the ranks of the Bar on his elevation. At the welcoming ceremony held at the High Court in his honour, he said (*inter alia*) -

"I have enjoyed my years of practice at the Bar and will ever be mindful of my origins — that I have come from ranks and have been one of you for some 24 years. I shall always continue to be a lawyer at heart, for to me a judge is basically but a lawyer functioning in a different and possibly much wider field and having as his primary duty that of hearing and determining according to law. I am very pleased to have come on the Bench and be able to serve the nation and I must add that my personal gratification on my elevation is not unmixed with elation at the fact that this also accords recognition to the Bar and its role in the administration of justice in our country.

On assuming office as a judge I am conscious of the very great responsibilities that devolve on me and am proud to say that I have joined a judiciary which has the very highest and noblest traditions of independence, impartiality and integrity. I shall by the grace of God and with His blessing discharge my judicial duties in a manner befitting the high tradition set by and which I receive from my predecessors and colleagues, which I shall strive to maintain and contribute to in my own humble way and which I shall transmit to my successors pure and unsullied as I receive it, and indeed enhance if that is possible. If I cannot strengthen our Bench, strong as it is, I shall certainly do nothing to weaken it."

The late Tan Sri Eusoffe lived up to all that he promised. His years as a Judge brought an added, indeed glorious, dimension to the judicial pronouncements of the Court. His judgements were often hailed as literary works, his mastery of the English language, and of Latin, enhancing his deep but clear, lucid reasoning, no matter how complex the issues litigated before him. His life was one complete and total commitment to the law.



The passing of the late Tan Sri Eusoffe is a tragic loss to the legal profession and to the country. His contribution to the law and the profession, indeed the nation, is his legacy. He is by all accounts quite irreplaceable. We — the Bar — mourn his passing.

*Hendon Mohamed*  
President, Malaysian Bar



### THE PASSING AWAY OF A DOWEN

Man of great integrity and  
uncompromising  
champion of justice

Aliran mourns the passing away of Tan Sri Eusoffe Abdoolcader.

The former Supreme Court Judge had distinguished himself as a man of great integrity and an uncompromising champion of justice and of the independence of the judiciary.

His stature as a doyen among the judges lent lustre to the courts, enhanced the image of the judiciary and instilled confidence in the judicial process.

He was one of the five Supreme Court judges who courageously took a stand to hear the appeal of the suspended former Lord President, Tun Salleh Abas, who came desperately knocking at the door of the judiciary for justice in 1988, at a time when the judiciary was being subverted and undermined for political expedience.

His judgements will remain forever as hallmarks of clarity, legal expertise and fluency.

Malaysians will long remember him for upholding the finest traditions of the judiciary.

His devotion and loyalty to his wife is an important lesson about the meaning of love.

Aliran in mourning his death is also humbled by the fact that he remained a reader of Aliran Monthly

to the end.

*P. Ramakrishnan*  
President, Aliran

### SEND US FOOLS, LORD

*O God! Send us fools,  
those who commit themselves totally,  
those who forget themselves,  
those who love in more than words,  
those who truly give their lives  
and until the end.*

*Give us fools, proud and fiery,  
persons capable of making  
the leap to insecurity,  
to the surprises and  
uncertainties of poverty.*

*Give us fools,  
who accept to be diluted  
among the masses,  
without pretensions of erecting  
their own pedestals,  
without using their superiority  
for their own advantage.*

*Give us fools,  
fools of the resent day  
in love with a simple life,  
lovers of peace,  
pure of heart,  
resolved never to betray,  
ready to help anywhere,  
free and obedient,  
spontaneous and tenacious,  
sweet and strong.*

*Give us fools, Lord,  
give us fools!*

# A LANDMARK DISSENTING JUDGMENT

on the concept of *locus standi* from a judge of integrity

Abdoolcader SCJ was a judge ahead of his time. In 1988, he delivered a vigorous, forceful dissenting judgement in the UEM case (excerpts below). Passionately, brilliantly, defending the right of the individual to take the government to court in public interest cases, he mourned, "... we might also as well have to hang our heads in sorrow and perhaps even in mortification in not being able to at least entertain for consideration on its merits any legitimate complaint of a public grievance or alleged unconstitutional conduct." Below are excerpts from this dissenting judgement.

**I**n 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 BACKGROUND

First things first, however, and so to briefly epitomize the factual background of this matter. The respondent, Lim Kit Siang, who assumes a title to sue in several capacities which I will have to advert to presently instituted these proceedings by way of writ against United Engineers (M) Berhad ("UEM") and the Government of Malaysia and two ministers, the Minister of Finance and the Minister of Works, for a declaration that the letter of intent given in December 1986 by the Government in favour of UEM for the privatization of the North-South Highway is null and void and of no consequence on the basis of allegations of impropriety and misconduct in the award of the tender for this project and statutory corrupt practice which it is not necessary to specify in detail for the purposes of this judgment, and an injunction to restrain UEM from signing the contract for the project with any agent or servant of the Government.

On filing the action in the High Court at Penang and before service of the writ on any of the defendants the respondent applied by *ex parte* summons for an interlocutory injunction against UEM to restrain it from signing the proposed contract pursuant to the letter of intent pending the final determination of the suit. The application was heard as an opposed *ex parte* summons with the State Legal Adviser, Penang, appearing on behalf of the two ministers and the Government before Edgar Joseph Jr. J. who dismissed the application. The respondent appealed to the Supreme Court and although none of the defendants had entered appearance they were served with the record of appeal and were represented by counsel at the hearing of the appeal. The Supreme Court gave an oral judgment after hearing submissions on August 25, 1987 allowing the appeal and granting the interlocutory injunction sought with costs in the cause and liberty to apply to the court below, and further directing an early trial of the action before another judge.

UEM then applied to the High Court to have the injunction granted by the Supreme Court set aside and the suit struck out on the ground that it discloses no reasonable cause of action,

is frivolous or vexatious or is otherwise an abuse of the process of the court, and alternatively in the exercise of its inherent jurisdiction on the ground that the action is not maintainable in law or that the respondent has no *locus standi*. The two ministers also jointly applied by summons to have the suit against them struck out on similar grounds and in addition invoked Order 15 rule 6(2) of the Rules of the High Court 1980 for their dismissal as parties to the suit by the reason of improper or unnecessary joinder for want of any reasonable cause of action against them. The Government as well took out a summons on grounds identical to those of UEM. V.C. George J. heard all these three applications and in a reserved judgment delivered on October 5, 1987 dismissed the applications by UEM and the Government with costs but allowed that of the two ministers, and holding that they were not necessary parties to the action, struck them out as defendants from the suit with costs. UEM and the Government promptly appealed to the Supreme Court against the dismissal of their respective applications in these two appeals which were heard together on January 14 and 15, 1988. ....

### LOCUS STANDI

The pivotal issue on which the appeals were actually argued and turned is that of *locus standi* or standing to sue. The respondent, like his English counterpart in *Ex parte Smedley*, is a man of many parts, and perhaps of even more. He launched these proceedings in his capacity as specified in the statement of claim as a Member of Parliament, the Leader of the Opposition in the House of Representatives, a State Assemblyman, a taxpayer, a

motorist and a frequent user of highways and roads in the country.

I have given judgment in two cases setting out the relevant precepts relating to standing — in the High Court in *Lim Cho Hock v. Government of The State of Perak & Others* and in the Federal Court in *Tan Sri Haji Othman Saat v. Mohamed bin Ismail* and I see no reason to depart from the principles expounded in these two decisions. The Federal Court approved *Lim Cho Hock* in *Tan Sri Haji Othman Saat* and endorsed (at p. 179) the concept of liberalizing the scope of individual standing, and these two judgments must be read in the light of the continuing development of the doctrine of *locus standi* here and in other jurisdictions. I alluded to the necessity of keeping in tune with the times in the development of the approach to the question of *locus standi* in *Tan Sri Haji Othman Saat* (at p. 179) to this effect:

*"Even if the law's pace may be slower than society's march, what with increased and increasing civic-consciousness and appreciation of rights and fundamental values in the citizenry, it must nonetheless strive to be relevant if it is to perform its function of peaceful ordering of the relations between and among persons in society, and between and among persons and government at various levels."*

Liberalization of standing has in varying degrees been proceeding or proposed in other common law jurisdictions as I have shown in these two judgments, and it would be a shame if we were to lag behind ....

*Tan Sri Haji Othman Saat* actually involved a private law element as the plaintiff's grievance there was the de-

nial of his application for the land in question and its grant to the defendant who was the Menteri Besar of the State and other personages in the upper echelon of the administration. In *Lim Cho Hock* I accorded standing to the plaintiff who was a Member of Parliament, a member of the State Assembly and a ratepayer to impugn the appointment of the Menteri Besar of the State as President of the Ipoh Municipal Council. In the *Blackburn* cases which I referred to in *Lim Cho Hock* and *Tan Sri Haji Othman Saat*, standing was accorded to the applicant prior to the examination of the merits of the applications on the reasoning that unless the court in its discretion gave him a hearing, then no one would bring the matter to court.

In *Fitzgerald v. Muldoon* which I referred to in *Lim Cho Hock* (at p. 150), standing was granted to an individual to challenge a general administrative order relating to the compulsory universal superannuation scheme merely because he was one of the million compulsory contributors. In *Reg. v. Hereford Corporation, ex parte Harrower* the court did not deny standing on a challenge by local business people as ratepayers, but as electrical contractors, on a complaint that the local authority had not followed proper tendering procedures in letting out a contract for the installation of central heating.

Public-spirited citizens do not seem to have deluged the English courts with applications for judicial review since *National Federation*, but there are some noteworthy decisions. *Ex parte Smedley* is one of the few recent examples of a citizen's challenge. There, a taxpayer who sought relief by way of certiorari and declaration was given standing by the



English Court of Appeal to challenge the Treasury's proposal to pay a large sum of money — in excess of £120 million — to subsidize the European Economic Communities' budget without seeking an Appropriation Act, and it did so on the basis that the grounds of challenge were serious, and, it seems, that the amount involved made the threatened illegality serious.

The applicant was given standing to challenge the decision affecting spending of public funds on technical grounds which did not question the substance of the spending decision. In the High Court (*The Times*, December 8, 1984) Woolf J. said that he "would be surprised if a public-spirited citizen was prevented from coming before a court to prevent an unconstitutional and unauthorized disposal by the government of funds. In the Court of Appeal Sir John (now Lord) Donaldson M.R. said (at p. 664) that the applicant sought the assistance of the court in his capacity as a British taxpayer and elector and (at p. 667) that he agreed with Woolf J. that he would be extremely surprised to find himself obliged to uphold the submission that the applicant had no sufficient interest and therefore no *locus standi*. It is, I think, of some importance to refer to and quote *in extenso* what Slade L.J. had to say on the question of *locus standi* (at pp. 669-670).

".... The making of any such Order would be likely to be followed automatically by the expenditure by the government of substantial sums from the Consolidated Fund in reliance on section 2 of the European Communities Act 1972. I do not feel much doubt that Mr Smedley, if only in his capacity as a taxpayer, has sufficient *locus standi* to raise

this question by way of an application for judicial review; on the present state of the authorities, I cannot think that any such right of challenge belongs to the Attorney-General alone."

In *Waddell v. Schreyer*, the British Columbia Supreme Court gave the plaintiff, who sought a declaration that certain orders-in-council were *ultra vires*, standing by virtue of his special interest as a Member of Parliament. An appeal to the British Columbia Court of Appeal was dismissed: [1983] 1 W.W.R. 762; and leave to appeal to the Supreme Court of Canada was refused: [1983] 1 W.W.R. iii. In *Finlay v. Minister of Finance of Canada* the Federal Court of Appeal of Canada allowed a citizen who was neither directly affected nor a taxpayer to challenge the validity of federal and provincial transfer payments under the Canada Assistance Plan. The decision has been upheld by the Supreme Court of Canada *sub nomine* *Finlay v. Canada*.

The Supreme Court decided that the interest of the applicant was too remote or speculative to grant standing under the general requirement that the plaintiff must have a sufficient private or personal interest in the subject matter. The court went on to hold, however, that in appropriate public law cases, as a matter of judicial discretion, standing might be given to a private individual notwithstanding the fact that a constitutional or Charter of Rights and Freedoms issue was not involved.

The court thus extended the principle laid down in *Thorson v. Attorney-General for Canada*, *Nova Scotia Board of Censors v. McNeil* (both of which I dealt with in *Lim Cho Hock*) and *Minister of Justice for*

*Canada v. Borowski* — all three of which involved the requirements for standing in a constitutional case where a party has no direct interest — to the field of administrative law and, in the result, granted standing to Finlay to bring an action for a declaration to challenge the legality of Federal cost-sharing arrangements.

### ONLY THE A-G?

The contention of the appellants is that in matters such as that before us it is only the Attorney-General himself moving *suo motu* or by the grant of a fiat for a relator action who has the right to challenge and can take action and no other. I would think it would be too much to expect process of this nature involving the ventilation of a public grievance to proceed only through this channel, given even the fortitude the incumbent of the office would presumably be endowed with, in view of the rebound where the complaint is against the Government itself and the Attorney-General is its legal adviser, as it would surely be expected that if the complaint merited action by the Attorney-General or by his fiat to a relator, he would himself in the first instance have had the cause of complaint aborted before its overt manifestation.

For the Attorney-General to have to proceed himself or by relation in such a case would only be a deplorable and intolerable reflection as in the normal course of events such a situation would and should never be allowed to arise, and so the question of a relator action must necessarily remain attractive as a theoretical possibility with no conceivable hope generally for practical purposes of advancing to concrete action beyond that. This appears to be the rationale in granting standing in such circum-

stances in other jurisdictions and perhaps explains why Slade L.J. said in *Ex parte Smedley* in the passage I have cited that he could not think that any such right of challenge belongs to the Attorney-General alone.

I am not therefore impressed that the road to relief in regard to public law issues can be travelled only with the permission of the Attorney-General. To deny *locus standi* in the instant proceedings would in my view be a retrograde step in the present stage of development of administrative law and a retreat into antiquity. The merits of the complaint are an entirely different matter, and we are not concerned with the personalities in the picture or whether it is a high-way project or the construction of a causeway to the moon that is involved. The principle that transcends every other consideration must *ex necessitate* be that of not closing the door to the ventilation of a genuine public grievance, and more particularly so where the disbursement of public funds is in issue, subject always of course to a judicial discretion to preclude the phantom busybody or ghostly intermeddler.

The effect of the denial of standing in such circumstances would be, and it has indeed been so suggested, that we will have to fold our arms and do nothing, in which event I would add we might also as well have to hang our heads in sorrow and perhaps even in mortification in not being able to at least entertain for consideration on its merits any legitimate complaint of a public grievance or alleged unconstitutional conduct. To take an instance: If a considerable sum of money is taken out by executive fiat from the Consolidated Fund without Parliamentary approval by way of a Supply

Act for the implementation of a project, however laudable, the legality of such a move would then be incapable of being tested or challenged by a public-spirited citizen or a taxpayer as in *Ex parte Smedley* and *Finlay v. Canada*. The courts must therefore be cautious in accepting any postulate that purports to narrow the rights of recourse to them and, in the present context, in constricting the concept of standing in public law litigation, and will have to be ready to sharpen their constitutional knives as and when the occasion demands.

### PREPOSTEROUS CONTENTION

The question of *locus standi*, which the notes of proceedings disclose was raised for the first time in the present proceedings by Mr. Zaid Ibrahim appearing for UEM in this matter in the course of the hearing of the appeal before the Supreme Court on August 25, 1987 and pursued by Senior Federal Counsel appearing for the Government, appears to have been fully exposed in argument, as the court in arriving at its decision in a short judgment owing to the urgency of the matter stated it had considered a number of authorities, both English and local, as to the question of *locus standi* and that it need only say that on the facts of this case the respondent clearly has *locus standi* to bring the instant suit.

We are now met with the preposterous contention that this judgment of the Supreme Court is only *obiter* and made *per incuriam* just because it does not set out full reasons for its decision. The pronouncement on August 25, 1987 is a judgment of the Supreme Court which unequivocally made a decision on the points in issue before it including that of stand-

ing taken by the appellants themselves and crucial to the substratum and basis of the respondent's suit. Any view to the contrary as to the efficacy of that judgment would lay open the door to similar contentions in relation to decisions of this court and indeed of other courts as well in matters where brief oral judgments are delivered at the conclusion of argument.....

To reverse that decision of the Supreme Court on *locus standi* now would amount to no less than our sitting in judgment on another division of this court and overruling its adjudication given only some four and a half months ago. The Supreme Court which can aptly be described and designated as the engine-room of the Constitution would as a result have the sanctity of its decisions set at stake. In *Lye Thai Sang & Another v. Faber Merlin (M) Sdn Bhd & Others* this court held, in a judgment delivered by Tan Sri Abdul Hamid C.J. (Malaya), that where an appeal has been heard and disposed of by the Supreme Court, the court has no power to review the case, that is, to re-open, rehear and re-examine its decision for whatever purpose. It now becomes a matter of speculation whether that decision itself has been the subject of review by this court as a result of the decision of the majority of this Bench in the instant appeals. I must point out that only a constitutional amendment can confer jurisdiction and effectuate the power of review by the Supreme Court of its own decisions.

V.C. George J. in consonance with the doctrine of *stare decisis* and judicial discipline was accordingly bound by the decision of the Supreme Court given on August 25, 1987 as he properly held, and, I would add, he also examined the

position as to *locus standi* in law independently by extensive reference to authority and correctly came to the same conclusion.

To discard the decision of the Supreme Court given previously and so very recently in the same matter and on the same point and summarily dismiss it as the appellants would have us do would only inject alarming uncertainty into the law, with however the consoling thought but perhaps as an unintended consequence that just as the majority judgment in this matter has purported to reverse the decision of this court given on August 25, 1987, so would it pave the way for yet another division of this court to reconsider the question in issue in some other subsequent case perhaps in the not too distant future and come to a different conclusion and restore the principle of law accepted in the decision reversed. The result of all this would well be, adapting my words in *Foo Ying & Another v. Television Broadcasts Ltd and Others*, to countenance in the realm of judicial precedent a free-for-all like the aftermath of an English football match. Well then did Francis Bacon have cause to muse as he did, and that too as far back as 1605:

"It is of so much importance to a law, that it be certain that without this, neither can it be just, 'for if the trumpet give an uncertain vice, who shall equip himself for war?' Similarly, if the law give an uncertain voice, who shall prepare himself to obey? Therefore, it is necessary that it warn before it strike"

I must touch on other matter in this regard. Tan Sri Abdul Hamid C.J. (Malaya) in delivering his judgment says that perhaps the time has come to review the decision of the Fed-

eral Court in *Tan Sri Haji Othman Saat*, and that the Supreme Court is not bound by decisions of the Federal Court. I am not aware of nor do I subscribe to any such theory on the doctrine of *stare decisis* in our court in relation to decisions of the Federal Court. The Supreme Court is but the Federal Court reconstituted under a different name with enhanced jurisdiction, and until a policy in relation to judicial precedent has been agreed, formulated and declared by the judges of the Supreme Court as a collegiate body, as indeed the High Court of Australia has done in *Vitro v. Regina* and *Jones v. The Commonwealth* after appeals to the Privy Council ceased, I would have thought that the principles enunciated in *Young v. Bristol Aeroplane Company Limited* would apply. ....

#### **IS THE GOVERNMENT IMMUNE?**

I find equally irrelevant the Attorney-General's reliance on section 7 of the Government Proceedings Ordinance 1956 which provides for savings of acts done in exercise of public duties. I will not set out that section *in extenso* to obviate prolixity, and it will suffice for me to say that I cannot see how that provision can help, as all it does is to preclude proceedings against the Government on account of anything done or omitted or refused to be done by the Government or any public officer in "exercise of the public duties" of the Government, with the expression which I have put in quotes defined in subsection (2) of that section to include paragraph (a) thereof which is the only relevant part in the present context and which reads: "the construction, maintenance, diversion and abandonment of railways, roads, bridle-paths or bridges."

This must necessarily mean that the Government is rendered immune from action in the execution of any such works by reason of any loss or damage suffered thereby by any person as a result of, for instance, the diversion or construction of a highway or road affecting his business or residence or otherwise with economic or other consequences. Subsection (3) substantiates this position as it specifically permits an action for damages or compensation arising out of negligence or trespass in the execution of any such works.

Section 7 of the Ordinance cannot in my view conceivably appertain to a complaint of the nature made in the present proceedings involving a challenge to a decision affecting the expenditure of public funds in relation to a project for the construction of a highway on the modus of its implementation which does not question the substance of the expenditure or the execution of the project itself. The respondent's action does not accordingly in any way affect the exercise of the public duties of the Government within the purview of section 7 of the Ordinance. ....

#### **NO QUESTION OF INTERFERENCE**

Even if, however, section 29 of the Ordinance is effective to prohibit an injunction against the Government or any of its officers, and I have come to the conclusion that it is not in the light of the statutory provisions I have adumbrated, I can see no impediment to the granting of an interlocutory injunction against UEM in this case. The inability to proceed against the Government, if at all,

**Continued on page 25**



# 2 THINKING allowed

## WISHY-WASHY EXCUSES

The Menteri Besar of Selangor, usually all too keen to push his face in front of the TV camera, was strangely shy when floods hit large parts of this "highly advanced" state in December. One of the worst hit areas was Shah Alam, a town that he is extremely proud of. Nature, it would appear, struck back with a vengeance after all these years of abuse and destruction. This industrialised state that was the envy of so many other less developed ones was, overnight, the object of pity and, perhaps, even a little derision.



Menteri Besar of Selangor

The deluge reflected poorly on the way unbridled development had been bulldozed through over the years. All kinds of excuses were offered by all sorts of experts although a ten-year-old boy could have come up with some of the reasons given. They ranged from the popular "poor drainage" to the more sophisticated "over-development." Sad but true, the type of development which we are so proud of, and which has made us so condescending towards those less developed, is one of the causes of the string of disasters that has collapsed on us.

The latest such catastrophe was the landslide along the PLUS Highway. A wall of earth and concrete came crashing down onto the road below and a man lost his life. The Works Minister quickly, and rather defensively, announced that there was no need to suspend all hillslope development projects. We are not asking for anything so ambitious, but a simple assurance that the proposed highway road to link the three hill resorts of Camerons, Genting and Frasers will not be built would have sufficed. The highland highway, we understand, has already received the greenlight from the Cabinet and

awarded to a tycoon that environmentalists love to dislike.

Landslides and floods seem to have become a sad part of life on the fast lane of rapid development. But behind many of these disasters lies a more serious reason for it happening: greed. Greed on the part of developers who carry out development, greed on the part of government servants who approve the development and greed on the part of politicians who push for the development. Perhaps we ought to be thankful that the Selangor MB was less visible during the floods. Otherwise, it would have made all the hardship suffered by the flooded-resident even more difficult to bear.

## PRICES ABOVE THE WIND

The Sabah government was quick to claim credit for Sabah having one of the lowest inflation rates in the country. The consumer price index, a government backbencher claimed, was far lower than that for Peninsular Malaysia. But those who have been to Sabah would agree that there is really nothing much to crow about.

Prices of goods in Sabah are already so exorbitant that there would be a popular revolt if they were to increase at the rate of those in Peninsular Malaysia. Even Johorians, hardened to exploitation of their pockets, gape at the sort of prices they have to pay in Sabah.

A bowl of noodles that costs RM2 in the Klang Valley (the most expensive place to live in Malay-

sia) would probably cost RM4 in Kota Kinabalu. The cost of housing, whether for sale or for rent, is capable of giving the Klang Valley a run for its money and anyone who has tried to buy electrical equipment there would find it is far costlier than in the peninsula. It is not uncommon - and rather pathetic too, at Subang Airport, to see Sabahans lugging home the most basic of consumer items because they are either cheaper or unavailable in KK. So, instead of blowing its own out-of-tune trumpet, the state government should try to bring prices down to more reasonable levels. Prices in the land below the wind are, unfortunately, blown sky-high.

### WOLVES IN SHEEP'S CLOTHING?

The MIC was reported to be going all out to stamp out gangsterism in several squatter colonies in Selangor. This followed a violent gang fight involving the use of parangs, helmets and broken bottles and the death of one person. The incident moved the MIC president to vow that the MIC would restore law and order in these squatter areas. His solution: Unemployed youths in the area would be enrolled at the party's TAFE College in Seremban for vocational courses. Let's hope his party really carries out his pledge.

Sometimes, politicians promise to do this and that after a particular incident or disaster and nobody really checks whether it is actually done. And while he is in the mood to tackle Indian gangsters, perhaps he can spare some attention on the string of

attacks on P. Veerasamy, the outspoken former newspaper editor. Veerasamy, whose life has been threatened several times following his vocal views on the allotment of Telekom shares to Maika Holdings, was attacked and slashed in front of about 50 people in Penang. The police suspect that his attackers were MIC members and it is said that big names are behind the attackers.

Now, if his attackers were indeed MIC members, then Samy Vellu ought to reserve a few more places in TAFE College for those MIC members prone to crime.

### GIVE US A BREAK, MAN!

A New Year does not always necessarily herald new ideas. The New Year messages by some of our political leaders are as stale as the news found in newspapers used to wrap the fish and vegetables we get from the wet market. They seem to enjoy mouthing the predictable mixture of more development (may God save us from landslides and floods!), more industries (read as more cheap foreign labour coming in), work hard (speak for yourselves!), and be grateful (same to you!), to name a few.

Underlying the torrent of words is often a certain arrogance regarding the way we have grown. The arrogance usually takes the form of running down the West (the West is corrupt, decadent, full of unmarried mothers and homosexuals, racist, and forever trying to exploit us through unfair trade and an uncontrollable media).

True, the superpowers have an unfair advantage over us and they make no bones of making full use of those advantages. But West-bashing should not be used to mask what is not well on our home front.

For instance, Malaysia was reported to be one of the countries where corruption is fairly rampant. Instead of elaborating on the moves taken to check corruption, we lash out at the West: The West is also corrupt! More recently, a foreign magazine reported that one of the KL Twin Towers was tilting. Our response: There are other leaning buildings in the West too. A wrong is a wrong. Just because a wrong is prevalent elsewhere too it does not make it a right.

Whatever one may say about the evil West, most of their political leaders do have the decency to resign, and stay that way, if they are unable to prove how they managed to amass a mind-boggling fortune in property and luxury cars. It appears too that adultery is becoming more acceptable in political society. President Clinton has managed to stay in power despite the torrid details of his adulterous affair being aired to all and sundry. Perhaps, adultery has come to be regarded as one of the perks of high office as the behaviour of a number of our own political leaders seems to suggest.

Even corruption seems to have been reinvented by Malaysian politicians. For instance, helping one's brother to secure a permit to bring in thousands of foreign labourers is not wrong. Neither is it wrong to grease the way for millions of shares to be allotted to one's son or son-in-law. It is okay too to accept "donations"

amounting to millions of ringgit from wealthy businessmen to oil one's political campaign (the money goes to the rakyat, so goes the argument). Corruption, according to them, is only deemed to take place when money actually changes hands.

Truly, this is one of the more bizarre instances of people unclear on the concept.

Of late, there has been a clear reluctance among our leaders to dwell on corruption. Don't jeopardise our economic growth, seems to be the rationale. The same perverted rationale is used in a variety of situations. In an election, people are told to give a bigger mandate to the ruling party to ensure continued growth; in Parliament, the opposition is accused of trying to rock the economic boat when they highlight malpractices; concern about corruption in the Judiciary is only expressed when it is in danger of jeopardising investments; the Western media is accused of being jealous of our economic success when they publish critical articles. The end result is that basic ideals and principles so crucial to a civil society are being subverted in the name of economics.

Really, there is not very much that we can be truly proud of in our record of rapid growth. One gets the sneaky feeling that we have grown at the expense of the army of foreign help who man our service sector and toil in our plantations and homes. There are more than one million Indonesians alone in the country. In Johor Baru, they reportedly outnumber locals by five to one. And every other day, we read of a poverty-stricken labourer or rubber tapper begging for dona-

tions to go for a heart operation or being put out of work because he is paralysed. Such human tragedies seem to greatly contradict the phenomenal growth that we are experiencing.

### POWER GOES TO THE HEAD

Government servants, especially teachers, who support the opposition will face stern action, came the warning from the Deputy Education Minister. More than a warning, it is about one of the most undemocratic sort of attitudes to adopt in politics. A functioning democracy allows one to support any political party of one's choice and the right extends to government servants as well. Besides, UMNO Baru's power base used to be made up largely of teachers.

In fact, if there are government servants who go overboard in supporting any political party, it is those who support the ruling party. During elections, work in some departments come to a standstill as they are deployed to organise ceramah, produce pamphlets, and even campaign on behalf of candidates from the ruling party. It is an open secret that the *raison d'être* of certain government departments like Kemas is to serve the Barisan Nasional. The behaviour of some of our politicians seems to suggest that the more powerful they become, the less democratic they are.

### THE RACE IS ON

The race for the three vice-presi-

dents' posts is on. At last count, there were already six candidates "offering their services for race and nation." With the two top posts declared uncontested (democracy in UMNO Baru begins from two posts down), it appears that all eyes will be on the V-P's posts. The list is unexciting:

\* Muhyiddin Yasin (incumbent) - At one time touted to be a possible deputy prime minister to Anwar Ibrahim when the latter ascends the UMNO Baru throne. But, of late, the picture of him as No 2 seems to have grown less clear, like the snowy interference that you get on TV if you are too poor to install Metrovision aeri-

als. Amazing stories of mismanagement and abuse of power have followed in the wake of his departure from the top seat of Johor. Of course, we are not saying that such stories are true but they do make interesting conversation in a situation where the media suffers constipation when it comes to political news.



Najib Razak

\* Najib Razak (incumbent) - Stands a good chance. He has handled the controversial Education Bills well (thanks largely



to a docile mass media). Has a good grasp of issues and will not embarrass Malaysia overseas since he can string together an English sentence far better than even some of the country's top judicial figures. Is said to have grown close to Anwar since 1993 and he may win with the latter's backing.

\* Muhammad Muhammad Taib (incumbent) - A man haunted by his past in 1993 and hoping that, three years later, the notoriously short memories of Malaysians would have blurred, and less will be remembered of it. Unfortunately, a huge flood came along and washed away quite a bit of the record of rapid development that he had brought to Selangor. But the damage done to him was not as great as that wreaked on the homes and lives of those affected. Some say he has been preparing for November 1996 since April 1995 when he began erecting massive billboards of himself carrying a baby (nothing like a baby to help one win votes) with an elderly woman hanging about in the background (the elderly still have their few uses).



Syed Hamid Albar

\* Syed Hamid Albar - Among many UMNO Baru leaders, he is considered among the least sullied by money politics. Had

Anwar Ibrahim not pressured him, according to some, to step aside in the contest for the UMNO Baru Youth leadership in 1993, he would have won hands down and there would be no Rahim Tamby Chik to haunt us over and over again.

Unfortunately, he bowed to pressure and also won himself the title of "Cry Baby of the UMNO Baru Election 1993." But he may not necessarily win the VP's post because although UMNO Baru leaders and the grassroots say they deplore money politics, the leaders happily carry on with it while the grassroots find the rewards irresistible. Let's hope he will not adopt an attitude of "if we can't beat them, join them."



Abdullah Badawi

\* Abdullah Badawi (Pak Lah) - Generally, a nice guy and if he makes it, it is probably because Mahathir is using him to counterbalance Anwar Ibrahim in Penang. Anwar, meanwhile, has kept a sullen silence regarding Pak Lah's candidature. One thing good about Pak Lah's candidature, he is less likely to indulge in money politics than most of his opponents. One possible reason: he does not have much money to throw around.

\* Ramli Ngah Talib - An undynamic MB who insists on clinging on to power. The reason he has hung on so long is that there was no other alternative in sight. Like all "good leaders" he has effectively failed to groom a successor. Smart fellow in that sense, considering the headache that Dr M is going through now with Anwar. Went through an elaborate ruse to make his announcement. A day before his return from holidaying overseas, one of his cronies "urged" him to contest and, quite predictably, he announced in the airport lounge (couldn't even wait till he got home) that he was "offering himself" because of pressure from the grassroots. It is said that he commiserates deeply with the persecution suffered by his counterpart in Kedah.

## DARK AGES

For once, Megat Junid made sense. He objected to the proposal that couples be tested for HIV before getting hitched and urged that HIV-positive people be treated as humans rather than something to be feared and to be running away from. The proposal for a pre-marital HIV test by his cabinet colleague Hamid Othman is outrageous to say the least.

In another country, this Minister in the PM's Department would probably have had to resign, but com'on-lah, this is Malaysia, Man! Thanks to supposedly educated people like Hamid Othman, AIDS is likely to continue to be one of the least understood diseases.

- by NNP

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does not of necessity per se preclude the grant of injunctive relief against UEM as the transaction sought to be impugned is synallagmatic in nature and not unilateral, and the affidavits disclose contentions as to the solvency of UEM and other matters as well involving it in respect of which the High Court has found there were in fact serious questions to be tried.

Anent the matter of the interlocutory injunction granted against UEM, the Attorney-General also seeks to rely on the provisions of section 54(d) and (k) of the Specific Relief Act which provide respectively that an injunction cannot be granted to interfere with the public duties of any department of any Government in Malaysia, or with the sovereign acts of a foreign government (paragraph (d), and where the applicant has no personal interest in the matter (paragraph (k)). I cannot see how they apply to affect the position in the matter before us.

There is no question of any interference with the public duties of the Government as what is sought is to question the propriety of the transaction between the Government and UEM involving the expenditure of public moneys on the basis of certain allegations raised in question thereto; the respondent does not seek to question the substance of the spending decision or the propriety of the North-South Highway project itself. In any event, whether or not there can conceivably be any question of interference with the public duties of the Government is a matter for determination after consideration of the merits at the hearing, and these proceedings have not as yet reached that stage.

As for paragraph (k), the question of whether the respondent has any

personal interest or not in the matter must depend on the postulate of standing and I need not belabour this point as I have dealt with it at some length, and if the respondent can have standing to institute these proceedings as a public-spirited citizen, Leader of the Opposition, Member of Parliament and taxpayer, then he must necessarily and certainly have a personal interest in the matter in consequence on that basis.....

### AN INDICTMENT

V.C. George J. in the High Court carefully and meticulously examined in a well-considered and logically explicit judgment all the points raised and in issue before refusing to discharge the interlocutory injunction granted by the Supreme Court on August 25, 1987. It has been said time and again that the discretion whether or not to grant an interlocutory injunction is vested at first instance and not in the appellate court whose function initially is one of review only, and it will not overrule the decision of the judge at first instance unless, broadly speaking, he has made an error of law or misconceived the facts, and except in those circumstances it must defer to the judge's exercise of his discretion and must not interfere with it merely upon the ground that the members of the appellate court would have exercised the discretion differently, and I would refer to the judgement of the Federal Court in this regard in *S & F International Limited v. Trans-Con Engineering Sdn Bhd*. I can see no error of any kind in the judgment of V.C. George J. warranting interference by us.

In the premises and for the reasons I have discussed, I said at the conclusion of argument I would dismiss these appeals with costs.

One redeeming feature in this matter is that each party was ordered to bear its own costs here and below when the appeals were allowed as a result of the judgment of the majority of this Bench. This at least shows in relation to the issue of *locus standi* that the respondent was not all that wrong in purporting to assume the right in the capacities he specifies to institute these proceedings.

As a postlude, I would add this. If this judgment reads *in toto aut in partibus* like an indictment, let me immediately say it is meant to — against the doctrine of retrogression in the field of public law litigation in this age and at this stage of its evolution.

It might not perhaps be inapposite to close by referring to the dissent of Khanna J. in the Supreme Court of India in the famous *Habeas Corpus* case. (*Additional District Magistrate, Jabalpur v. Shivakant Shukla*) when he concluded his judgment with these words:

*"As observed by Chief Justice Hughes, judges are not there simply to decide cases, but decide them as they think they should be decided, and while it may be regrettable that they cannot always agree, it is better that their independence should be maintained and recognized than that unanimity should be secured through its sacrifice. A dissent in a court of last resort, to use his words, is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting judge believes the court to have been betrayed."* □

Source: *Malayan Law Journal* 1988(2).

## R.I.P. — RAKING IN PROFITS

The Land-Hungry Living Devouring Historical Graves

Some property developers have stooped to preying on the dead — exhuming historical graves to make way for condominium projects. KHOO SALMA NASUTION argues that the dead have the inviolable and sacred right to rest in peace.



Today, the dead are being devoured by the land-hungry living.

**T**he exhumation of the 193-year old grave of Chua Su Cheong, Kapitan China of Malacca, is the most disgraceful example of an alarming trend in property development today.

Quietly, stealthily, many private cemeteries have been

sold, many applications for change of land use have been granted, many burial grounds have been exhumed and, in their place, many new buildings have sprouted. The dead make no noise. The living have also conspired to hush things up.

The next historical grave threatened with exhumation is that of Khoo Soo Hong, a prominent nineteenth century Penang-Sumatra trader. He was the first secretary of the Khoo Kongsi, and a prime mover in constructing the famous Khoo Kongsi clan temple at Cannon Square. The Khoo Kongsi's builders were also responsible for the craftsmanship of his fine mausoleum on Mount Erskine.

Khoo Soo Hong's mausoleum should be preserved because it commemorates a historical personality; it is the only tomb pavilion (theong teng) of Chiang Chew architecture in the country, and it is of artistic significance and of special importance to the study of historical geomancy.

An unusual feature of this mausoleum is the geomantic specification spelt out on its stone pillars. Yet however carefully positioned, the geomantic configuration of the

tomb could not guarantee its future safety. And although Khoo Soo Hong had Confucius' 24 filial pieties carved out in stone relief on his mausoleum, those pictorial teachings could not ensure that his descendants would perpetuate the trust of his burial ground.

***Most politicians would rather side with developers than champion the interests of squatters. What hope then is there for the dead who do not even vote or pay taxes?***

Chinese wisdom reminds us, "Man's calculation cannot match Heaven's reckoning." Said in another way, man proposes, God disposes.

Khoo Soo Hong, a wealthy landowner and a major benefactor to the Hokkien cemeteries in Mount Erskine and Batu Lancang, in 1856 and 1880 respectively, purchased 4 hectares (almost 10 acres) of freehold land to ensure himself and his family a permanent resting place. He could not have imagined that one day he would be in danger of being evicted from his own grave. He might as well have taken a 99-year lease.

#### **A DECENT BURIAL**

The lack of permanent protection for burial grounds should disturb even the living as we could be dead tomorrow and exhumed soon after.

Most politicians would rather side with developers (who contribute to party funds) than

champion the interests of squatters. What hope then is there for the dead who do not even vote or pay taxes?

The problem with the dead and buried, some argue, is that they tend to occupy precious land which could be better and more profitably used by the living. Exhumed and cremated, they would conveniently take up much less space.

To this we must rebut that the most important thing to the Chinese immigrants and their descendants was to get a decent burial. Life was hard and short. Burials are supposed to be forever.

Wherever the Chinese settled in Southeast Asia, cemeteries still mark their settlements — quite often right in the middle of town, on prime land. Trusts and charities were set up to make sure that even those who died penniless would be properly interred according to Chinese custom.

If our Chinese ancestors had wanted to be cremated, they would have been so. The cremation facilities at most local Chinese cemeteries are new, probably installed in the last twenty years or so. The fact is cremation, acceptable to the Hindus, the Buddhists, and the Buddhist-influenced Chinese of today, was abhorred by the Confucian Chinese of old; just as it is also abhorred by the Muslims and the traditional Christians.

"Islam and Confucianism" may be a top-billing title for seminars and talk-shows, but are the Muslims and Confucianists indeed upholding their common values and defending their cemeteries?

The hadiths recorded by Imam Malik state: "The Messenger of Allah, may Allah bless him and grant him peace, cursed both men and women who dug up graves," and, "Breaking the bone of a Muslim when he is dead is like breaking it when



he is alive." Seldom is there sufficient justification to relocate graves and risk transgressing the dead.

For the people of the Book and the Confucian Chinese, the dead have a right to a decent burial, and to rest in peace thereafter. The living have a duty to protect their graves from vandalism, theft and exhumation.

A Muslim alim who visited a Chinese cemetery greeted the dead in the following way: "Assalamu-alaikum ya ahli kubur" (Peace be upon you, oh souls of the grave). When asked why he greeted the non-Muslim dead with a Muslim greeting, he replied, "The people of the next world - they all know their Lord."

#### **BURIAL GROUND SANCTITY**

It is the people of this world who worship money, forgetting that one day they will also meet their Maker.

Although Neo-Confucianist spokesmen have been promoting Confucian values as the basis for economic success, Confucius was basically anti-business. In that ancient agrarian society, the merchants were rated a fourth-class bunch.

A traditional Confucian society produces descendants who would preserve the memory of their forbears and the sanctity of the burial ground; it does not breed businessmen. Certainly not the kind of businessmen who are willing to violate burial grounds for profit.

Ironically enough, in some of the Mini Dragon countries that promote Neo-Confucianism, exhuming of cemeteries for property development has become almost routine. We pray Malaysia will not go that way.

The cemetery is an inviolable institution in Muslim and Confucian traditions alike. Only when the Chinese have lost their Confucian values — de-

they have to pay off the occupants of the land. But what if some of these occupants are dead people? Do the deceased and their descendants have a right to be remunerated for vacating the premises and a right to be compensated for their built graves?

It is widely known that in the past, the wealthy Chinese were buried with personal jewellery of gold or jade. The workers disinterring the remains may be tempted to remove them, feeling that the valuables would be more useful to the living than to the deceased. Are the authorities who grant the exhumation permit indifferent to the possibility of grave-robbery?

***Every society condemns and despises those who rob graves and those who desecrate graves.***

scendants distancing themselves and neglecting their responsibility, trustees failing in their duty, developers exhuming graves and apartment buyers willing to live on desecrated burial ground — is it necessary to turn to the courts of law to protect their ancestors' graves.

When a developer buys land without vacant possession,

Every society condemns and despises those who rob graves and those who desecrate graves. And if there is anything more repulsive than anthropophagy (cannibalism) it is necrophagy (eating the dead). Today, the dead are being devoured by the land-hungry living.

To God-fearing people, cemeteries are the permanent

resting-places of the dead. They remind us of our own mortality. But when certain developers look at the hills of Batu Lancang and Mount Erskine through their profit-tinted glasses, they see prime land for condominium projects.

### **PRIME TARGETS**

In this speculatively-inflated building boom, property developers have stooped to preying on the dead. Ungazetted private cemeteries, mismanaged estates with old trustees and arrears in assessment — these are prime targets. Living squatters can be paid off. The dead you can remove with a shovel.

owners and developers applying for redevelopment or change of land use are not required to show their existence in their plans. Neither are the officers who approve the plans required to know what is on the ground.

A burial ground is subject to quit rent of only three dollars a year. In the case of the Khoo Soo Hong Estate, the land had been converted to residential use because there were squatters on the land and the assessment was raised accordingly to about RM12,000 monthly. The ground rent collected was not even sufficient to pay the assessment. The developer then "came to the rescue" and paid off the mounting arrears

dants (besides the miniscule newspaper advertisements required by law) or the descendants failed to object, or the new owners being the legal owners did not heed the objections and exhumed the graves.

The dead are defenceless against the depredations of the living. In the light of the current issues, human rights advocates, especially those who are advocating "Asian values," should now speak out for the rights and the dignity of the dead.

In certain Western countries, the dead are protected by a law which states that the graves cannot be exhumed without the consent of every living descendant. This means that old cemeteries — often located right in the middle of cities where land prices are highest — are the most well protected.

### ***The dead are defenceless against the depredations of the living.***

How is it done? Burial grounds can be reclassified as residential or commercial land. The graves therein are thus doomed to be exhumed. Before approving the conversion of burial grounds to residential land, do the authorities investigate to see if there are any graves on the land? Or do they only deal with paper?

Many century-old buildings and graves have been conveniently levelled because land-

in return for the option to build on the burial ground.

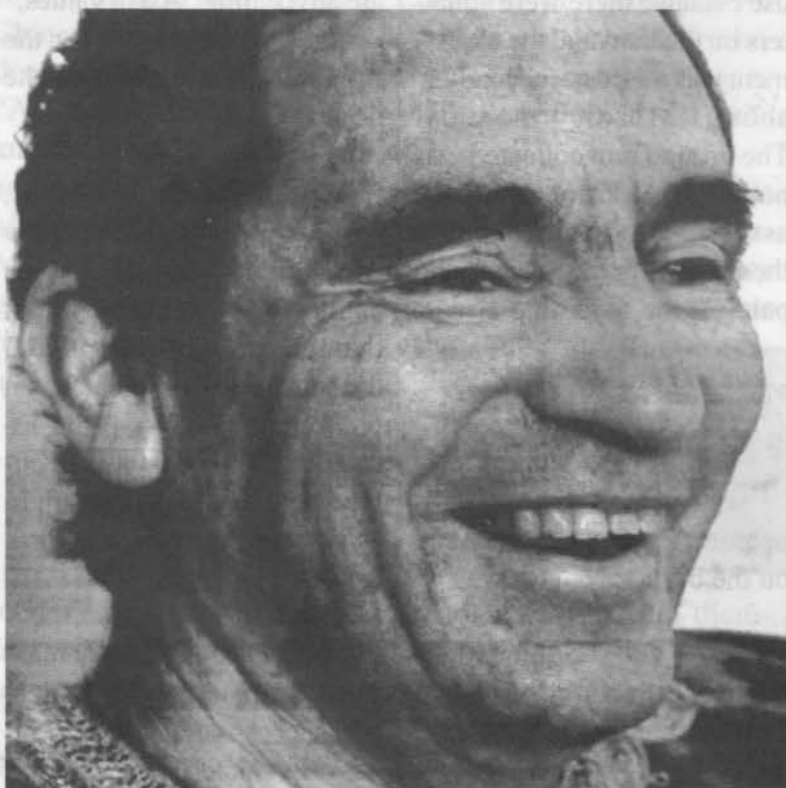
In similar cases of unpaid arrears, the Penang Municipal Council has already ordered the forfeiture of several large pieces of burial ground on Mount Erskine and auctioned them off. The graves were then exhumed without any fuss.

Either too little effort was made to inform the descen-

It is a soulless society that measures itself largely by industrial success, technological superiority, material and comfort indexes and the share market volume. The true marks of civilization are rather our spiritual traditions and cultural heritage, how the strong care for the weak and how the living treat the dead. □

# The Justice Diary of ALBIE SACHS

by Marcel Berlins



"We are establishing at all sorts of different levels the concept of society based on rights. And once you know what your rights are you've got your little piece of soil on which you stand. You're not just a free-floating subject ... You're somebody who has to be listened to. You can go to your lawyer, your paralegal, your trade union official, or your local community organisation and ask: what are my rights?"

**A**lbie Sachs caresses the words reverentially. Rights. Constitution. The words dominate our conversation. They are not, for him, arid descriptions

of political concepts and devices, but inspiring words to be worshipped.

Albie Sachs, freedom fighter, has turned into Judge Sachs of

the new South African Constitutional Court, the country's supreme watchdog, defender of its fledgling liberties. While we in Britain have been trapped in the repetitive debate



over incorporating the European Convention on Human Rights into our law, South Africans have produced an exciting Constitution with a tailor-made Bill of Rights. Taking the most successful ideas from the constitutions of countries like Germany, Canada and India and mixing them with principles from the African National Congress's own Freedom Charter (itself based on English Chartism), the South African Constitution — still interim, to be fine-tuned next year — is an impressive dynamic document.

It's only 15 months old, and the 11-judge multi-racial court that has the job of interpreting it has been in action for little more than three months. Sachs still speaks of it with the enthusiasm and affection due to a new baby. The difference is that this baby carries the hopes and expectations of an entire nation. If the Constitution doesn't work, if the guaranteed rights in it are not delivered to the people for whom they are meant, the struggle that Albie Sachs and his colleagues fought for so long will have failed.

Sachs has suffered more than most for his principles. His 168-day solitary incarceration

and interrogation by the security police in 1963/4 produced *The Jail Diary of Albie Sachs*, still one of the most moving accounts of prison experience under authoritarian rule. More than 20 years of exile culminated in another attack on him by the South African authorities, this time on his life. In 1988 a car-bomb blew him up in Maputo; he survived, minus an arm. The book that followed that, *The Soft Vengeance of A Freedom Fighter* showed him uncowed and curiously unbitter.

Looking back, he believes the assassination attempt made him see more clearly South Africa's path to change. "It made me much more eager to preserve life and to try to solve problems by accommodation and consensus." It also hastened his philosophical move from thinking in terms of power to believing in the supremacy of guaranteed rights. He's relieved now that the present government came into being through negotiation, not force.

Sachs emphasises that the South African system is based, not on the government *granting* rights to the people, but on the people *having* rights with which the government cannot

interfere. Otherwise it would merely have been the replacement of one kind of autocratic government with another.

The Constitution underlines most strongly those rights which, under apartheid, had been denied to the majority: total equality and the right to dignity to pursue economic activity, to own property. "All constitutions are based on extreme optimism on the one hand and total distrust on the other, and you've got to distrust everybody and all institutions; you've got to have mechanisms that embody that distrust."

The Constitutional Court is at the apex of those mechanisms. "We're establishing ... a mode of presenting legal issues, looking less to the pure letter of the law, more to the fundamental values." It is backed by agencies designed to ensure that constitutional rights are genuinely available: a Human Rights Commission to deal with the day-to-day affronts and manifestations of prejudice; a Public Protector for complaints against administrative authorities; a commission for sex equality, another for land claims.

There are plans for a public defender system and an exten-

sion of legal aid; and there are proliferating legal services offered both by lawyers (though there is a great shortage of them in the human rights field) and, more importantly in the long run, by para-legals in the community. Whether there will be enough trained people to cope with the demand is another, worrying, question.

Sachs is not deflected from his optimism. "We are establishing at all sorts of different levels the concept of society based on rights. And once you know what your rights are you've got your little piece of soil on which you stand. You're not just a free-floating subject ... You're somebody who has to be listened to. You can go to your lawyer, your para-legal, your trade union official, or your local community organisation and ask: what are my rights? It's moving and poignant to see people who are suddenly learning that they can speak out quite openly. You hear the word 'transparency' 10,000 times a day all over South Africa, but it's got some very real meaning because transparency, integrity and rights go together. It's not simply the right to get cross, but to ask questions and to be heard."

Yes, but it's all very well for the principles of the Constitution to be bandied about by the sophisticated intellectuals of the Court. In everyday life, they have to be implemented by judges, lawyers and police — most of whom have been brought up and trained in a society with very different values. What does it all mean to the Afrikaner magistrate in a remote area of traditional white conservatism?

Sachs is bullish. "What's changed at the symbolical level is that the normality of inequality, of subordination has been destroyed. The old racial assumptions just don't hold any more. Instead of that magistrate feeling that he is being normal by being abusive, tough and disrespectful to blacks in his court, suddenly he is on the defensive and has to hide and disguise. It changes the context in which the battle over rights is being fought out."

Even the white police, arch supporters of the old regime, are becoming more amenable, he believes. There is now a book called *Human Rights For The Police*; they have to sit an exam on the subject. "Of course, it's not enough if they pass their exams and then go

on to beat up suspects in the cells; but I do think the police are trying to change their mindset."

For the Court itself, it is still early days. It has given its decision in only five cases. In the most spectacular, it declared capital punishment to be unconstitutional; the judgments are impressive for the breadth of the discourse and the elegance of the language. Shortly after, the court ruled that corporal punishment of juveniles was unlawful.

Sachs, now 60, has found his personal transition from exiled freedom fighter to eminent member of the country's highest court easy, apart from the restrictions his new job imposes on publicly expressing his usually outspoken views. He is interpreting a constitution which he helped to develop. It reflects closely the dreams and aspirations of his generation of exiles and combatants; a fitting climax to their struggle. "My life is in there. I go to sleep at night and I can't wait to get up in the morning to work on my judgments." □

Source: THE GUARDIAN, 11 July 1995.

# UNTOLD HARDSHIP AND EMBARRASSMENT

## UNCARING ATTITUDE IN A 'CARING' SOCIETY - PART 2

**In the previous issue we carried the pathetic story of an old pensioner who had to endure a terrible ordeal without her pension warrants.**

**Even after two months on learning that she had not received her pension warrants, the pensions department did nothing to alleviate her pain and misery. Tragically, it was a black Christmas for her.**

**In this second part, she raises some very pertinent questions.**

**A**fter a long silence the Pensions Department has finally sent me a letter, a copy of which was also posted to Aliran. The letter states that the pension warrants were posted to a certain address on 7 August 1995 but falls short of revealing the fact that this was my former address.

Yes, these people at the Pensions Department have done it again. Not satisfied with all the suffering that they had inflicted on me last year by repeatedly sending my pension warrants for the period September 1994 to August 1995,

to the wrong address, they have now made me endure almost four months of untold hardship and embarrassment by repeating their blundering all over again this year. It is inconceivable that people working in such an important place as the Pensions Department could be so grossly incompetent that they cannot cope with such a simple matter as a change of address. It is beyond my comprehension how they could be so obtuse as to keep on repeating the same mistake over and over again, especially when the mistake had been pointed out to them, not once, but several times.

Their recent letter to me, in response to Aliran's correspondence, further states that the pension warrants were not returned to the department by Syarikat Pos Malaysia. Judging by what happened last year when the pension warrants went back and forth for more than three months, I do not think that Pos Malaysia had anything to do with the missing pension warrants. I have my own theory on this which I will keep to myself.

Are they now trying to imply that since the pension warrants were not returned to the office, they assumed that I had received them? Ah! But what about my letter dated 2 October 1995 addressed to the Ketua Pengarah Perkhidmatan Awam, Bahagian Pencen? They have carefully omitted to mention this in their letter. But there is no way they can deny receipt of this letter for the proof is right here in my hands in the form of the returned AR card with the name of the Pensions Department stamped on it acknowledging its receipt.

In this letter I reminded them that I faced the same problem last year and inquired whether the pension



warrants had once again been sent to my former address. Why was there no response whatsoever to this letter? Why was it completely ignored?

My letter was dated 2 October 1995 and the letter from Aliran to the Pensions Department regarding my case was dated 5 December. What were they doing during the intervening period of two months while I was saddled with one problem after another because of the delay in receiving my pension warrants? Were they having a nice, cozy snooze until they were awakened from their deep slumber by Aliran? It appears that the Pensions Department is staffed by people who hardly know what they are doing.

Whichever way you look at it, there is no denying the fact that they deliberately and callously ignored both my letter and my plight. I have no doubt whatsoever, that had Aliran not interceded on my behalf, they would have been quite content to let me go on waiting till doomsday. They must have decided that a letter from a mere nobody like me did not merit any attention or consideration. What did it matter if I had not received my pension warrants since this did not affect them in any way? They were receiving their salaries every month without fail, so why should they bother?

I am now asked to *melengkapkan borang Akuan Sumpah* (complete the Statutory Declaration Form) and to send it back *dengan kadar segera* (as soon as possible). This may be a simple matter for some people but in my case it poses

quite a few problems as it requires the presence of the Commissioner of Oaths. Moreover, for obvious reasons, the form has to be sent to the Pensions Department by AR Registered mail.

It is a proven fact that they did receive my letter dated 2 October 1995. I would like the Pensions Department to answer the following questions:

- 1) Why was I not informed *dengan kadar segera* on receipt of my letter that the pension warrants had been sent on 7 August 1995 to the address mentioned in their letter?
- 2) Why was no effort made *dengan kadar segera* to ascertain whether I was right in stating that the pension warrants could have been sent to my former address, as happened last year?
- 3) Why was this form then not sent to me *dengan kadar segera* so that I could at least have received my pension warrants by the end of October?
- 4) What immediate steps are normally taken to remedy the situation on learning that the pension warrants had gone astray?
- 5) Was any investigation instituted to trace the missing pension warrants?
- 6) How can they justify their total lack of humanity for more than two months to the plight of an old lady?

Now that Aliran is in the picture, they can no longer ignore my problem so they are now falling all over themselves to send the pension

warrants to me as soon as possible.

If they had acknowledged their mistake and apologised for all that they have done to me, this at least would have been a point in their favour. But apparently they are so puffed up with a sense of their own importance that they do not consider it necessary to do so.

The day after tomorrow is Christmas Day. But here I am, a Christian, still waiting to receive my pension for the months of September, October, November and December — thanks to the inefficient, irresponsible, indifferent and indolent staff of the Pensions Department.

Perhaps the publication of my letters will ensure that never again will we pensioners be subjected to such shabby treatment by the Pensions Department. □

Mrs H R Retnam  
23-12-1995

*Note: As of 24-1-96 Mrs. Retnam had not received her pension, even though the required Statutory Declaration Form was sent on 26-12-95-Editor.*

#### CALLING ALIRAN READERS

*If you or your friends or relatives had been subjected to similar hardships and had encountered lackadaisical responses and wish to share your experiences with your fellow Malaysians, please write in to the ALIRAN MONTHLY.*



**EMERGENCY  
RELIEF NEEDED  
FOR FIRE VICTIMS**

Aliran urges the Penang State Government to look into the plight of the nine families who lost their homes in a fire at a squatter area in Mak Mandin on Sunday, 22 October.

About 60 people lost their homes and all their belongings - and they are now putting up at the homes of their poor relatives and neighbours, and at a small hall nearby. These fire victims were only just recovering from the recent devastating floods when the fire broke out on the eve of Deepavali.

The Penang State Government should step in and provide emergency relief to these poor fire victims - either in cash or in kind. If the authorities truly believe in a caring society, then they should also help the victims to reconstruct their homes or provide low-cost housing with easy payment terms.

In addition, the Penang State Government must immediately resolve the squatter problem in Mak Mandin and Prai together with all the attendant social ills prevalent in these areas: drug addiction, alcoholism, violence against women, illiteracy, poor sanitation and drainage, and gambling. A significant number of these dilapidated homes do not even have piped water.

The first step is to provide sufficient affordable low-cost housing with easy payment terms - bearing in mind that these people are really poor.

*Aliran Executive Committee  
2 November 1995*

**SOC SO  
SHOULD UTILISE  
SURPLUS FUNDS FOR  
WORKERS' WELFARE**

Aliran welcomes Socso's move to explore ways to extend its benefits to workers. Last year, Socso recorded a massive surplus of over RM500 million. It received

RM557 million in contributions and paid out benefits totalling RM182 million. (It also earned RM278 million from investment returns.)

Obviously, Socso is raking in well over RM300 million a year (workers' contributions less benefits paid to them) from the sweat and toil of Malaysian workers. It is only fair that more should be returned to the workers. Socso coverage should be extended to other groups not presently covered who also contribute to the country's economic growth: homemakers and the self-employed.

In addition, the present restrictive coverage - covering only accidents incurred at the workplace (and while travelling to and from work), and accidents leading to death and invalidism outside the workplace - should be expanded. We recommend that workers should also be covered for a proportion of the cost of treatment and surgery for serious illnesses/diseases such as cancer, heart problems, tuberculosis and kidney failure - even if it cannot be proven that these were work-related in origin.

Socso should place the welfare of all workers first. We are alarmed to note that it is tying down its resources in property development, spending millions to construct Socso offices. Apart from a RM78 million head office, its Butterworth branch office will cost a staggering RM14 million. Is it really necessary to spend such a huge amount on an office complex especially in a place like Butterworth where a sizeable number of poor workers live in squalid squatter

settlements?

Wouldn't Socso's resources be better utilised in providing housing loans at attractive terms to contributors who cannot even afford a low-cost house? If at all Socso wants to delve into property development, surely it would contribute more effectively to workers' welfare by building low-cost houses - which are in short supply everywhere - for its contributors.

Socso should seriously re-examine its objectives and operations to see if it truly has the interests and welfare of workers at heart.

*Aliran Executive Committee  
8 November 1995*

### **INSTITUTE MURDER CHARGES**

Aliran is disturbed to hear that 11 policemen were ruled by a judicial inquiry to be responsible for the 12 May 1995 death of mechanic Lee Quat Leong while under police custody.

Lee had been held at the KL police remand centre for prolonged criminal interrogation under the Emergency Ordinance. Session Court Judge Jalaludin Saleh held that Lee's detention was illegal and an abuse of the law. He said Lee died from injuries arising from blunt trauma such as punching, kicking and hitting (with blunt objects such as a rubber rose).

Aliran urges the Attorney-General

to institute murder charges against the 11 policemen responsible for this outrage. Such charges will send an unmistakable message to police personnel in the country that they should never ill-treat prisoners or suspected criminals - even during interrogation.

But A-G Mohtar Abdullah appears reluctant to act decisively following the judicial verdict. He argues that pressing charges is not something automatic. He says he has to be careful not to smear the good name of the Royal Malaysian Police. But a life had been lost brutally. His primary concern should be to nail the culprits and not worry unduly about the good name of the police which had already been tarnished in this instance.

Aliran calls on Mohtar to act courageously to see that justice is done for the family of Lee Quat Leong. We also urge the authorities to set up an independent commission of inquiry to investigate how suspected criminals in the country are treated while under police custody. We suspect the Lee Quat Leong tragedy is just the tip of the iceberg. We shudder to think how many other remand prisoners are subjected to similar inhuman treatment at the hands of police personnel.

*Aliran Executive Committee  
1 December 1995*

### **RAHIM'S ACQUITTAL SHOCKING**

Aliran is taken aback by Attorney-General Mohtar Abdullah's sud-

den decision to drop all corruption charges against former Malacca Chief Minister Rahim Tamby Chik.

When the A-G first instituted charges against Rahim, he must have obtained sufficient evidence to establish a reasonable case against Rahim. For him to now turn around and say that he has no case against Rahim is hard for the Malaysian public to swallow.

If Mohtar really has "new information" which clears Rahim, he should provide explicit details to the public and the media - otherwise he should step down as the A-G since he has lost all credibility. Malaysians now have the impression that the "big shots" are somehow above the law and the authorities are not serious in charging them if they are implicated in wrongdoings.

Aliran is also disappointed about how the media covered Mohtar's decision to drop the charges against Rahim. A person casually reading the newspaper headlines and reports will get the impression that the court had examined carefully all the evidence before it and had then acquitted Rahim for want of sufficient evidence. In reality, however, Rahim was present in court for a mere 10 minutes and it was the A-G who stopped the court proceedings by dropping all charges for the most unconvincing of reasons.

*Aliran Executive Committee  
1 December 1995*



At the time of writing, Rahim was reported to be "still considering" the offer. The UMNO Baru Supreme Council, according to reports, had unanimously decided to reinstate the former party strongman. But some say that the decision was not all that unanimous, that it was more of a consensus.

Whether unanimous or by consensus, what is apparent was Dr Mahathir's consistent stand regarding Rahim. The top man had been all along sympathetic to Rahim. The UMNO Baru president's soft spot for Rahim continues to puzzle many, both within and without the party.

Whatever the reasons may be, what is clear - but which is unlikely to be enunciated in the mainstream media - is that both the leadership of UMNO Baru and its Youth wing went against grassroots sentiment.

#### **AGAINST THE GRASSROOTS**

Earlier feedback from the Youth wings in at least seven states had shown a definite opposition to the proposal of Nazri Aziz, its acting chief, to bring Rahim back into the Youth fold. Even Malacca, Rahim's own state, had objected. There was little doubt

that the other states felt the same but lacked the moral courage to come out openly.



*Nazri Aziz : Stepping aside for Rahim.*

Nazri's argument for reinstating Rahim, outwardly at least, was that the latter had been cleared of both the sex and corruption charges levelled against him while he was still Malacca Chief Minister.

And, his argument continued, since Rahim was elected by the Youth assembly, this meant he still had the mandate and therefore, should be reinstated. Rahim, Nazri claimed, was not sacked, but had resigned on his own accord.

What ought to be made clear is that Rahim's innocence was not won in court. The Attorney-General's chamber (now widely perceived as a political tool of the ruling party)

dropped, one after another, the charges against him.

Besides, it is not as if the majority of the UMNO Baru rank and file actually believed that Rahim is entirely innocent. Otherwise, how would one explain the stupendous silence that met the decision of the Attorney-General to drop all charges against him. The contained congratulatory remarks from his political colleagues spoke louder than any incriminatory statements that could have come from his chief adversary, Lim Guan Eng.

The welcoming statements have only begun coming following the Supreme Council decision. Shocking though it may seem, it took the Supreme Council to convince the rest of UMNO Baru that Rahim had been cleared. Never mind what the courts decided, or what the A-G said.

#### **MYSTERY WEALTH**

Still, one would think that before Rahim can come clean, he should explain publicly how he managed to amass such a vast fortune on his pay as a chief minister (just compare his alleged wealth, assets and lifestyle with that of say, Datuk Nik Aziz or even Tun Dr Lim Chong Eu).

Also, Malaysians should be allowed to hear the side of the story of the under-aged girl instead of listening only to the AG's (yes, that man!) ludicrous version.



Nik Aziz : Simple Lifestyle

The entire issue has left some wondering about the leadership qualities of Nazri and a few conclusions immediately come to mind - confused, emotional, irrational, indecisive and impetuous.

Indeed, this is not the first time that he has put his foot in his mouth and his behaviour confirms some of our worst fears - that the country is being ruled by politicians who act without thinking and, worse, will not be held accountable for their action.

Then again, was Nazri's proposal to re-instate his former boss as foolish as it appears to be? In politics, what is not

said is usually more relevant than what is. Some saw a great deal of political ambition and scheming piled up behind all those public announcements of not wanting to contest the Youth leadership.

Perhaps his successful resurrection of Rahim was not all that altruistic. It is possible that he was merely trying to clear his own name so that he would not be accused of having climbed over the back of a fallen man. He probably did not want this notion clinging to his political record.

Others think he was acting in anticipation of Dr Mahathir's heart's desire. The Prime Minister was one of Rahim's sympathisers at the height of the latter's crisis and continues to show apathy for him. Thus, it was said that Nazri was trying to score points with the big man.

#### MAVERICK

But reliable sources say that Nazri decided to step aside for Rahim while on a Youth junket to Indonesia. He had then sounded out the idea to two or three cronies, who naturally agreed and before these cronies could even test it out on their own cronies, Nazri had given a press conference in Parliament. One is inclined to

believe that Nazri acted on his own accord, given his record of being impetuous. If Nazri had wished to score points to shore up his political ambitions, then he should be doing it with the heir-apparent, Anwar Ibrahim, which he certainly isn't by siding with Rahim.

Just as Dr Mahathir has been consistent in nursing a soft spot for Rahim, Anwar has been just as adamant against him (with one inexplicable compromise during the UMNO Baru elections in 1993 when principles were trampled by ambition).

As such, the return of Rahim would make things rather awkward for Anwar. Some even think that this is part of Dr M's strategy to counterbalance Anwar's support in the party. How this delicate balance of power will work out is only likely to be seen this November.

#### HOUSE OF CARDS

In the last two years, Anwar's *Wawasan Team* has collapsed like the house of cards that it was and it is to the dishonour of the Malaysian media that none of them has dared to inquire of him regarding the disarray of his Vision Team. Doesn't its collapse reflect

false promises on his part?



*Anwar Ibrahim : What happened to his Wawasan Team ?*

In this respect, perhaps Dr Mahathir is right too in advising against the formation of teams in the coming race for position and power in this most powerful political party in the country.

The Prime Minister had been critical of the Wawasan Team from the start and he has said that candidates this time around should contest on the premise of their own merit and commitment. This may be wishful thinking on his part. The number who have announced their candidature for the vice-presidencies suggests that the contest for these three positions may be the most heated this November.

Six people have voiced their intentions a full 10 months be-

fore the general assembly. Among them are a few notorious for the use of money politics in 1993 and there is no reason to think that they would not do the same this time around. Some of them even have think-tanks to their name. Presumably, these so-called think-tanks, funded largely with public money, will be employed full-time to serve the candidates during the campaign.



*Dr Mahatir : Against the formation of teams .*

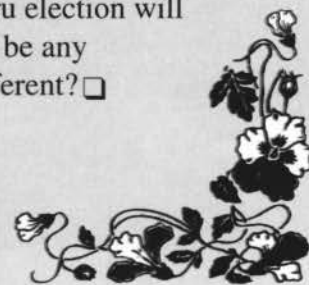
The unhealthy thing about all this early announcements is that their supporters will now begin campaigning on their behalf. And many of UMNO Baru's more relevant grassroots members are government servants, which means less work done all round.

From now on too, we shall be hearing other ambitious UMNO Baru leaders telling us

that they are offering themselves for election because of their deep desire and commitment to serve "the race, religion and nation."

These statements are dished out to an unquestioning media election after election. The announcers mouth it without shame, and the media publishes it without embarrassment. No doubt, a few of these declarations may be sincere except that so many of them have lost our trust and respect along their journey to power, in the way they have enriched themselves through the political process, and in the way they have trampled on our ideals towards a democratic and progressive nation. And events of the past decade or so have demonstrated that in no other political party in this country is the name of the *rakyat* used more flagrantly in fueling political ambition than in UMNO Baru and in no other party is politics so abused for personal gain.

Can we be blamed then to expect that the coming UMNO Baru election will not be any different? □





# RETURN OF RAHIM

**Stunning decision by Umno  
Supreme Council to reinstate Rahim**

**The decision of the Supreme Council of UMNO Baru has paved the way for Rahim Tamby Chik to return as UMNO Baru Youth Chief. The saying anything is possible in politics could not be truer than ever right now in UMNO Baru politics. It would seem that anything is also possible in law, observes NNP.**



*Rahim Tamby Chik (right) shaking hands with Nazri Aziz (left)*

**B**y the time this goes to print, Rahim Tamby Chik is likely to be sitting snug in the chair of the UMNO Baru Youth chief, a seat he left in disgrace and which he will, presumably, now return to with great satisfaction.

Perhaps, he may even be back in the seat of Malacca Chief Minister. The saying that anything is possible in politics could not be truer than ever right now in UMNO Baru politics. It would seem that anything is also possible in law. The day after the Supreme Council meeting, the Attorney-General's office dropped the last of the string of charges - this one involving the alleged non-declaration of assets - against Rahim.

He emerged from the KL courts an elated man, thanking God and Dr Mahathir. Meanwhile, his lawyer warned against repeating any of the previous allegations regarding corruption and sex with under-aged girls against Rahim so we shall refrain from doing so.

**Continued  
on page  
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