



ANWAR ON TRIAL

In the Face of Injustice

Pawancheek Marican



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To the members of Anwar Ibrahim's
legal defence team led by Raja Aziz Addruse
and (the late) Aris Rizal Christopher Fernando



Contents

<i>List of Illustrations</i>	xii
<i>Preface</i>	xv
<i>Acknowledgments</i>	xvii
Prologue	
The Gathering Rainstorm	1
Anwar's Sacking, Arrest and Detention	1
Mahathir Interferes with Judicial Process	1
Trial by Media	2
Judicial Scenario Leading Up to the Trial	3
Events Occurring Ahead of Anwar's Arrest and Trial	6
Anwar Challenges Detention Order	11
Chapter 1	
The Case for the Prosecution	13
Commencement of Trial	13
Evidence of the Police and Other Public Officers	14
Anwar Files Action to Exclude Two Prosecutors	28
Zainur Zakaria Cited for Contempt	29
Evidence of Principal Accuser Azizan Abu Bakar	31
Defence Attempts to Impeach Azizan	36
Evidence of Ummi Hafilda Ali	37
The DNA Evidence of Lim Kong Boon	44
Examination of ASP Mohd Rodwan Yusof	59
Anwar Appeals for Bail	65
Anwar's Injuries: AG Issues Statement; IGP Resigns	67
Amendment of the Four Charges	69
Press Statement by JUST	73
Chapter 2	
Submissions of No Case to Answer	75
Submission by Raja Aziz Addruse	75
Submission by Christopher Fernando	78
Submission by Gurbachan Singh	88
Submission by Sulaiman Abdullah	94
The Prosecution's Submission	96
Ruling on Submission of No Case to Answer	100



Chapter 3

The Case for the Defence	103
AG Leads Prosecution Team	103
Anwar's Examination-in-Chief	105
Cross-Examination of Anwar	129
Re-Examination of Anwar	131
Royal Commission Investigates Anwar's Assault	135
Evidence of ASP Zull Aznam	136
Comments by the Inter-Parliamentary Union	141
Evidence of Mohamed Ahmad, Anwar's Former Private Secretary	142
Evidence of Journalists	143
Evidence of Ma'min Latip	144
Evidence of Manjeet Singh Dhillon	147
Evidence of Zamani Sulaiman	149
Evidence of Dr Vasantha Ponniah	149
Evidence of Dr. Halim Mansar	151
Mohd Azmin Ali Testifies	152
Evidence of Sukhdev Singh	158
Evidence of Nor Azman Abdullah @ Baginda Anak Minda	158
Evidence of Ahmad Azam Abdul Rahman	160
Evidence of Faiz Abdullah	161
Evidence of Wan Azizah Wan Ismail	162
Defence Witnesses Not Allowed to Give Evidence	162
Mahathir's Comments on the Trial	166
Anwar Applies to Disqualify the Judge	167
Anwar's Lawyers Threatened With Contempt	169
Hearing to Remove Justice Paul	170

Chapter 4

Legal Submissions and Verdict	175
Submission by the Defence	175
Submission by the Prosecution	185
Further Submissions by Both Sides	192
The High Court Verdict	194
Anwar's "Mitigation"	198
The AG's Reply	199
Anwar Sentenced to Six Years	200
Anwar's Full Statement In Lieu of Mitigation	201
Government Reaction to the Verdict	205
Criticism of Police Action	205

Chapter 5

Reaction to the Verdict	209
Did Anwar Receive A Fair Trial?	209
Worldwide Reaction	209

Report of the Lawyers' Committee For Human Rights	212
Joint Report of Four Legal/Judicial Bodies	218
Overall Conclusion: It was An Unfair Trial	221

Chapter 6

The Slow Road to the Federal Court	233
Anwar Appeals to Court of Appeal	233
Anwar's Daughter Appeals to the U.N.	233
The Court of Appeal Decides	234
Anwar Lodges Appeal with Federal Court	235
A By-Election Looms	235
Federal Court Appeal Postponed	236
New Chief Justice Appointed	237
Anwar in Hospital	238
New Attorney-General Appointed	240
Appeal for Anwar to Undergo Surgery Overseas	241
Five Remaining Charges Against Anwar Dropped	243
Ex-Police Chief Rahim Nor Loses Appeal	245
Opposition Activists Detained Under ISA	247
Controversial Finance Minister Daim Zainuddin Resigns	249
Zainur Zakaria Wins Contempt Case at Federal Court	250

Chapter 7

The Federal Court Appeal	257
Appeal: Day 1 (4 February 2002)	257
Raja Aziz Addruse Begins Submission	258
Appeal: Day 2 (5 February 2002)	264
Appeal: Day 3 (6 February 2002)	270
Sulaiman Abdullah's Submission	271
Appeal: Day 4 (7 February 2002)	279
Appeal: Day 5 (26 March 2002)	282
Christopher Fernando's Submission	283
Appeal: Day 6 (28 March 2002)	296
Submission on Sentence	296
The Prosecution's Submission	298
Appeal: Day 7 (1 April 2002)	302
Response by the Defence	303
Appeal: Day 8 (2 April 2002)	307
Judgment is Reserved	310

Chapter 8

Mahathir Decides to Resign	313
ISA Detainee's Wife Seeks U.N. Intervention	313
Detainees Go On Hunger Strike	314

Mahathir Resigns, Then Retracts His Decision	315
Opposition Leader Fadzil Noor Dies	317
Chapter 9	
The Federal Court Judgment	319
The Federal Court Decision	319
Anwar's Closing Salvo	321
Forecast: Dark Days Ahead	323
U.S. Says Anwar Trial Flawed	323
Chapter 10	
The Post-Appeal Review	325
Anwar Requests Federal Court Review	325
ISA Detainees Released From Detention	326
Former AG Mohtar Abdullah Dies	326
Mahathir Retires	327
Anwar Acquitted in "Sodomy" Appeal; Flies to Germany for Surgery	328
Grounds in Support of Review	328
Review Hearing and Decision	329
Chapter 11	
Conclusion	333
Epilogue	
2004 to 2008: Significant Events	341
Appendix 1	
Anwar's Second Trial: A Short Commentary	347
Second High Court Trial	347
The Witnesses	348
The High Court Decision	350
Anwar's Statement In Lieu of Mitigation	352
Justice Arifin Jaka's Written Judgment	354
Anwar and Sukma Appeal to Court of Appeal	355
The Grounds of Appeal	356
Legal Arguments at the Court of Appeal	357
Decision of the Court of Appeal	360
Anwar and Sukma Appeal to the Federal Court	362
Federal Court Acquits Anwar and Sukma	363
Prejudicial Remarks by Federal Court Judge	364
Analysis of Judgment: An Islamic Perspective	367
Conclusion	369

Appendix 2	
The Charges Against Anwar	371
Who's Who in the First Trial	377
Important Exhibits in the First Trial	379
Glossary and Abbreviations	383

List of Illustrations

1. A massive demonstration to protest the sacking of Anwar Ibrahim 222
2. Another section of the crowd at the Kuala Lumpur demonstration 222
3. A pro-Anwar demonstration outside the Sogo Department Store 223
4. A pro-Anwar demonstrator in midtown Kuala Lumpur 223
5. Anwar Ibrahim and his defence lawyers 224
6. Datin Seri Dr Wan Azizah Wan Ismail with three of her children 224
7. Anwar Ibrahim smiling and waving to his supporters 225
8. Anwar's wife, Datin Seri Dr Wan Azizah, talking to reporters 225
9. Anwar Ibrahim and leading defence counsel Raja Aziz Addruse 226
10. Anwar Ibrahim conferring with defence counsel Sulaiman Abdullah 226
11. Defence counsel Christopher Fernando talking to reporters 227
12. Christopher Fernando, Sankara Nair and the author 227
13. Anwar Ibrahim talking to defence counsel Zainur Zakaria 228
14. Lawyers waiting for the Federal Court's decision in Zainur Zakaria's appeal 228
15. *Parti Keadilan Rakyat* Member of Parliament Tian Chua with friends 229
16. Karpal Singh speaking to reporters 229

17. A large crowd gathers at Dataran Merdeka on Anwar's birthday.	230
18. Defence counsel Christopher Fernando in a pensive mood	230
19. Christopher Fernando and other defence lawyers at the Palace of Justice in Putrajaya	231
20. The new superior courts complex in Putrajaya	231
21. The old superior courts complex in Kuala Lumpur	232
22. Former Prime Minister Tun Dr Mahathir Mohamad	337
23. Justice Augustine S Paul	337
24. Former Inspector-General of Police Tan Sri Rahim Nor	338
25. Former Chief Justice Mohd Dzaidin Abdullah	338
26. Attorney-General Tan Sri Abdul Gani Patail	339
27. High Court judge Justice Arifin Jaka	339
28. Former Attorney-General Tan Sri Mohtar Abdullah	340
29. A caricaturist's solution to the problem of "Malay unity" arising from the Anwar-Mahathir conflict.	340



Preface

The world was shocked when, in September 1998, Prime Minister Mahathir Mohamad sacked Anwar Ibrahim—one of Malaysia's most popular political leaders—from all his government and political posts. It was not just Anwar's dismissal but also the bizarre reasons that Mahathir had given for the sacking, that surprised everyone. Dr Mahathir had accused the former Deputy Prime Minister of being "a sodomist who also indulged in illicit sex".

The immediate result of this unfair dismissal was a series of unprecedented public demonstrations by ordinary people in the streets. Seldom had such anger been seen within the context of the country's short political history. Police action against the demonstrators had been swift and brutal; and all the while, Dr Mahathir continued to utter a tirade of scandalous and libelous remarks against Anwar through the manipulation of the mainstream media, the ruling party machinery and certain state agencies.

This book is a study of the first criminal case against Anwar Ibrahim in 1998—*Public Prosecutor v Dato' Seri Anwar Bin Ibrahim (In the High Court of Malaya, Federal Territory Criminal Trial Nos 45-48-98 & 45-47-98)*, popularly known as "the corruption trial"—that lasted 76 days.

Beginning with the background to Dr Mahathir's sacking of Anwar, the Prime Minister's interference with the judicial process and the judicial scenario leading up to the trial, the book gives an almost blow-by-blow account of the first "corruption" trial, including the case for the prosecution, preliminary legal skirmishes and the case for the defence. The High Court held that Anwar was guilty and sentenced him to six years of imprisonment.

At the Court of Appeal, defence lawyers contended that Anwar had not been given a fair trial, but his appeal was dismissed. Anwar appealed again—this time to the nation's highest tribunal, the Federal Court. However, this appeal took an unduly long time to be heard.

At the Federal Court, Anwar's appeal was finally dismissed, and he applied for a post-appeal review—a difficult legal procedure, more so in the context of a "politically-loaded case". Anwar's application for a review

was argued before a differently constituted panel of the Federal Court, which dismissed the application.

This was the final verdict in the “corruption” trial. In a comment that he made to the media, Anwar accused the Federal Court of bowing to government pressure. “I don’t believe that the judges are in a position to act independently,” Anwar had declared.

Appendix 1 contains a short commentary and analysis of Anwar’s second “sodomy” trial—*Public Prosecutor v Dato’ Seri Anwar Ibrahim (In the High Court of Malaya, Federal Territory Criminal Trial No 45–51–98)*. In this case, Anwar was charged with sodomy under the Penal Code. He was convicted and failed in his appeal before the Court of Appeal. He further appealed to the Federal Court, which, on 2 September 2004, decided by a majority of two-to-one that he was not guilty.

More than 20 judges, from the Sessions Court all the way up to the Federal Court, had adjudicated Anwar’s two criminal trials and numerous appeals.

In essence, this book describes the abuse of the country’s judicial process and the emasculation of Malaysia’s democratic institutions during the 1998–2004 period, as seen through the prism of Anwar’s trials. During this difficult period, the rule of law was flouted and many political dissenters were charged, convicted and imprisoned. The handling of the Anwar trials was an abuse of the legal system and a blot on the reputation of the judiciary during the sunset years of the Mahathir administration.

Pawancheek Marican

Kuala Lumpur

30 September 2008

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I am grateful to Dr Edmund Terence Gomez of the University of Malaya for reading the manuscript and offering me invaluable advice on the impact that the Anwar Ibrahim trials had on the Malaysian socio-political landscape.

To Zunar, Malaysia's renowned caricaturist, I laud him for offering a wise solution to the problem of "Malay unity" within the context of the Anwar/Mahathir conflict.

I am indebted to Malaysian artists Raja Azhar Idris and Shamsuri Atan for their fine pencil drawings of seven public figures.

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And finally, I thank Mr Chong Ton Sin, the publisher, for his confidence in and unwavering support for the publication.



Prologue

The Gathering Rainstorm

Anwar's Sacking, Arrest and Detention

On 2 September 1998, Dato' Seri Anwar Ibrahim was dismissed from his position as the Deputy Prime Minister and Finance Minister of Malaysia by the Prime Minister, Dato' Seri Dr Mahathir Mohamad. On 3 September, Mahathir sacked Anwar from UMNO (United Malays National Organisation), Malaysia's ruling political party, and relieved him of his duties as its Deputy President. On 20 September, Anwar was arrested and detained under the Internal Security Act 1960 (ISA), a statute that permits indefinite detention without charge or trial and which is regarded by local and international human rights groups as a gross violation of basic human rights.

Mahathir Interferes with Judicial Process

Immediately following Anwar's arrest, the Mahathir Government seemed to be engaged in a public relations exercise aimed at convincing Malaysians and the rest of the world that the Malaysian judiciary was independent and capable of making an autonomous decision in the forthcoming criminal case against Anwar. On 16 October, the Prime Minister said at a press conference:

No one should question the independence of the judiciary and its ability to make decisions freely because it has proven that it is not beholden to the Government. (*New Straits Times*, 16 October 1998)

Was the Malaysian judiciary really as independent as Mahathir claimed? Back in 1988, Mahathir had dismissed the Lord President Tun Salleh Abas, the nation's highest-ranking judge, and two senior Supreme Court judges, on charges that, according to former Malaysian Bar President Param Cumarasamy, "would not be sufficient to upbraid a low



functionary in the public service”. Cumarasamy describes this assault on the judiciary as having the chilling effect of demonstrating not only to the judiciary, but also to all Malaysians, where the balance of power lay in our system of government.¹

Twelve days before the commencement of Anwar’s trial, Mahathir stated at a press briefing that the government would not entertain any application by foreigners to be observers at the trial “as the presence of foreign observers will put pressure on the country’s judges.” However, under the law, it is not for the government to decide whether or not any person ought to be given observer status at any trial in Malaysia; only the court can make such a decision. The law provides that “the place in which any criminal trial is held for the purpose of inquiring or trying any offence shall be deemed an open and public court to which the public shall generally have access.”² Mahathir’s statement gave the impression that attendance in court was at the discretion of the executive, not the courts, and the Prime Minister’s remark was seen as an attempt to influence the way that the judiciary decided on the question of foreigners applying to be observers at Anwar’s trial. This statement runs counter to the adage that “justice must not only be done but must be manifestly seen to be done.”

Trial by Media

Days before his court case commenced, Anwar was already being subjected to an unprecedented media trial. The media gave maximum coverage to speeches by the Prime Minister, Cabinet Ministers and UMNO leaders regarding Anwar. These speeches carried the same refrain: that Anwar was “immoral” and, therefore, unfit to be the Deputy Prime Minister or the next Prime Minister of the nation.

During an interview with international journalists on 22 September, Mahathir was reported to have said:

It is quite true that a lot of people still believe in him. I must say even for me it took me years to believe the allegations made against him. First time I was told about him was by (the previous Inspector-General of Police) Hanif. I dismissed it as a false allegation. Subsequently, I was told last year

¹ Foreword by Dato’ Param Cumarasamy in *Conduct Unbecoming—In Defence of Tun Mohd Salleh Abas*, authored by Raja Aziz Addruse (1990). Kuala Lumpur: Walrus.

² Criminal Procedure Code (CPC), s 8.

about him. I dismissed this and I said “this is out of sheer jealousy for my man who is going to be a leader of the party”. I had concrete proof that it was true, before I could (sic) but other people cannot very well get the kind of information that I got. I actually interviewed the people who were sodomised, the women whom he had sex with, the driver who brought the women to the place. We also have proof of his corruption. But I am not interested in that. I cannot accept a sodomist to be a leader of this country. (*New Straits Times*, 23 September 1998)

On 23 September, the former Inspector-General of Police, Tun Hanif Omar, suddenly came out of the woodwork to tell the press that he had informed Prime Minister Mahathir in 1993 that Anwar had homosexual tendencies. He said that his report to Mahathir had been based on “convincing evidence” gathered by his officers. The ludicrous nature of this allegation was pointedly challenged by a former Attorney-General, Tan Sri Abu Talib Othman—who held office in 1993—who told the press that he had never been informed by the police of any such conduct on Anwar’s part.³

Despite having made such serious allegations against Anwar, Mahathir was never brought to court as a witness to support Hanif’s prejudicial statement.

Judicial Scenario Leading Up to The Trial

Before Anwar was charged in the Sessions Court on 29 September, he was beaten up while in detention by a very senior police officer—a fact that the police had kept secret. As a result of the beating, Anwar suffered injuries to his left eye, neck and head. He was not allowed to see a doctor for five days after the beating. When it became public knowledge that Anwar had been beaten while under police custody, Mahathir told the press that the police would investigate the matter but still impassively remarked: “Anwar’s injuries may have been self-inflicted.” People were shocked to learn that the Prime Minister could make such a callous comment.

On 29 September, Anwar applied at the Kuala Lumpur Sessions Court to make a statement on his beating and the injuries that he had suffered

³ In any event, when Hanif subsequently gave evidence in the High Court his officers were not produced as witnesses to corroborate his evidence. The court, thus, regarded his evidence as hearsay.

at the hands of the police. He also applied to be examined by an eye specialist, but the Senior Deputy Public Prosecutor, Abdul Gani Patail, objected to this. The lower court judge took almost two-and-a-half hours to decide on this simple application. Generally, when an accused person wishes to give a statement to the court about an alleged assault while in police custody, there is no question of the court having to deliberate upon the issue. In this particular case, it was indicative of the kind of pressure that was being exerted upon the lower levels of the judiciary where the judges often had to consider how their superiors might react to their rulings. Eventually, the Sessions Court judge allowed Anwar to make a statement on his beating and injuries. The judge also ruled that an eye specialist could examine Anwar. One week after the Sessions Court judge allowed Anwar to make the statement, she was transferred to the civil division of the Sessions Court—the reason for the transfer was only too obvious.

At the Petaling Jaya Sessions Court on 30 September, where another charge was being preferred against Anwar, his lawyers applied for him to be examined by his family-appointed medical specialists. Again, Senior DPP Abdul Gani Patail objected and suggested that the services of government-appointed medical specialists be utilised instead. The Sessions Court judge disallowed Anwar's application but gave approval for two government-appointed medical specialists to examine him. These doctors examined Anwar but their reports were not made available to either Anwar's family or his lawyers. Anwar told his lawyers that the Government doctors were under pressure to "tone down" the contents of their reports.

At the time that Anwar was charged, there were two judges sitting in the criminal division of the High Court: Justices K.C. Vohrah and Abdul Wahab Patail. Justice Abdul Wahab Patail could not hear Anwar's case as he was hearing another case in which Anwar was allegedly involved⁴. This left Justice Vohrah as the most senior judge with criminal trial experience in the criminal division, but he was not chosen to hear Anwar's case. On the other hand, Justice Augustine Paul Sinnapen—a junior judge—was selected. He had been elevated to the position of a High Court judge in May 1998 and transferred from Malacca to the appellate/special powers sub-division of the High Court. It cannot, therefore, be said that the selection of Augustine Paul as the judge to hear Anwar's case was a transparent one.

⁴ The Nallakuruppan case (see page 7)

On 5 October, Anwar was brought to the Kuala Lumpur High Court to be formally charged, following a transfer of the case from the Sessions Court. Anwar pleaded not guilty to all the charges and claimed trial. The prosecution stated that Anwar would first be tried, jointly, on four charges while another six charges would be kept in abeyance.

Justice Paul denied Anwar's application for bail after he claimed trial. The prosecution objected to bail on the grounds that Anwar was allegedly tampering with witnesses. However, no clear or concrete evidence of this was produced in court and it remained a bare allegation by the prosecution. Justice Paul justified his denial of bail on the basis that some of the charges against Anwar involved "tampering with witnesses". He, however, completely overlooked the fact that the charges alleged witness tampering by Anwar in his capacity as Deputy Prime Minister. This did not make sense, as Anwar was no longer holding the post of Deputy Prime Minister. How could such tampering then arise if he was granted bail? The denial of bail for these offences was unprecedented. Persons previously charged for corruption under Ordinance No. 22 had been allowed bail; so why was Anwar not allowed bail? Many people considered the denial of bail in Anwar's case as having been politically motivated—Mahathir seemed to be afraid of having Anwar out of prison and free to speak against him.

On 5 October, Justice Paul ruled that only three of Anwar's nine lawyers could visit him in detention at any one time. The first time that Anwar's lawyers were permitted to visit him to get instructions—while he was under ISA detention—was on Friday 9 October. Raja Aziz Addruse, Sulaiman Abdullah and Zainur Zakaria met Anwar between 4.30 p.m. and 6.00 p.m. that day. On that same day, Anwar's family was also allowed to see him for the first time since his detention on 20 September. Anwar's wife, Wan Azizah, noted that her husband had lost about nine kilograms of weight and that he was still wearing the neck brace that he had worn on the night that he was arrested.

The visits were made possible only after Wan Azizah complained to the press on 7 October that Anwar's lawyers were not being given access to him in spite of the court order. She also complained that neither she nor her children had been allowed to see Anwar. "We have sent letters and faxes to the police requesting permission to see him but were denied (permission) on the grounds that he is under investigation and if we still want to see him, we should see (Senior DPP) Gani Patail ... They have already charged him in court. What investigation are they talking about, and how is he going to prepare his defence?"

Since Anwar's termination as the Deputy Prime Minister, several of his lawyers had been questioned by the police, who used the pretext of investigating the alleged "tampering" of witnesses to probe into matters related to his case. This, however, was highly improper because legal practitioners are bound by the law not to reveal to any third party the content of their communications with their clients.

Justice Paul scheduled a short trial date—less than one month from the mention date of 5 October—which, in fact, was the date suggested by Senior DPP Abdul Gani Patail. The judge had earlier rejected the defence's request for a trial date two months away, which would have provided Anwar's lawyers with adequate time to get his instructions and prepare for his defence. It is important to note here that Malaysian courts generally allow criminal defence lawyers adequate time to prepare for their cases. In Anwar's case, there were valid reasons why more time was needed: firstly, there were four charges against him; secondly, he was still under ISA detention and it was very difficult for his lawyers to meet him for instructions; and thirdly, many of the documents that Anwar needed for his defence were in government hands and formal procedures had to be followed before the defence could get hold of them.

When the trial began, the defence was unhappy with the large number of plainclothes policemen sitting in court—their boots, manner and hairstyles gave them away—thus preventing Anwar's family members, friends and members of the public from securing seats in the court. Quite a large number of foreign journalists were not allowed in as the court seats had been taken up by these policemen. When the defence complained to the judge and suggested that these policemen be asked to stand at the rear of the courtroom, the judge refused, saying that he did not want "to interfere with security matters".

Events Occurring Ahead of Anwar's Arrest and Trial

In early 1998, before Anwar's arrest and trial, he had filed a defamation suit against the writer and publisher of the book *50 Dalil Mengapa Anwar Tak Boleh Jadi PM* (50 Reasons Why Anwar Should Not Become Prime Minister). Anwar had obtained an injunction preventing the writer from selling the book. The High Court judge who granted the injunction described the book as "one long poison-pen letter". However, shortly after granting the injunction, this judge was transferred from his position as head of the Civil Division of the Kuala Lumpur High Court to the Shah

Alam High Court when, in fact, based on his seniority, he should have been due for a promotion to the Court of Appeal.

An inter-related event was the criminal case against Dato' S. Nallakaruppan, Anwar's friend and ex-tennis partner. Nallakaruppan was arrested on 31 July 1998 and held *incommunicado* for 14 days. He was charged in court on 12 August for the illegal possession of bullets at his house, even though he held a valid firearms licence. Initially, the police were planning to charge him for an offence under the Arms Act 1960 which carried the penalty of a fine and/or jail and which was a bailable offence. However, shortly after that, he was charged with an offence under the ISA, which carried a mandatory death sentence and for which there was no bail. Nallakaruppan was remanded in Sungai Buloh Prison—an hour's drive from Kuala Lumpur—pending his trial, but police officers had him moved and placed in solitary confinement at Bukit Aman, the Federal Police Headquarters in Kuala Lumpur.

Initially, Nallakaruppan was denied access to his lawyers although later he was allowed to see two senior lawyers, Manjeet Singh Dhillon and Balwant Singh Sidhu. He immediately filed an application in court stating that he was being unlawfully held in police custody and requesting that he be moved back to prison. More significantly, in a long affidavit that he made while in police custody, he complained that he was being subjected to mental and physical torture at the hands of the police who attempted to force him to sign false statements implicating Anwar. He was threatened with hanging under the ISA and told that something could happen to his wife, if he chose not to sign the statements.

The way that the hearing of Nallakaruppan's application was conducted before the High Court judge on 3 September—the day after Anwar was sacked as Deputy Prime Minister—further unravelled the web of conspiracy against Anwar. The public prosecutors and police had, on 2 September, filed several affidavits in reply to Nallakaruppan's affidavit. All that the prosecution could say in their reply to detailed complaints of police abuse against Nallakaruppan was one paragraph of bare denial, which ordinarily would have lacked credibility in any court of law. The prosecutors also filed a long affidavit by a senior police officer, which carried a litany of scurrilous and defamatory allegations against Anwar, ranging from sexual misconduct to corruption and treason. All the statements in the police affidavit were based on hearsay and did not cite any sources. Such evidence would not be acceptable, even in a civil case where the standard of proof is much lower.

It was then discovered that the Attorney-General's Chambers had forwarded these affidavits to the press, at the same time that they filed the documents in court but before they were served on Nallakaruppan's lawyers. His lawyers had asked for an adjournment of the case—which would, in fact, be to his detriment, as he would be kept in police custody in Bukit Aman for a longer period—which was necessary for him to file an affidavit in reply. The High Court judge, Justice Abdul Wahab Patail, denied the adjournment and ordered all parties to proceed. It is pertinent to note that this judge is the brother of Senior DPP Abdul Gani Patail, who would later be the chief prosecutor in Anwar's trial.

Nallakaruppan's lawyers applied to the judge to halt the publication of the police affidavits on two grounds: (i) that the affidavits had not yet been read in court, and (ii) that they were clearly intended for the purpose of assassinating Anwar's character in the media. The lawyers asked the judge to issue an interim order to stop the publication of the affidavits until full arguments could be heard on the issue. The judge refused and ruled that the affidavits were "public documents".

The government-controlled media immediately went into a frenzy, running special editions with the full texts of the scandalous affidavits implicating Anwar. Nallakaruppan was forced to issue a statement to deny the contents of the police affidavits, which had been published online. The judge duly ruled that the police could continue to detain Nallakaruppan in Bukit Aman. Most shockingly, the judge never dealt with the most important question raised by Nallakaruppan—that he was asked to sign, under duress, false statements against Anwar. The judge did not say anything significant about this. The police were apparently trying to get false evidence with which to implicate Anwar from as early on as August 1998, in order to justify the Prime Minister's action in sacking him.

Next came the issue of the confessions by Dr Munawar Anees, Anwar's friend, and Sukma Darmawan Sasmitaat Madja, Anwar's adopted brother, both potential state witnesses against Anwar. Bizarre circumstances surrounded the way in which confessions of sodomy had been obtained from Munawar, an internationally known scholar who used to write Anwar's speeches on a part-time basis, and Sukma, a businessman. On 19 September 1998, both pleaded guilty to having been sodomised by Anwar in separate Sessions Court hearings. They were each sentenced to six months' imprisonment.

Munawar was arrested earlier, on 14 September, and held *incommunicado* until he was produced in court. Sukma was arrested on

4 September, detained for 15 days and denied the opportunity to see a family-appointed lawyer. Munawar later filed an affidavit in court saying that he had been tortured. Sukma, subsequently, did the same.

Lawyers unknown to the families of Munawar and Sukma had been appointed to attend the so-called “confession” hearing. Munawar told his family that a Deputy Public Prosecutor (DPP) had appointed a lawyer for him. On the other hand, the lawyers who had been appointed by the families of both the accused were not allowed to meet the two men on the day of the “confession” and sentencing. It is interesting to note that although the proceedings were carried out simultaneously in two separate courts, identical sentences were handed down. Manjeet Singh Dhillon, a former President of the Malaysian Bar, who was subsequently appointed by Munawar’s wife to act as counsel for her husband in the appeal against his conviction and sentence, informed the press that it was unusual that both men—alleged victims of sexual crimes—were prosecuted, instead of the alleged perpetrator of the offence.

Several suspicious and irregular events took place after Munawar and Sukma entered their guilty pleas. When Sukma’s family-appointed lawyers attempted to see him at Kajang Prison, the police whisked him away to the Police Headquarters in Bukit Aman and his lawyers were denied access. The only lawyer allowed to see him was the one who had acted for him at the “confession” hearing—one Mohd Noor Don. Yet Sukma had expressly asked his sister to appoint him a lawyer. After Sukma was moved to Bukit Aman, his sister instructed the lawyers to file an appeal against his conviction and sentence, and complained that he was being pressured by the police to withdraw this appeal.

Immediately after his conviction, Munawar was warded in hospital for a serious heart ailment. His family-appointed lawyers were able to meet him in hospital and this enabled him to instruct them to file an appeal against his conviction and sentence. He filed an affidavit in court saying that after his appeal was filed, the police and a police-appointed lawyer, one Yacob Karim, kept pressuring him to drop the appeal.

Following the above episode, Mahathir made certain derogatory remarks against Anwar at a press conference on 22 September—two days after Anwar was detained. Mahathir said:

But he did not expect his own adopted brother and his friend will come out in the open and make this statement. They made this statement because I believe the police, who are Muslims, and those knowledgeable about Islam, pointed out to them that what they committed was a great sin

and punishable in the after-life and need to repent and recant [sic]. But it would seem that they decided they should “come clean”, even at the risk of their families being shamed by their confessions. What they said was the absolute truth. Anwar has not sworn in the mosque as he claimed. What he did was just to say “I swear”. And that is not good enough. The fact is that the man had for years been masquerading as a religious person and yet had been committing these things not today, not yesterday, but for years. (*New Straits Times*, 23 September 1998)

This was one of the many occasions, since Anwar’s sacking on 20 September 1998 that Mahathir had made derogatory remarks against Anwar in public.

Mohd Azmin Ali, Anwar’s former private secretary in his capacity as Deputy Prime Minister, was also not spared police pressure and abuse. Azmin was arrested by the police and detained for seven days. On 16 September, another member of Anwar’s staff, Mohamed bin Ahmad, Anwar’s private secretary in his capacity as Minister of Finance, was also detained by the police for seven days. Both men were interrogated by the police, who were only interested in facts relating to Anwar’s alleged “extra-marital affairs”. The circumstances of both these interrogations were clearly oppressive. Anwar believed that after he was dismissed from office, the police had been instructed by their political masters to gather information from his associates and staff that would justify his removal by Mahathir and that would “finish him off” politically.

Next came the arrests and detention, under the ISA, of political and non-governmental organisation (NGO) activists who were perceived by the authorities to be Anwar’s supporters. They were Ahmad Zahid Hamidi, UMNO Youth Chief; Kamaruddin Jaffar, Chairman, Institute for Policy Research and Head of UMNO Tumpat Division, Kelantan; Ruslan Kassim, Negeri Sembilan UMNO Youth Head and UMNO Youth Exco Member; Ahmad Azam Abdul Rahman, President of ABIM; Mukhtar Redhuan, National Vice-President of ABIM; Shaharuddin Badaruddin, Secretary-General of ABIM; Abdul Halim Ismail, International Vice-President of ABIM; Kamaruddin Mat Noor, State Assemblyman for Semerak and Head of UMNO Pasir Puteh Division, Kelantan; Amidi Abdul Manan, President of the National Muslim Students Association; Ahmad Shabrimi, Secretary-General of the National Muslim Students Association; Dr Sidek Baba, Deputy Rector for Student Affairs, International Islamic University; Asmaon Ismail, State Assemblyman for Panti, Johore; Dr Zambray Abdul Kadir, UMNO Youth Head of Lumut

Division, Perak; and Tamunif Mokhtar, Head of UMNO Bandar Tun Razak Division, Kuala Lumpur.

Other persons later arrested and detained under the ISA were UMNO Youth Culture Bureau Committee Member Lokman Noor Adam; UMNO members Mohammad Khair Noor and Abdullah Rashid Ahmad; Abdul Malek Hussin, former Secretary of PAS Youth; Zulkifli Noordin, a lawyer practising in Kuala Lumpur—he was detained on 29 September and would become one of Anwar’s counsel in the forthcoming trial—and Saari Sungib, President of Islamic NGO *Jemaah Islam Malaysia* (JIM), who was detained on 12 October. They were subsequently released as a result of national and international pressure but their release was conditional: they had to deny that while under detention, the police had subjected them to harsh treatment.

Even Anwar’s wife, Wan Azizah, had her share of trouble. Five days after her husband was detained, she was served with an ISA restriction order by the police prohibiting her from holding gatherings in her home. Except for family members, the press and those with invitations, visitors were barred from entering the house. Police set up roadblocks near Anwar’s house. This was the beginning of the many harassments that Anwar’s wife had to put up with.

Next, the Government banned all demonstrations in support of Reformasi—a movement for justice and democracy, marked by mass rallies and demonstrations against the Barisan Nasional government that had been initiated by Anwar and his supporters shortly after he was sacked as Deputy Prime Minister. In October 1998, the police publicly warned that anyone attending an illegal assembly—i.e. one held without a police permit—could be detained under the ISA.

Anwar Challenges Detention Order

At the time that Anwar was arrested and detained under the ISA, Mahathir was the Home Minister. Anwar was released from ISA detention on 14 October and placed on remand at the Sungai Buloh Prison, after having been refused bail, first by the Sessions Court and later by the High Court. Earlier, on 7 October, Anwar’s lawyers had filed a *habeas corpus* application in the High Court asking for his release. The application had been supported by a 22-page affidavit affirmed by Wan Azizah. The hearing came up for arguments on 28 October before High Court judge Abdul Wahab Patail, but Anwar was not allowed to attend.

At the outset of the hearing, Anwar's counsel Sulaiman Abdullah said that he had received affidavits affirmed by two police officers and the Deputy Superintendent of Prisons confirming that Anwar had been released from ISA detention on 14 October and had been placed on remand at the Sungai Buloh Prison immediately after his release. Sulaiman questioned the lawfulness of Anwar's detention despite his release, contending that the events, which had led to Anwar's arrest, were a chain of illegalities involving conspiracy between the Inspector-General of Police and the Government.

He argued that Anwar's arrest and detention, the charges brought against him, his transfer to Sungai Buloh prison and the subsequent hearing had all been tainted by *male fides*. He further submitted that there was a high level of conspiracy involved in the case, where "every possible law that could be broken had been broken, and every possible authority that could be misused had been misused". Sulaiman also complained that the authorities had failed to provide any interim findings on their purported investigation into Anwar's complaints. Senior Federal Counsel Kamarudin Mohd Said, in his reply, argued that Anwar's release would render the application redundant, as he was no longer under the custody of the Inspector-General of Police.

The judge ruled that there was no merit in Anwar's application as Anwar had already been released from ISA detention and was being remanded at the Sungai Buloh Prison.

Earlier, Sulaiman had called for Justice Abdul Wahab Patail to recuse himself from the case, on the ground that his brother, Senior DPP Abdul Gani Patail, was involved in cases connected to Anwar's case, and this, too, the judge had refused, saying: "This is a court of law and I like to run my court as a court of justice according to law."

One does not have to be a lawyer to appreciate the difference between "law" and "justice". The two concepts do not necessarily coincide.

Chapter 1

The Case for the Prosecution

Commencement of Trial

Anwar's long-awaited trial—*Public Prosecutor v Dato' Seri Anwar Ibrahim* (Criminal Trial Nos. 45-48-98 & 45-47-98)—commenced on 2 November 1998 at the Kuala Lumpur High Court.

The defence team comprised nine lawyers: Raja Aziz Raja Addruse as leading counsel, Aris Rizal Christopher Fernando, Gurbachan Singh Bannu, Sulaiman Abdullah, Pawancheek Marican, Zainur Zakaria, Kamar Ainiah Kamaruzaman, Zulfikli Noordin and Sankara Nair, while the prosecution was represented by three Senior Deputy Public Prosecutors: Datuk Abdul Gani Patail, Azahar Mohamed and Mohd Yusuf Zainal Abiden as well as three Deputy Public Prosecutors: Stanley Augustine, Nordin Hassan and Shamsul Sulaiman.

There was intense global interest in the case with diplomats and representatives from various international organisations such as Amnesty International, Human Rights Watch, International Commission of Jurists, LawAsia and the United Nations Rapporteur on Human Rights, as well as the Malaysian Bar applying to be admitted as observers on the first day of the trial. Some of these earlier applications had already been turned down by the government and many of those who lined up outside the court building from the early morning were disappointed when they discovered that the court had its own list of people who were allowed to attend. It appeared that, in terms of priority, members of the public came last. An unprecedented number of police officers were present in court and the others allowed in were members of Anwar's family and journalists, particularly those from the local press. Members of the public had to take turns to secure the few seats left.

Anwar's defence lawyers and a number of other legal practitioners had applied to the court to admit the representatives of international

bodies as observers. Unlike previous high-profile cases, such as the *Lim Guan Eng* case,¹ where such representatives were allowed to attend court as observers, Justice Augustine Paul rejected all such applications. Even the representatives of the Malaysian Bar—which had 8,000 members in 1998—were not allowed to hold a watching brief, i.e. to be officially accepted by the court as observers. After Justice Paul denied international bodies the right to be observers in the trial, the Geneva-based International Commission of Jurists (ICJ) sought a meeting with Malaysia’s Chief Justice. Adnan Buyung Nasution, an Indonesian Commissioner from the ICJ, commented: “The ICJ wants the trial to be open, free and impartial, in line with the principle of justice accepted by civilised countries. I hope Malaysia will adhere to that.”

At the start of the trial, ten charges were preferred against Anwar who pleaded not guilty and claimed trial. The prosecution said the trial would commence on the first four charges (see Appendix 2) and produced a list of 52 prosecution witnesses. A trial date for the fifth charge was to be decided later.

Evidence of The Police and other Public Officers

Evidence of SB Director Mohd Said Awang

The first witness for the prosecution was the outgoing Director of the Special Branch (SB), Dato’ Mohd Said Awang. When asked to describe the interrogation methods used by his officers to extract information, he gave a chilling picture of the role of the SB—a division of the Malaysian police force—in the psychological torture of detainees under the draconian ISA. The SB Director spoke of a “trade secret”—methods such as “turning over” and “neutralisation operation” used by the agency to force ISA detainees to change their stand.

Mohd Said was giving evidence on a directive that Anwar, as Deputy Prime Minister, had allegedly issued to the police, which instructed them to obtain written statements from the two people who had written letters

¹ In 1997, opposition Member of Parliament Lim was convicted under the Sedition Act 1948 and the Printing Presses and Publications Act 1984 after he criticised the Government’s handling of allegations of statutory rape made against the chief minister of a state. Lim was sentenced to 18 months in jail in a decision that was widely criticised. Amnesty International declared him “A Prisoner of Conscience” in 1998, after he lost his appeal in the Federal Court.

alleging his sexual misconduct. Anwar had vehemently denied this in his public speeches and, in turn, had alleged the existence of a conspiracy on the part of several high-ranking UMNO politicians out to destroy his political career.

When cross-examined by Anwar's counsel, Christopher Fernando, Mohd Said shocked the whole nation by admitting that he might lie in court.

Fernando : If someone higher than the Deputy Prime Minister were to instruct you to lie in court, would you do it?

Mohd Said : The point is no one asked me. It would depend on the situation. I may or may not lie.

Judge : What are the instances when you would lie?

Mohd Said : I would not know.

Fernando : You are a most unscrupulous man!

Mohd Said : That is counsel's opinion.

Fernando : I am justified in saying it from your own answer.

Mohd Said : Your questions are like that.

Fernando : When would you lie?

Mohd Said : I would not know.

Further questioning of Mohd Said followed.

Fernando : You admitted earlier that you "may or may not lie" depending upon the circumstances. I put it to you that you have an inclination to lie.

Mohd Said : I do not have an inclination to lie and I have already informed the court that I will not lie in this court before the judge. The original question asked by defence counsel was a theoretical question.

Fernando : Earlier you told the court that you may or may not lie if an important man were to ask you to do so. I put it to you that you have an inclination to lie.

Mohd Said : I have already answered it.

“The point is no one asked me. It would depend on the situation. I may or may not lie.”

Mohd Said Awang, when asked if he would lie in court

The Anwar Ibrahim trials during the late Nineties left the landscape of Malaysia’s judiciary forever changed. Convicted to a six-year prison term on charges that many believe to have been trumped up, Anwar has become the symbol of a new generation of Malaysians determined to seek truth and justice.

Anwar on Trial: In the Face of Injustice gives readers a cogent look into the detailed workings of the 1998 corruption trial of Anwar Ibrahim. Captured through the lens of a lawyer who was present throughout the proceedings, this book presents a first-hand account of the goings-on in court and outside it.

Pawancheek Marican examines the way that the Malaysian judiciary was systematically emasculated and turned into a pawn of the executive, the consequences of which will linger for many generations to come.

From the trial judge who forbade Anwar to argue his defence of conspiracy to the abuse of the Attorney-General’s chambers, this book lays bare the political machinations taking place behind the scenes by those in power to remain in power.

The information contained within this book comes at an opportune moment as Anwar Ibrahim faces yet another sodomy trial in 2009—this time, however, from the freedom of his own home and as the Opposition Leader and Member of Parliament for Permatang Pauh in Penang.



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