

LAUNCH OF THE PUBLICATION
“A CIVIL PRACTICE: GOOD COUNSEL FOR LEARNED FRIENDS”
Thursday, 10 March 2011

SPEECH OF CHIEF JUSTICE CHAN SEK KEONG

Members of the Singapore Academy of Law,
Ladies and gentlemen:

1. I am very pleased to be here this evening to launch a delightful book with an engaging title – *A Civil Practice: Good Counsel for Learned Friends*. The title is not “A Successful Practice”, or “A Criminal Practice”, but simply “A Civil Practice”, “civil” as in “civilised, polite or well-mannered”. It is an apt title for a small but substantial book which spells out in plain English a proud tradition of the English Bar which our own Bar has preserved.

2. Lawyers have a long and proud history of mutual courtesy and respect in the discharge of their professional duties. Shakespeare recorded this tradition in the 16th century when he wrote that whilst adversaries in law “[s]trive mightily”, they “eat and drink as friends”.¹ To strive mightily does not mean to strive rudely or uncouthly. All advocates know that the right to cross-examine a witness is not a licence to examine him crossly. Advancing and safeguarding the interests of the client is at the heart of the lawyer’s obligation and the essence of his craft. But, there are many ways to do it – some permissible, some not. There is no reason why the client’s interest cannot be advanced courteously, nicely, and even stylishly.

3. A US District Judge, Gene E.K. Pratter,² took Shakespeare's advice to heart when she ordered a lawyer who had resorted to cursing and name-calling at a deposition to have dinner with his opponent to repair their relationship. The judge also ordered that each pay for his own meal. I think the order would have more meaning if the culprit had been left to decide whether he should pay the bill – this would show whether he could be rehabilitated.

4. Forensic incivility is actually quite rare in our court proceedings. We, the judges will not allow it. But if and when standards start falling, we will know. We are a very small Bench. We lunch together every Wednesday, and so we know who is who, and who does what. However, I would like to assure you that since I returned to the Bench, I have not encountered a case of deliberate rudeness to me or to my colleagues. Of course, being the apex court, we are accorded a degree of civility that counsel knows must be accorded to us, if he wants an attentive and respectful hearing. I would imagine that the same degree of civility is accorded to judges in the High Court.

5. Our Senior Counsel are role models and perpetuators of this fine tradition of civility. Nowadays, no Senior Counsel or senior advocate appears in the High Court or the Court of Appeal without being accompanied by a phalanx of young juniors to assist him and also to learn from him. Junior lawyers tend to take their cue from their seniors. So let the senior advocates not lead them in the wrong direction. In the law, the path **not** taken is often the wrong path as the law is a well-trodden path. Let me give you two unedifying examples.

6. An Australian criminal lawyer, Colin Lovitt QC, was defending an accused before a Brisbane magistrate. When the magistrate made an evidentiary ruling against him, he turned to the press box and said in a

false whisper: "This bloke's a complete cretin." Later, when the magistrate made a ruling in his favour, Mr Lovitt turned to the press box again and said "I take it back. He is not a complete cretin". Mr Lovitt was cited for contempt of court, and fined \$10,000 and ordered to pay costs.³ Apparently, Mr Lovitt is known to prosecutors as "the Cowboy" and "the Embarrister".⁴ I think we have embarristers in our midst, but perhaps not cowboys.

7. The second example comes from the *Three Rivers case*.⁵ Gordon Pollock QC, an eminent counsel, represented the liquidator of the failed bank, BCCI, in a trial that lasted over a year.

8. When the trial judge, Tomlinson J, came to deliver judgment on the issue of costs, he said:

"Mr Pollock was only infrequently rude to me and I ignored it. Not everything said by Mr Pollock is intended to be taken seriously and sometimes his offensive remarks are the product of a well-intentioned but ill-judged attempt to lighten the mood. I propose to say no more about some of the things said in the course of the trial about the Bank, its officials and its legal advisers with the exception however of [opposing counsel]. Mr Pollock's sustained rudeness to his opponent was of an altogether different order. It was behaviour not in the usual tradition of the Bar and it was inappropriate and distracting. I should have done more to attempt to control it, although I doubt if I should have been any more successful than evidently were Mr Pollock's colleagues whom on at any rate one occasion I invited to attempt to exercise some restraining influence."

9. A long comment published in *The Telegraph* of 14 April 2006 contained these remarks:⁶

It [the case] failed spectacularly, partly because, far from impressing the court, Deloitte's advocate, Pollock, a man seemingly unchallenged by modesty, came over as a nut in charge of the cake mix, not least when insulting the judge.

To make matters worse, Pollock was scoring own goals with offensive remarks, aimed sometimes at the judge, but more often at his adversary, Stadlen. ...

What I know about courtroom etiquette extends not much beyond a few episodes of Perry Mason. Even so, having a pop at the bloke in charge doesn't seem like a winning move. ...

A leading QC, who followed the case, told me that he thought it was a public scandal. He said: "I disagreed with Tomlinson's savage criticisms [of Deloitte and Pollock], only in that I thought they were not trenchant enough".

Pollock QC is regarded as an exceptional advocate. But exceptionalism, especially for an advocate, is not a licence to be exceptionally discourteous or rude to the other side.

10. Civility is still the order of the day in the Supreme Court because more often than not opposing counsel are, by and large, of the same standing in terms of age and experience. They tend to treat each other as they expect to be treated. So, we don't have close encounters of the rude kind. However, the proof of the pudding is what goes on in the Subordinate Courts or in Chambers' hearings in both the High Court and Subordinate Courts where the registrars and Subordinate Courts judges may be younger and often have less experience than counsel appearing before them. The same situation applies to encounters between experienced criminal counsel and young DPPs. If our advocates pass the courtesy test in these situations, we have something to crow about.

11. A law school teaches law, but it is not a finishing school for the best practices and traditions of the Bar. Law graduates doing the PLC, or what is now Part B of the Singapore Bar Examinations, have thus far been

instructed in professional ethics. While this includes some pointers on professional etiquette, it does not go far enough. Ethics and etiquette sometimes overlap, but they are not the same. You can be ethical and rude, but also unethical but courteous. As Shakespeare wrote, "... one may smile, and smile, and be a villain".⁷

12. It is fitting that we have in attendance at this launch members from every section of the legal community. But I am especially pleased to see students from both of our law schools. This book is also meant for them as it provides a quick and simple introduction to how lawyers should behave and conduct themselves professionally. A better way to learn is, of course, to observe some trials to see how experienced lawyers do it when pleading their clients' cases. Look for cases where you have a role model to follow, and watch how he carries himself, how he addresses his opponent, how he addresses the court, and how he answers questions from the Bench. There are many good role models around.

13. Young lawyers may ask: What is the point of reading this book? Isn't it better to be rude and win a case, rather than to be civil and lose it? In theory, it is difficult to disagree with that proposition, except in real life these are not the true choices. When an advocate is rude, it may affect how the court thinks of his arguments. So it is better to lose your case and earn the respect of the judge and of opposing counsel, rather than to lose both your case and the respect of both of them.

14. This book puts the spotlight on the importance of civility in legal practice, and provides an introductory course to a professional life in court etiquette and manners. Many a time, an advocate may forget about the finer points of court etiquette either through lack of experience or disuse due to infrequent appearances in court. When a thing is done often enough, it becomes part of one's DNA. It will then come naturally.

15. Our young lawyers today are smart, and they are also smartly trained to question authority – by that I mean case authority. That is not a bad thing. A decision that cannot be justified or supported, either in logic, principle or authority is a bad decision. The law advances by this dialectic process of analysing and questioning legal reasoning and its assumptions. But that is a different kind of activity from doing it the right way. The rules of professional courtesy and good etiquette do not need any justification. They are self-evident rules. As was once said by a US attorney: “The small courtesies sweeten life; the greater ennoble it.”⁸

16. Courtesy is not only for lawyers. In June 1979, the then Ministry of Culture launched the National Courtesy Campaign to encourage Singaporeans to be kind and considerate to each other so as to create a pleasant social environment. Many here are old enough to remember the courtesy campaign, which was initially represented by a Smiley logo and had the slogan, “Make courtesy our way of life”. That is an injunction not just for 1979 or for today: it is a perpetual injunction.

17. I may also mention the attributes of a judge as seen by Socrates, who observed, “Four things belong to a judge: to hear courteously, to answer wisely, to consider soberly, and to decide impartially.” If a judge hears courteously, it is likely that he has been addressed courteously. Therefore, in addition to his arguments, a courteous advocate contributes to the judicial process by his manners. Today, I hope that with the launch of this book, courtesy will be enhanced as a way of life of lawyers in the best traditions of the Bar. We want litigants and witnesses to come away from the courts with admiration for our legal and professional processes and the manner in which their disputes are resolved.

18. Some acknowledgements are now called for. The SAL has many people to thank, and to congratulate, for producing this book, *viz.*, the Professional Affairs Committee, chaired by Justice V K Rajah, the Sub-Committee for Professional Courtesy and Etiquette, the contributors of the book, Mr Vinodh Coomaraswamy SC, Dr Stanley Lai SC, Mr Adrian Tan, Ms Teh Hwee Hwee and Mr Anand Nalachandran, as well as Associate Professor Locknie Hsu who has made the book an even more enjoyable read with ten witty illustrations. I think they have enjoyed writing and illustrating the book as much as I have enjoyed reading it.

19. Some concluding words – so keen is the SAL that everyone in the legal community should possess a copy, a first print run of 8,000 copies has been ordered so that every member of the SAL will be given a copy free of charge.

20. It now gives me great pleasure to present this book to the legal profession.

¹ The Taming of the Shrew, Act 1, Scene 2

² See <http://www.paed.uscourts.gov/documents/opinions/09D1141P.pdf> *Huggins v. Coatsville Area School District, et al*, United States District Court for the Eastern District of Pennsylvania (last accessed on 7 March 2011)

³ See <http://www.theage.com.au/articles/2003/09/12/1063341777507.html> (last accessed on 7 March 2011), *Attorney-General for State of Queensland v. Colin Lovitt QC* [2003] QSC 279

⁴ See <http://www.theage.com.au/articles/2003/09/20/1063625259328.html?from=storyrhs> (last accessed on 7 March 2011)

⁵ *Three Rivers District Council v The Governor and Company of the Bank of England* [2006] EWHC 816 (Comm)

⁶ See <http://www.telegraph.co.uk/finance/2936715/It-looks-Bleak-for-Deloitte-as-judge-says-case-was-a-load-of-Pollock.html> (last accessed on 7 March 2011)

⁷ Hamlet, Act 1, Scene 5

⁸ A quote from Christian Nestell Bovee, a late 19th century American author and lawyer. See [http://www.englishforums.com/open/Quotes,\(Author\)Christian-Nestell-Bov_E900_e.htm](http://www.englishforums.com/open/Quotes,(Author)Christian-Nestell-Bov_E900_e.htm) (last accessed on 7 March 2011)