

RESPONSE TO THE LETTER TO THE EDITOR BY VIJAY SHANMUGAM
PUBLISHED IN THE NEW STRAITS TIMES ON 20 JANUARY 2010

I refer to the letter written by Vijay Shanmugan of Taiping entitled "*Move impinges judges' role*" in the New Straits Times on 20 January 2010 which had referred to the report entitled "*Move to end leniency in court*" on 15 January 2010. I was alleged by him to have said that my "[C]hambers would help the court secure the maximum sentence". I vehemently deny making such a statement. I have not made such a statement at any time or anywhere. It cannot be over-emphasized that the said report never mentioned that I had made such a statement. In fact, I advocate against any "*interference in the discretion of judges hearing such cases*", more so in respect of the exercise by a judge of his sentencing powers.

The said report ("*Move to end leniency in court*") actually quoted me to have said that my Deputy Public Prosecutors (DPPs) "*most of the time asked the courts to impose deterrent sentences.... The general rule for the Attorney-General's Chambers is to go for deterrent punishment..." and not that my Chambers "*would help the court secure the maximum sentence*".*

In fact, in the same report, it was also mentioned that a "*high ranking source in the judiciary told the New Straits Times that while the deputy public prosecutors (DPPs) could ask for a maximum sentence, often they left it at the discretion of the presiding judge to mete out punishments.*" This is consonant with my Chambers stand that we

uphold the principle of non-interference in the discretion of judges hearing cases. We entirely agree that judges should be independent in exercising their discretion when meting out sentences without fear or favour and in accordance with the law.

In this regard, let me clarify that my DPPs who appear in court are obliged to carry out their duties in accordance with the law. On that note, they adhere to the following:

“When an accused person has been found guilty and convicted, the court will proceed to impose sentence. The question of sentence lies solely on the court which has the right and the duty of deciding whether to be lenient or severe. In deciding what should be the appropriate sentence the court will consider the accused’s defence counsel’s plea in mitigation as well as any submissions the DPPs may wish to make.

Whether or not a DPP should press for a deterrent sentence depends entirely on the circumstances. In deciding whether or not to press for a deterrent sentence the DPP should take into consideration the following factors:-

- (a) Previous convictions and antecedents of the accused;*
- (b) Serious nature of the offence;*
- (c) Prevalency of such offences;*
- (d) Degree of violence used and deliberations;*
- (e) The effect a deterrent sentence will have on the accused as well as on others; and*
- (f) The public interest.”*

At this juncture, I am reminded of the principle pronounced by Justice Hilbery in his judgment in the landmark case of **R v. Ball [1951]35 Cr. App. R. 164** which decided as follows:

“In deciding the appropriate sentence a Court should always be guided by certain considerations. The first and foremost is the public interest. The criminal law is publicly enforced, not only with object of punishing crime, but also in the hope of preventing it.

*... Our law does not, therefore, fix a sentence for a particular crime, but fixes a maximum sentence and **leaves it to the Court to decide** what is, within that maximum, the appropriate sentence for each criminal in the particular circumstances of each case. Not only in regard to each crime but in regard to each criminal, the Court has the right and the duty to decide whether to be lenient or severe.”*

This principle has been adopted on many occasions by Malaysian judges. One such example is the case of **New Tuck Shen v. PP [1982] 1 MLJ 27**, wherein Justice Wan Yahya had said:

“The right to impose punishment on a guilty party is absolutely the discretion of the court. It will exercise that power judicially but will not tolerate any

encroachment or even semblance of encroachment either by the prosecution or the defence in respect of such right.”

Another case which is worthy of reference is **PP v. Darmalingam R Kandiah [1988] 2 CLJ (Rep) 227** which relates to an appeal against sentence by the prosecution. The counsel in that case had argued that the prosecution in the lower court did not seek a deterrent sentence. Justice Zakaria Yatim after referring to the case of **New Tuck Shen v. PP** decided as follows:

*“I shall first deal with the second point raised ...that is the Prosecuting Officer did not urge the President to pass a deterrent sentence. It is true that on the question of sentence the Prosecuting Officer merely said, “Leave it to Court.”... In my opinion, the Prosecuting Officer had done the right thing to leave the matter of sentence to the Court. **Sentences are within the absolute province of the Court....** The mere fact that the prosecution does not address the Court on the question of the amount of sentence to be awarded is therefore immaterial...”*

DPPs do request for deterrent sentence in specific cases. Such request is always made in accord with the facts and circumstances of each case. Then, it is left to the court to decide and to mete out the appropriate sentence. The courts are always guided by established judicial principles. At times, the court passes maximum sentence if the circumstances merits it.

With this, I must say that the letter by Vijay Shanmugan has the tendency to raise misconceptions amongst the public insofar as the independence of the judiciary and the fundamental principle of the separation of powers are concerned. In the circumstances, it is only appropriate that the writer of that letter apologizes unreservedly for misquoting me.

by

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