Legal Reasoning and Techniques for Judicial Research Assistants: Practical Tips

By:

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Being:

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1. Introduction/Appreciation

Let me start by formally appreciating the highly esteemed Administrator of the National Judicial Institute (NJI), Rt. Hon. Justice RPI Bozimo, OFR, the Secretary of the Institute, the Directors of Study and Research, and indeed the entire management and workforce of the Institute for finding me less unworthy to participate at this important workshop and at the exalted position of making this presentation. Immense

thanks for reposing this uncommon confidence in my little self.

To the learned Research/Judicial/Legal Assistants attending the workshop, I say, congratulations on your selection by your various judiciaries to represent them here and now. I sincerely wish you all, fruitful deliberations and productive participation.

Now, on the topic, I will start by stating that legal reasoning is an aspect of practical reasoning which leads to resolution of dilemmas, controversies, conflicts and indeed all forms of challenges that life is capable of generating.

On the other hand, Judicial/Research/Legal assistants, by their calling and employment, work closely with judicial officers whom they assist to attain the end of justice. They are like guardian angels to their principals (Judicial Officers). In that capacity therefore, they need the tools of work that will enable them be effective assistants to their said principals. If they are to be that effective, they must be well equipped with requisite practical tips on how the minds of judicial officers work. These will enable them understand and appreciate where and how to be of effective assistance to their said principals, hence this discussion.

2. Law as the fundamental tool of judicial assignments

The concept of law is essentially complex. Consequently, it hardly admits of one straight forward definition as can be made of a simple idea, like say, the notion of shelter. It is in this sense that experts on jurisprudence[1] have, in the course of time, proposed several (different) definitions of law. A leading authority on jurisprudence, J.M. Elegido[2] justifies this curious phenomenon by asserting that the said many different definitions of law, **"reflects the fact that law is a very complex phenomenon which can be studied from many different stand points".**

Still, according to him, **"often, the fact that two writers propose different definitions of law does not mean that their ideas about it are incompatible, but simply that each of them, often for quite legitimate reasons, wishes to emphasize different aspects of the same reality"[3].** This observation is correct; immutable. There are statutory laws, common law concepts, doctrines of equity, customary law, Islamic law, canonon law, grund norm (that is the constitution) etc. These are the different faces of law. There are also the different schools of thought of jurisprudence[4], that is, different philosophies of law. Writers who approach the

[1] Jurisprudence is the study of legal philosophies and legal theories.
[2] See, Elegido, J.M., Jurisprudence (Ibadan, Nigeria Spectrum, 1994) P332.
[3] Elegido, Ibid.
[4] There are for instance, the positivists, the realists, as well as natural schools of thought in jurisprudence.

definition of law from these varying stand points and perspectives are bound to throw up different definitions that may not be essentially and mutually incompatible and yet can impact on judicial decisions differently.

However, in the context of our present discussion, it is considered more expedient to adopt the simplified literary approach. To that end, we adopt here the literal definition of law as made by Webster Comprehensive Dictionary and proceed there from. It gives the meaning of law as, **"a rule of conduct, recognized by custom or by formal enactment, which a community considers as binding upon its members; a system or body of such rules ..."**[5]

Law, in this general (definitive) sense is thus presented as the ultimate, foundational factor in societal formation. This is particularly true of Nigeria which is a direct creation of law. Analogical to the biblical story of the creation of the world by the law of God's words[6], it was by the words of law that Nigeria came into existence. Certainly, the gradual evolution of Nigeria started with the Treaty of 1861 by which the King of Lagos, Oba Dosunmu, ceded Lagos to Britain and thus granted the Queen of England, full sovereign powers over the Port and Island of Lagos. That treaty was effective and respected by other European countries

[5] See, the New International Webster's Dictionary of the English Language (Encyclopedic edition, 2010) p722.
[6] See, Genesis, chapter 1, Good News Bible, Catholic edition, pages 4-5.

then scrambling for African territories because it was a law of a sort, albeit, international law[7]

It was therefore on account of the 1861 treaty that the British government symbolically hoisted the British flag, the Union Jack, to herald the epochal commencement of a long period of imperialism which extended into the later years of the 20th century. The point of emphasis here is that even colonialism as a form of government in a modern state was authenticated and legitimized by law. It was for this reason that the struggle against it, for its cessation, later took the form of agitation for another law to nullify it. The desired change came handy in 1960 when, in July of that year, the British parliament enacted a law, the Nigeria Independence Act, 1960. The Act provided *interalia*, that the date for the declaration of independence for Nigeria would be 1st day of October, 1960. And it came to pass!

An insight into the creative and authoritative characteristics of law is illustrated by a crucial section of the said Act[8] which formally declared that Her Majesty's government in the United Kingdom would no longer have responsibility for the government of Nigeria; with effect from 1st day of October, 1960. It was the legal magical effect of that provision of a

[7] Treaties are recognized aspect of **"Juscogens"** – a concept which refers to those international norms from which no derogation or breach is allowed. See, for instance, the Vienna Convention on the Law of Treaties, 1969, Article 53.

[8] Section 1(2) (a), Nigeria Independence Act, 1960 of Great Britain.

British Act of Parliament[9] that, **"brought to an end, the powers of both the British parliament and crown"[10]**. This Act contrasted with the Foreign Jurisdiction Act, of 1890 and 1913 by which the British Government got the legal power to legislate on and for Nigeria.

Law makes and unmakes, hence, whereas Nigeria's occupation, amalgamation and eventual colonisation[11] were effected by legal instrument (law), so was its attainment of a formal independence. Infact, by section 3 (1) of the Nigeria Independence Act, 1960, the legal status, as well as the name of the country were formally altered and repositioned from **"the colony and protectorate of Nigeria"** to **'*Nigeria*'** simpliciter. Again, this is illustrative of how drastic, fundamental and inevitable law can ultimately impact on the modern society. It is to law that we owe all the features of a typical state apparatus of today.

Abuja, as the Federal Capital Territory (FCT) of Nigeria has the peculiar feature of being the only city in the world exclusively created by law. Every other city gradually evolved from one small settlement and expanded steadily later. This feat (that is, the creation of Abuja city) was accomplished by the then Federal Government of Nigeria, vide the Federal Capital

[9] Another kind of law.
[10] See, Nwabueze, B.O., A Constitutional History of Nigeria (Lagos, C. Hurst & Co. 1982) p61.
[11] In 1914, the Northern and Southern Nigeria were amalgamated by the letter patent, 1914, hence the 1914 Constitution of Nigeria

Territory Act, No. 6, 1976, now cap. F6, LFN, 2004, section 1 (1) – (3) thereof.

The importance and purpose of law is even more pronounced in the area of criminal justice. The Constitution of the Federal Republic of Nigeria 1999 is the nation's grund-norm – that is, the most fundamental law, from which every other law derives its legitimacy. It provides in its section 36 (12), that **"a person shall not be convicted of a criminal offence unless that offence is defined and the penalty thereof is prescribed in a written law".**

Nigeria is not isolated in this legal prescription. It is a global phenomenon. Crime is as created and/or defined by law, hence the Osborn's Concise Law Dictionary[12] defines crime thus:

> **A crime may be described as an act, default or conduct prejudicial to the community, the commission of which by law renders the person responsible liable to punishment by fine or imprisonment in special proceedings normally instituted by officers in the service of the crown.**

One of the far reaching implications of the codification of crimes in Nigeria as in other parts of the world is the abolition of customary or traditional criminal law system. This resulted in the decision in ***Aoko vs.***

[12] 8th edition, pp99-100

Fagbemi[13] to the effect that no act or omission can be declared as criminal if it is not prohibited by any statute. It was a case whereof adultery, 'though a reprehensible and immoral conduct in Southern Nigeria, was held not to be a crime because it was not so declared by the applicable criminal code.

It was in that sense that a foremost English jurist, Lord Atkin, handed down the very radical dictum in the case of ***Proprietary Articles Trade Association vs. A.G for Canada***[14], that:

> **The criminal quality of an act cannot be discerned by Intuition, nor can it be discovered by reference to any standard but one; is the act prohibited with penal consequence? This is, I think, the true test for criminality.**

From the foregoing expositions, it has been shown that it is in the purview of law to lay down policies and guidelines that are at the root of societal super structure as well as its sustenance. In the specific area of criminal justice, the law does not only create and define crime, but also creates the procedural framework for its administration. To that end, key players in the justice sector are greatly circumscribed and limited by the tenets of the applicable law.

[13] (1961) All NLR, 400
[14] (1931) AC, 310

Judicial/Legal Research Assistants must therefore be particularly well acquainted with specific laws, legal principles and rules relevant to the cases handled by their principals; that is, the judicial officers they assist. Indeed, it goes without saying that unless such assistants are conversant with such relevant legal instruments and norms, they would be of no meaningful value to their principals.

It behoves them therefore, to be essentially research oriented to discover the laws and rules relevant to the cases they assist their principals handle so as to produce the desired results of quick and efficient dispensation of justice through well researched judgments of their Lordships at whose immediate services they (research assistants) are deployed to work.

This point can be better appreciated if we recall that the Webster's Dictionary defines **"lawyer"** as, **"one who practices law ..."** Thus, the lawyer, (which a judicial/legal/research assistant personifies in the present context) is the person trained and lincenced to discover the law and deploy it for the attainment of justice in the society. In the present context, the judicial/legal/research assistant is expected to deploy his training as a lawyer to assist his principal – the judicial officer – in his attainment of justice, vide his judgments and decisions.

To further drive home the point on this segment of the discussion, it is necessary to state in the outline, the description and synoptic configuration of the term **"justice"**. Justice stands for fairness, justness and equality of treatment of members of the society. A discussant on the term captured the underlining essence of justice in the following lucid passage:

> **If you asked a group of people what the idea of justice conjured up in their minds, most would probably tell you it made them think of a criminal getting punished. This is sadly a limited and negative conception of justice. The classical understanding, by contrast, held up justice as that noble virtue by which we give others what is their due. The just person is always sure to fulfill his obligations towards everyone. He sees to it that he does not withhold what rightly belongs to another"[15]**

It therefore follows that justice is dependent on law; since it is the law that stipulates what is due to each person in the society. Consequently, the lawyer, or better still, the judicial/legal/research assistant, if he knows the law (as he is expected or presumed to know) should assist his principal identify it and apply it to the cases he handles. Good appreciation of the extant law is therefore the first and most important tool a

[15] Culled from catholic News Agency, courtesy of: http/www.school of faith.com

judicial/legal/research assistant should possess for effective and effectual performance.

3. Legal Concepts

Another class of tool lawyers and judges unavoidably use to perform judicial functions, also needed by judicial research assistants are legal concepts. Professor Elegido captures the point very lucidly in the following passage in his book, jurisprudence:

> **A peculiarity of legal reasoning is that it proceeds, so to speak, in a roundabout way. Laymen are often struck by the fact that lawyers (primarily judges) do not decide cases by considering directly the merits of the possible alternative solutions to them; instead they try to see whether the case fits into some predetermined categories or legal concepts' and then they decide it according to the category or concept under which it falls![16]**

In other words, whereas the uninitiated look for the immediate political ad economic solutions in or implications of every judgment, the legal mind is in search of the legal concepts that underscored or justified it. This is partly the reason for the surprises and confusions that certain judgments throw up in the minds of the general public which the press tends to

[16] Elegido, op. cit, 313

unduly orchestrate and blow out of proportion. That is also partly the reason for the mystery that shroud legal practice, court judgments and even substantive law in their states and operations.

Judgments, by their natural states, are given by judges strictly on legal definitions, legal concepts, independent of their social, economic and political implications. If the law as interpreted with the aid of legal concepts persistently produce adverse socio-political or even economic effects, the onus is that of the legislature to deliberately review it and radically intervene in the form of new statutes or amendment of existing ones to achieve the desired goal. This is what judges try to find out when they employ the services of mischief rule of interpretation. On this, Obeagu wrote as follows:

> **This rule (Mischief Rule) formulated from the Heydon's case[17] is to the effect that in construing the statute, the court must look at the genesis or history of the enactment itself, its progress through parliament and the debates and discussions which produced it for the court to consider these things in order to discover the true intention of the legislature or parliament. In order to achieve this end, the court must consider four things for sure and true**

[17] (1584) Co. Rep, 7a; 76 ER, P637.

interpretation of all statutes: what was the common law before the Act(?) what was the mischief for which the common law did not provide(?) what remedy the parliament or legislature has resolved to cure the disease (i.e, the mischief or problem) of the common wealth (society) and the true reason of the remedy. The court having made determination of the above questions must proceed to interpret the statute law in such a way as to suppress the problem (mischief) and free the society from its negative effect[18].

The way concepts compliment law is to help streamline rules of law; thus the existence of legal concepts makes for clearer predictability of definitive law on issues and matters. To avoid undue duplication of **"rules"** therefore, it is necessary to develop and operate with concepts. In this context, concepts stand as the broader philosophical basis that underscore decisions of courts. Rules, on the other hand, are specific cannons that apply to specific situations, matters and issues upon which conflicts arise, necessitating that in every controversial issue, there must be a specific rule. Legal concepts exist to moderate such needs.

The following illustrative instance by Elegido appears to clarify the point better:

[18] See, Obeagu, C.C., Rudiments of Legal Method in Nigeria (Enugu, Nigeria, Celex publishers, 2008) p295.

we have some general rules which determine when a contract does exist and further rules which determine the conditions under which a party to a contract is liable to the other party. Because of the existence of these rules, if there is an accident in a train as a consequence of which the luggage of a passenger is damaged, a lawyer will easily be able to inform that passenger whether or not he can recover from the railway company. If the lawyer is competent and the case is not extremely unusual, that advice will be reliable. But if the 'concept' of contract did not exist, for the lawyer to be able to inform the passenger on his rights and liabilities in such a case, there would have to be rules which specified in details the liability of railway companies whenever there is accidental damage to luggage, and rules for liability of railway companies whenever there is accidental damage to luggage, and rules for liability of air transport companies in similar circumstances and rules for bus companies, for 'truck – pushers' and so on. Not only this, in respect of railway companies, there would have to be rules for harm to luggage, different rules for harm to persons, and still different rules

for harm to persons, and still different rules for harm to pets, etc[19].

This way, rules would continue to multiply and diversify as new issues and transactions are coming up in response to the continuous evolution of society. Concepts therefore are formulated to check the drift. In the very words of Elegido, **"the only way to avoid having millions upon millions of different rules is to generalize and speak in terms of broader concepts like 'carriers', 'contracts', and so on".[20]**

With the establishment of several broad concepts, other issues or matters that evolve but which cannot fit into the templates or platforms already erected by the existing concepts are viewed as **"novelties".** In dealing with them, the judge is at liberty to use his discretion very wisely to attain the cause of justice, equity and fairness in his decisions. In consonance with this existential legal reality, Lloyd posited, very lucidly as follows:

... legal principles and concepts establish a broad framework setting out the general line of approach which the court will be disposed to adopt without necessarily depriving it of all freedom of manouenvre in particular cases. From the present point of view, nevertheless, the

[19] Elegido, op. cit, p315.

[20] Elegido, Ibid; citing the discussion of N. Mac Comick in "Law as an International Fact", (1974) 90 Law Quarterly Review, 102, pp 103 – 14

importance of the conceptual approach lies in this, that the court starts off with a strong disposition to move in a particular direction...

... the danger only arises when the court ceases to recognize that it still retains some freedom of action within this framework and that it is a question of policy how far such freedom is exercised or not.

The moral here is that legal research assistants should always endeavour to assist their principals (judicial officers) find out the most appropriate concepts upon which the cases they handle can be adjudicated and judgment entered. A legal research assistant so well informed will be of invaluable relevance and utility to their principals. He knows that in the event of a case where no clear concept has already evolved, the judge should make a good utilization of his judicial discretion. He would then advise and assist his principal accordingly.

4. Legal Principles

Principles are public policy considerations which a court can fall back on in the absence of clearly defined rules on a given set of facts which it has to decide upon. Eligido[21] illustrated the point with the case of

[21] Op.cit 324 – 325.

Home Office vs. Dorset Yatch Co. Ltd.[22] There, some boys living in a borstal home escaped one night and did extensive damage in the respondent's club. The novel question was whether the Home Office owed any duty of care to members of the public to prevent the escape of boys from borstal homes. As rightly observed by the analyst, **"there was no previous authority for the existence of such a duty, but a majority in the House of Lords took the 'neighbour principle' as being enough supporting ground for a decision in the respondent's favour, even though the neighbor principle in *Denoghue vs. Stevenson*[23] is not part of the ratio of the case and therefore is not a rule of law in a Strict sense**".

Continuing the illustration, Elegido[24], submitted, **"at the same time, precisely because the neighbor principle is only a principle and not a rule, a court may decide not to apply it when it thinks that other competing principles should be given preference in a given situation. An example of this is provided by the decision of the House of Lords in *Rondel vs. Worsley*[25]**. The question that had to be decided in that case was whether a barrister owed a duty of care to his client in respect of his presentation of the client's case in the court. In spite of the existence of the nighbour principle, the court decided

[22] (1970) A.C., 1004
[23] (1932) A.C. 562
[24] Ibid.
[25] (1969) AC, 191

that there were other important principles and reasons which should be given priority in the circumstances of that type of case, like the need to have finality in litigation and the need to protect the position of a barrister as an officer to the court".

It needs to be added that principles can also be the basis of certain legislations. As such, when the courts take decisions on the said legislations, they invariably invoke and apply the principles. A good example of this point is the principle guiding the order for custody and maintenance of children. Generally, it has been to view the welfare of the affected child or children as paramount. Every decision or order in that regard is usually weighed against the ultimate welfare of the child. This is in line with the provisions of the Matrimonial Causes Act. We see such decisions in ***Williams vs. Williams***[26], ***Nzelu vs. Nzelu***[27], etc.

An illustration of the flexible nature of principles is the fact that there is a growing trend not to follow the principle of the pre-eminence of the welfare of the child where he (or she) is a product of customary marriage; especially if custody question is a direct offshoot of a suit for the dissolution of customary marriage. In such cases, parental right is accorded a more prominent consideration over and above the interest of the child. This is usually more so in some parts of Nigeria where the culture is highly paternalistic. We

[26] (1988) 1 QLRN, 122 at 123.
[27] CA/B/109/95 (The Reported in Punch Newspapers of 1st Day of September, (1997) P. 18.

see this principle applied in an oturkpo Grade 1 Area Court in ***Ede Ode vs. Opinta Ogale***[28], which held that a child whose paternity is not customarily legitimate is bound to remain with the mother until he grows up.

The essential point is that in deciding the principle to adopt for the determination of a case, the court looks at the established facts and chooses the principle that is most suitable for the justice of the case. In other words, the proposition that is most applicable to the facts of the case before it.

The implication is that principles are, by their nature, flexible as they depend on fluctuating variables. They are of persuasive effects to the courts, thus Ronald Dworkin succinctly sums it with these words:

> **All that is meant when we say that a particular principle is a principle of our law is that the principle is one which officials must take into account, if it is relevant, as a consideration including in one direction or another[29].**

Obeagu compared Rules and Principles and came up with the following as the differences between them:

1. A principle is a broad or comprehensive proposition of law which forms the basis or source

[28] Suit No. MD/410/1977, Reported in Agu and Odike, Modern Nigerian Family Law and Succession (Enugu, Vougasen Ltd, 2003) 44.

[29] R. Dworkin, Taking Rights Seriously (London 1977) p. 26 cited in Obeagu, The Rudiments of legal Method in Nigeria, op. cit, p. 157.

for the development of legal rules. On the other hand, a rule is narrow or specific proposition of law derived from a principle.

2. A rule of law is decisive in the particular matter in controversy when it is relevant while a legal principle merely inclines (i.e influences the court) to one way or the other when relevant.

3. A rule must operate or apply only if certain condition(s) precedent(s) is/are met. Conversely, a principle does not necessarily operate upon the fulfillment of any antecedent condition but may still weigh in the mind of the judge before he reaches a decision.

4. Courts are bound to apply rules once they apply in any given case or situation unlike principles which are merely persuasive on the judges[30].

I agree. Rules and principles are veritable tools in the hands of judges for the effective determination of cases before them. Legal Research assistants therefore should be disposed to assist their principals (their judicial officers) discover them so as to use them to attain justice in their cases.

5. Practical Tips for Effective Legal Research Assistance

Having laid out in some details, the essential constituents of judicial functions as performed by

[30] Obeagu, C.C., **The Rudiments of Legal Medod in Nigeria**, (Enugu Nigeria, Celex Publishers, 2008) 157-158.

judicial officers, it remains to list out, albeit in the outline, the various ways and dimensions legal research assistants can be of practical assistance to their principals – judicial officers. They include as follows:

(a) Nature of the case. The legal research assistant should be well acquainted with the nature of the case as well as the established facts of same. Without this, he can hardly be of any meaningful use to his principal in the case.

(b) In the same vein, identification of the laws applicable to the facts and nature of the case is of utmost importance. The legal research assistant most be ever keen to find these out and work on them.

(c) Similar to this, is discovery of decided cases and other relevant authorities applicable to the case at hand. This, the research assistant must endeavour to do with utmost dexterity and commitment.

(d) In the event of conflicting decisions of the appellate courts (like Court of Appeal and Supreme Court) on a given rule, principle or set of facts, the researcher should strive to find out the following and advice his principal accordingly:

    (i) Distinguishing facts, if any, between the conflicting appellate decisions on one hand

and between the said decisions and the instant case on trial on the other hand.

(ii) The latest of the conflicting decisions and

(iii) Which of the decisions best serves the interest of justice, given the peculiar facts and circumstances of the case at hand.

(e) In the event of the absence of local (Nigerian) authorities on the case on trial, the researcher should look for foreign, especially common wealth decisions, that could be of strong persuasive importance and advice his principal accordingly.

(f) Also of great relevance is the human rights dimension of every case. The researcher must necessarily help his principal sift this out and draw attention to it for the sake of the need for justice, which, as already hinted above, should be the bottom line of every judgment or decision.

(g) In other to achieve the foregoing targets, the importance of books and wide readership of them by legal research assistants cannot be over emphasized. These are strongly suggested.

(h) Aside of these, other practical steps the researcher must endeavour to take are thus:

(i) He should always take time to summarise the facts and evidence adduced by witnesses in the case.

(ii) From his detailed knowledge of the case, help suggest to his principal, issues for determination in the case.

(iii) Similarly, read, summarise and analyse the written addresses of learned counsel to the parties in the case.

(iv) Help his principal in evaluating and making findings out of the facts of the case and go further to make honest and confidential recommendations to his principal. Of course, his principal knows that such suggestions are only advisory as the researcher simply works behind the scene while the whole judicial responsibility is on him (the judicial officer) and not shared with any other person or authority.

6. **Recommendations.**

From the foregoing elucidations so far, it is obvious that legal research assistants are of invaluable utility in the judicial process of this country. To reposition them therefore and make maximum utilization of their potentials, I dare to put up the following recommendations to concerned authorities:

(a) Enhanced emoluments to effectively motivate them. In this wise, it is hereby suggested that all the terms and conditions of employment applicable to learned Magistrates and Law officers

in the Ministry of Justice be made applicable to legal research assistants who must all be lawyers called to the Nigerian Bar and thus qualified to be Magistrates and/or law officers.

(b) Full time engagement of legal research assistants by their principals – the judicial officers. By this, I call for judicial officers to whom legal research assistants are assigned to always keep them positively busy by remembering to delegate specific research duties to them. This way the research assistant will rapidly grow on the job and impact more on the system.

(c) Promotion to judicial officer position. It is recommended that legal research assistants should be regularly considered for appointment as judicial officers, once their years of cognate experience reach the required standards. This way, they are better motivated as they see a goal to advance to.

(d) Regular in-service trainings. Workshops, seminars and conferences as the one currently in session are highly recommended to constantly re-tool and re-sharpen legal research assistants for maximum performance.

(e) For the legal research assistants themselves, it is hereby highly recommended that they find reason to motivate themselves and constantly engage in private studies and above all, apply themselves

diligently to any assignment they are given so as to consistently record successes in all such endeavours. In this respect, PPPF formula is a **"Sine-qua-non"**. It is, **"Proper Planning Prevents Failure"**.

7. Conclusion.

We have, by these reflections, tried to show that legal research assistants are of immense importance in the judicial sector of this country; that they are truly needed to assist judicial officers attain justice in their judicial functions. We have equally given in synopsis, the essential areas they are most needed as well as made recommendations on how their potentials can be fully tapped into for maximum utility. It remains to once again heartly thank the authority of the National Judicial Institute (NJI) for providing this window of opportunity for the said reflections. In the same vein, I thank the esteemed audience (participants, organizers, etc) for your cooperation and rapt attention. I equally regret and apologise for all the ways your high expectations from the paper and/or its presenter were not met. Please bear with us. It's just in the nature of human elements to be imperfect. Again, thanks for everything!!