

SPEECH BY: DATO' SERI DR. MAHATHIR BIN MOHAMAD
(PRIME MINISTER)

EVENT: DI PEMBUKAAN PERSIDANGAN UNDANG-UNDANG MALAYSIA KE-7

VENUE: HOTEL MERLIN, KUALA LUMPUR

DATE: 31 OCT 1983

TIME:

Encik S. Sivasubramaniam,
Pengerusi Majlis Peguam;
Dif-Dif Kehormat;
Tuan-tuan dan Puan-puan.

Saya mengucapkan terima kasih kepada Majlis Peguam Malaysia kerana diberi peluang berucap di Persidangan Undang-Undang Malaysia ke-7 ini. Tahun lalu saya hanya berpeluang bersama tuan-tuan dan puan-puan di majlis makan malam, tetapi tahun ini diberi peluang pula membuka Persidangan ini. Di sini saya akan mengambil peluang memberi beberapa pandangan mengenai masyarakat peguam dan undang-undang di Malaysia.

Ladies and Gentlemen,

2. All my predecessors as you know belonged to the same discipline as yours, and I would consider them, therefore, fortunate for every time they were in your midst, they were certainly not strangers. Our first Prime Minister was even more fortunate as his deputy was no less learned in the same discipline. It is certainly understandable that those with the legal bias would be more inclined to entertain the conviction that in democracy, the rule of law can best be maintained and defended only by leaders who are learned in the legal profession.

3. Your discipline is law and mine is medicine. However both demand the highest degree of integrity. As individuals, both make mistakes for it is only human to err. Some say lawyers write them while doctors "bury" them. I would prefer to say that the mistakes of lawyers go six feet up while those of doctors go six feet down. However, I am not a practising doctor any more. For better or for worse, I am now very much involved with the law, or more precisely in law-making. My mistakes can no longer be buried. They are too exposed to avoid public scrutiny. And so it is incumbent upon me to avoid mistakes as much as humanly possible. That means, of course, that the Government must be extremely careful.

4. I am told that among lawyers there is the belief that they are the watchdogs of the private citizens against

encroachments of the Executive. However, they must admit that in this day and age, they do not have the sole monopoly of the watchdog role. Various groups have cropped up who are equally concerned over the exercise of authority by the Executive. In a democratic society the most pertinent and most effective watchdog is the electorate themselves. They are the ones to choose the Government and in the final analysis they are the sole authority to bring it down. Other bodies may claim to be more intelligent and knowledgeable, but in a democracy they cannot impose their will on the majority.

5. But a democracy also provides a role for the minority. They will not be ignored. They will be heard. They will influence decisions. Indeed they are acknowledged as an integral part of the democratic process. But they may not negate the wishes of the majority.

6. That is why I stated in my last speech to you that the Government is willing to listen to the advice of the Bar Council. It will take such advice seriously. Whether the advice is given before, during or after is not of absolute significance. Indeed the Government has been known to amend laws because of criticism after the law has been implemented. It is never too late to correct. Many were the unfortunate people who were hanged for stealing lambs in England before it dawned on the British that it was a miscarriage of justice. Many have been hanged all over the world before the people of the West suddenly felt it was morally wrong to take a life. But as soon as the mores changed, the laws were changed to accommodate it.

7. The point that I am trying to make is that you will be given a hearing whenever the need arises. If possible we will listen to you before legislating. But sometimes it is not possible to do so. As I said it is not too late.

8. I have met your representatives over the latest piece of legislation that you are not happy with. You have also submitted your comments and advice in writing. The Government will consider all the points raised. But as I have said before, advice is good counsel which may or may not be accepted. The Government will do its best to accept but you should not be too disappointed or discouraged if it rejects the advice.

9. The present administration is anxious to provide a high standard of service. We have adopted the slogan "bersih, cekap dan amanah" or "clean, efficient and trustworthy" as our slogan. We will endeavour to live up to this slogan.

10. Needless to say, such a slogan should not be confined only to the Government if this country is to progress. Everyone should try to adhere to these excellent principles. Certainly the professionals in the private sector have a duty to make the national slogan meaningful. As a professional body, the Bar Council is duty bound to oversee

the professional behaviour of its members. In some countries, the legal profession has fallen into disrepute because ethics have been thrown aside in favour of quick gains. Some make this profession only a side-line as they moved into more lucrative business. There is no way we can stop lawyers and other professionals from foresaking their professions, (I am myself a culprit) but the fear is that the only lawyers left will be young lawyers. Like all young people they will be more impetuous. It is essential that older lawyers take a greater interest in the profession and in the professional bodies such as the Bar Council. It is important to remember also that the Government will have to tap the private sector for judges -- and judges must come from among the older members of your profession.

11. I observe that one of the papers to be discussed at this Conference is on Emergency Powers and the Rule of Law. You are of course entitled to your views but it is important to remember that emergency powers are designed for a special situation. Strictly speaking emergency implies a short term need, but as you know, the British taught us that emergencies can last for years and years. Since we have borrowed so much of their laws, we see no reason to reject the Emergency Powers given the situation that we are in. While you and I are quite safe in this hall, a lot of our soldiers are fighting in the jungle, fighting a very real war in which death can come quite suddenly and limbs lost through booby traps and the like. If things seem calm in the populated areas, it is because the forces are sweating it out in the jungles and the Emergency Powers are being enforced. By all means criticise the Emergency Powers but do not forget that we do have a real emergency on our hands. We have been quite liberal and tolerant lately. But as the Malay saying goes "Give the calf and you will be asked for the thighs". At one time when we were not so liberal we were asked to be a bit liberal. Now that we are, we are told that it is not enough. We need to do more. Indeed we are expected to abolish powers of detention and emergency laws completely.

12. Preventive detention seems to be quite unacceptable to a lot of people. But to those who are threatened, it does not seem too unreasonable. It would be interesting to study the result of releasing avowed terrorists and homicidal maniacs among society. No matter how much we wish to believe in the essential goodness of everyone, the fact still remains that hardened psychopathic criminals, murderers and terrorists do exist. For them the kind of laws that deter others are quite irrelevant.

13. Anything that we do must be related to the environment that we live in. The laws of a society are not exempt from the need to suit their environment. We may study law in England or Australia or elsewhere, but although the principles can be accepted, the practice cannot be totally adopted. Malaysia is a developing country where average earnings are far below that of developed countries. What

this means is that Malaysia can only afford the laws that are within its means.

14. In western countries, litigation is very popular. Everyone sues everybody else as he feels he can make something out of it. Thus if you sprain your ankle coming down the stairs of a friend's house, you sue him. If a doctor misses something during his examination, you sue the doctor. Of course you sue the Government for everything under the sun.

15. The sums that you sue for have grown faster than the rate of inflation in Argentina. There is a feeling that the power to sue will ensure a safer society. This is unfortunately a form of self deception.

16. The money that the litigant gets must come from somewhere. If the insurance pays, it simply means you will have to pay a bigger premium. As the award increases, so will the premium. In the end, the cost to a society given to litigation will be much more than the protection the law is supposed to afford. But in addition to this cost to society, service would actually be poorer. It is well known that doctors will not go to the aid of an accident victim in case he may be sued for something or other. And of course if you see a doctor, he is likely to carry out all the tests in order to avoid any possibility of being sued for negligence. All these of course cost money -- a lot of money. In the final analysis society has to pay a high price for becoming a litigious society.

17. I am mentioning this because there is a trend towards more litigation for bigger awards in Malaysia. There is a tendency to forget that Malaysia is not a developed country. It cannot afford the kind of awards that make headlines. It is wrong to think that it is only the insurance company which will pay the cost. In the long run it is the society which has to pay. Should Malaysia become a litigious society long before it can afford it, than a lot of poor people are going to suffer. I hope that the lawyers, the Bar Council and everyone else concerned will give this matter some thought.

18. Apart from litigation, there are other practices in foreign countries which lawyers think should be adopted simply because other countries practise them. Of late exposures are popular. We have the saga of the Pentagon Papers and the revelations of the names of CIA agents. There is a rather naive assumption that all that needs to be done to solve problems is to expose them to the public. To them if the nation is endangered or secret agents killed, that is a small price to pay. But events have shown that nothing is to be gained by such exposures. Indeed more damage is done by them than otherwise.

19. I would like to suggest that we do not accept everything that is done by the so-called civilised and

advanced countries as being perfect. They are far from being so. In fact there is evidence of a lot of disillusionment with their own systems, values and mores of the developed countries. What is good for General Motors is not necessarily good for the country. What is good for Europe and America is not necessarily good for Malaysia. So please think carefully first before suggesting that western mores should be applied in Malaysia without regard for the peculiarities of the environment in which we live. We may be actually retarding the development of Malaysia by prematurely adopting mores and ethics that are foreign to us.

Ladies and Gentlemen,

20. We have associations, societies and organisations which bring together members of particular trades, interest groups or professions. The legal profession in Malaysia has the Bar Council. In relation to bar councils, I am attracted to a statement made by a lawyer in a weekly magazine recently that bar associations are acting more as trade unions for lawyers, protecting the lawyers' interest, rather than being responsible to the needs of society. I do not really subscribe to such an opinion, but we ought to ponder a while, and take this in a positive light. Any association for that matter will only attract membership if, and only if, it can protect the interest of its members. But once it is established, an association has also to consider and adjust to its environment.

21. In this country, there is no denying that there are always people in need of justice, but legal costs may deny them justice. The Government has realised this and has set up the Legal Aid Bureau for the small man. However, the government may not be able to do much. It is restricted by funds and also by personnel. Here individuals and interest groups like the Bar Council will be able to play a more meaningful role by extending their service to the small man. In this regard, you may deliberate on ways and means to make justice accessible to as many of our fellow citizens as possible. This is more the social responsibility of lawyers for the general welfare of the public. I have made such a call to other associations as well. I hope this call will not be construed as specially addressed to the legal profession in this country. I am confident that you will not take this in its negative sense, but rather in the spirit of serving the well-being of all Malaysians.

Ladies and Gentlemen,

22. With the gathering of such active and learned minds, you will undoubtedly not fail to have very useful and fruitful discussions. I now take great pleasure in declaring this 7th Malaysian Law Conference open. Thank you.

