

# Opening of the Legal Year 9 January 2008

## Remarks by the Chief Justice

The Honourable Sir Burton Hall

**[C]haos in any society provides the cover for criminal activity. Crime flourishes when the environment makes it conducive for persons to behave in a particular way. This inevitably occurs when we fail to enforce our laws, particularly the *small* laws. Just simply knowing that the police seldom respond with alacrity, criminals become emboldened in the knowledge that the chances of getting caught are slim.**

**. . . How many of us sit and watch (probably in anger) as a motorist drives on the shoulder . . . and cuts you off at the traffic light? The only reason he does that is because he knows that he will get away with it. Throughout the country this situation repeats itself thousands of times daily. What is being ingrained into the psyche of our people is that lawlessness pays. The consequence is a culture of lawlessness. The sad thing is that we know the solution, yet it eludes us.**

**You see, we have created the environment that permits these persons to do what they do with impunity. We have created the conditions of lawlessness. We permit and encourage lawlessness. However, the day we insist, seriously insist, that a police officer be assigned to pull over those motorists who drive on the shoulder and charge them with reckless driving, is the day that we begin taking back control of our country. It is the day we begin to develop a culture of respect for laws and law enforcement. It is the first step towards the eradication of crime.**

**If therefore I seem to dwell on the traffic courts it is because we must begin somewhere. We must begin with the small laws and so remove the cover that aids the commission of greater crimes.**

My Lords, My Ladies  
Madam Attorney  
etc,

Today is the seventh occasion on which, as Head of the Judiciary, I have the pleasure and the duty to welcome you and thank each of you for showing us the courtesy of taking the time to share this occasion.

I thank the Very Reverend Patrick Adderley, Dean of Christ Church Cathedral, for allowing use of the Cathedral for our annual official service.

The theme of his sermon, that there is no island of refuge in the time of plague, the “plague” in our case being the upsurge in offences against the person and other anti-social activity, echoed the reminder of the Most Reverend Patrick Pinder, Archbishop of the Catholic Archdiocese of Nassau, at last Sunday’s traditional “Red Mass”, invoking the guidance of the Holy Spirit on the work of the courts, to which we had been invited by His Grace, that we will see little improvement in the rising tide of serious crime until we accept that we all share responsibility for the rapid dissolution on Bahamian society by “every incivility . . . every failure to follow the rules, every failure to do our duty”.

I thank the Commissioner of Police for the usual excellent presentation of the guard of honour by the Internal Security Division accompanied by the Force Band and for the facilitation of our procession by the Traffic Division.

Under the Supreme Court Act, the Commissioner of Police is the Provost Marshal of the Court. It is for that reason that he sits with the Court on occasions such as this and today, being the first occasion for the present acting office holder, Mr Reginald Ferguson, to attend, I congratulate him on behalf of the judiciary.

As I have previously explained, this military title of “Provost Marshal”, that is, an army officer in charge of military police, was, historically in The Bahamas intended to convey that he is the “sheriff” (in the British rather than popular American use of the term) responsible for carrying into effect the orders of the Court, from the seizure and sale of property to the execution of persons under sentence of death.

In practice, most of these duties are carried out by the bailiffs of the Court and I have devoted much time over the past six years in continuing dialogue with his office and the other relevant agencies to establish a process to consolidate the responsibilities of the Provost Marshal (by whatever title new legislation styles him) for the oversight of the security division of the courts, a regime still being developed, a component of which is the assignment of aides to all judges.

The past year has been characterised by the continuous clamour that the authorities take drastic action to halt the rise in violent crimes and offences against the person and the judiciary has been the focus of attack by the clamouring and chattering classes despite the assiduous efforts of judges over the years to use these occasions of concern as teaching moments to explain to the public the responsibility of an independent judiciary in a society ordered by the rule of law.

The constant din tends to drown out the voices of rationality who take pains to point out that crimes of violence against the person cannot be isolated from offences of dishonesty and other expressions of social disorder which also plague the society and which serve as the incubator for the offences which grab the news headlines.

I commenced my remarks with an excerpt from the opening address of my brother Chief Justice, Mr Justice Roger Hamel-Smith, Acting Chief Justice of the Republic of Trinidad and Tobago at the opening of their 2007-2008 "Law Term" on 17 September 2007. In that address, he proposed certain measures aimed at enhancing the efficiency of the criminal work of the courts and I will return to his suggestions as I conclude my remarks which, as usual, I begin by highlighting certain specific aspects of the work of the courts during the past year.

### **Computerisation**

When I assumed office in September of 2001, the process for implementation of THE BAHAMAS INTEGRATED JUSTICE INFORMATION SYSTEM (BIJIS) had already begun and, on this occasion in 2002, I reported that:

In February of 1999, the Prime Minister appointed a Steering Committee to, *inter alia*,

- Set goals for the development and implementation of an integrated justice information system in consultation with all agencies and groups which contribute to or use such information system and to approve a strategic plan for the system.
- Define the requirements necessary for an integrated justice information system and to determine the specifications for the design of software programs to meet those particular requirements
- Identify and agree on any business changes that may result from the implementation of the system

[Two judges had been] appointed to co-chair the Steering Committee. Other members appointed to the Committee included officers from the five justice agencies, namely, the Judiciary, the Office of the Attorney General, the Royal Bahamas Police Force, H.M. Prisons and the Department of Rehabilitative/Welfare Services (Probation Division) along with [the then] National Information Technology Coordinator from the Ministry of Finance and [two members] of the private Bar.

After . . . several months of meetings, the Committee, with the assistance of . . . a Court Management Consultant from the United States, developed a Request for Proposals (RFP) and a Strategic Plan for the Bahamas Integrated Justice Information System (BIJIS) which were submitted to the Prime Minister and the former Chief Justice for approval in March of 2000.

Upon receipt of such approval, the RFP was submitted to tender and, on May 21, 2001, the Steering Committee accepted a bid from IBM Bahamas Limited and its business partners, Professional Computer Software services Inc. (PCSS) for the development of software to meet the needs of BIJIS. The software system selected is called Judicial Enforcement Management Software (JEMS®).

IBM Business and Organisation Consultants conducted a business and organisation assessment during the month of December and tendered its final report on December 19, 2001 [and subsequently] a new IBM AS/400 computer was . . . installed . . .

The estimated cost of the project is \$2.5 million and the estimated completion date is May 2003.

A year later, I was obliged to state:

My greatest disappointment is the fact that, primarily due to the lack of the necessary administrative and technical personnel, this 2.5 million dollar exercise has slowed to a crawl and that it will be some time yet before The Bahamas joins the ranks of Jamaica, Trinidad and Tobago and the Eastern Caribbean . . . in having a “computerised” court system; it always being borne in mind that this exercise is far more complex than merely providing computers for persons, even when there is functioning internet capability.

In 2004, I reported:

Despite our repeated petitions, no progress has been made during the past year.

It should be obvious to all that “computerisation” is much more than putting computers in offices and if the court, the lifeblood of which is record keeping, is to efficiently manage the millions of bits of information which flow through it, not only in Nassau and Freeport, but from each population centre from Bimini to Inagua, not only must the hardware be in place but there must exist the skilled personnel to maintain this protean technology. Information technology cannot function for the courts without its dedicated administrative and support staff and the inability of the Executive, having purchased the computers and the software, to supply the necessary staffing means that the large sums money previously spent would not have proved a prudent use of public funds.

Moreover, counter intuitively, at the primary level of entering the voluminous basic data, the exercise is quite labour intensive and the clerical staff is hard pressed to perform this task while dealing with members of the public in answering queries, collecting fines, issuance of court forms, and so on. While we have been promised “data entry clerks” for this purpose, failure to address the other needs would be equivalent to providing carpenter’s and mason’s helpers on a construction site where there is no supervising architect or building contractor.

and, in 2005, I announced, naively as it turned out:

I am pleased to announce that personnel for a dedicated Information Technology (“IT”) department has been promised to the Office of the Judiciary for the year now begun. . .

To illustrate [the observation made in 2004] we had received a proposal from a vendor to “digitise” the cause lists, a proposition that was immediately attractive because of the wear on the existing paper records by the many members of the public who have to carry out searches in the Registry. However, we soon discovered that, because . . . entries in the cause lists have always been made manually in longhand and, before they can be reproduced electronically, these entries, which extend backward for decades, would have to be reconstructed in a printed form then scrutinised for accuracy by a team of clerks who would have no other duties to perform. After this labour-intensive exercise, resources would have to be dedicated to the installation of the necessary machines to enable the public to have access to the information made available electronically.

We have all had our enthusiasm for the benefits of “computerisation” tempered by the realities on the ground and we will only begin to make meaningful progress when our IT team is in place.

At the other end of the range of personnel indispensable to a functioning IT section, I would point out that, while the appointment of a “Coordinator” was necessary in the initial stages of the BIJIS exercise, the time has long passed when the post should have been phased out and the duties devolved upon a technically trained IT Manager. Mrs Estelle Gray-Evans has been obliged to continue as BIJIS Coordinator, despite her repeated representations for proper staffing, more so after having been appointed as Registrar.

Come 2006, no such appointments having been made, I noted:

In the last quarter of the year, the Office of the Judiciary was given permission by Cabinet to engage the services of additional staff, including IT personnel, and we are currently reviewing applications with a view to filling the vacant positions, including that of an IT Manager.

The urgency of these appointments is that the [BIJIS] project has, so far, been unable to function at the level which justifies the substantial sums of public money which have been ploughed into it.

Last year, like the “Peanuts” character, Charlie Brown, who insists on believing that Lucy would not yank away the football yet again as he tried to kick it, causing him the humiliation of falling flat on his back, I announced:

As for “computerisation”, I welcome the advances that the Honourable Attorney General has, today, informed us that are in train. However, I am obliged to point out that, despite the commitment by the Executive in previous years to provide to the Office of the Judiciary personnel for a dedicated Information Technology (“IT”) department, this has not yet happened with the result that, despite the enormous sums of money that continue to be spent on the [BIJIS] project, it is unable to deliver on the promises for the tracking of cases and the consistent record keeping essential to the production of statistics that make sense and the Office of the Judiciary is unable to respond rapidly to the technical problems that perennially plague IT systems.

Although, today, we still do not have the Manager of Information Systems that we have persistently sought and consistently promised over the years, the software is being used by staff in New Providence, Grand Bahama and Abaco and we are making progress with the document conversion process.

In August of last year, The Bahamas hosted the Fourth Annual Caribbean Court Technology Users Conference where, in discussion of issues and challenges common to most, if not all, countries in the region, it was discovered that we are behind some countries and ahead of others.

The current status of this exercise may be summarised as follows:

1. JEMS® (Judicial Enforcement Management System), the case management software developed for courts, has been in use in the Supreme Court and Magistrate's Courts in New Providence since mid 2002; in Freeport since 2005 and in Abaco since November of last year
2. Judicial Officers, Administrative and Support staff in New Providence, Grand Bahama (Freeport and Eight Mile Rock) and Abaco (Marsh Harbour and Coopers Town) have been provided with computers and internet access
3. The Supreme Court's website was developed and launched in 2006. Recent judgments and hearing lists are two of items posted thereto.
4. We have an intranet system (internal email) in place.
5. Judicial officers have online access to **Westlaw** and **Quicklaw**.
6. Document conversion project is the next step. While we await the necessary approvals, we have been reorganizing physical space to accommodate equipment and staff.

The inevitable day of public reckoning will require an accounting for the capital expenditure and current running costs of \$158,000 per annum for this programme and I lay the history out publicly today so that, when culpability has to be apportioned (something that we seem to derive a visceral pleasure from in this country), the innocence and impotence of the Office of the Judiciary will be patent.

In my remarks last year, in touching on the then topic du jour, "judicial independence", I separated "administrative independence" from adjudicative or institutional independence and described it as:

perhaps, the most difficult aspect in practice because this is daily played out in the competing concerns by which public funds are disbursed and personnel on the public payroll are engaged and deployed and the difficulty flows from the fact that the judiciary is dependent on the political directorate for the means by which it is sustained and the political directorate . . . tends to be erratic in its response to the needs of the judiciary. This is a fact of life in every country, even those which have been engaged in the exercise of democratic governance for centuries. The skirmishes inherent in this struggle (which on behalf, of the judiciary is

usually carried forward by the Chief Justice) with the political and bureaucratic machinery are ordinarily played out beyond of the public gaze.

The tale that I have tediously laid out to you today about the computerisation of the courts can be recast, albeit with more positive results in some areas, across the breadth of the support and supply services necessary for the more efficient and effective provision of judicial services to the public. I only request the public and its agent, the press, to continually ask “why?” when they perceive that the system is not delivering the results that they believe they have a right to expect.

### **The Supreme Court**

During the past year, we bade farewell to Madam Justice Thompson who had attained the extended constitutionally mandated age of retirement.

Mr Norris Carroll, a counsel and attorney in private practice in the city of Freeport, who had acted as a Justice since 1 October 2005, returned to his practice in January of 2007. He was succeeded at Freeport by Dr Peter Maynard, a former President of the Bar Association who served from January until 31 October.

We are grateful for the service of each of these distinguished counsel and attorneys and we wish them well for the future.

I include in these sentiments Mr Justice Mohammed, whose term of office will, by mandate of calendar and Constitution, determine early in the latter half of this year and I publicly thank him for his service to The Bahamas for nearly 30 years in several capacities, mostly in that arcane world of the legal draftsman, and wish him and his family well.

His Excellency, the Governor General, on the advice of the Judicial and Legal Service Commission (“the Commission”) appointed Mr K Neville Adderley, an attorney in private practice in Nassau, as a justice of this Court and Mr Justice Adderley assumed office on 1 October.

Last year, I announced:

While the Supreme Court has had physical facilities at Freeport since 1994, it has proved challenging to ensure that a judge is posted to the “Northern Region” on a consistent basis around which parties and practitioners in that city could arrange their affairs. I am not unmindful of the legitimate complaints which flow from Freeport and I am determined to seek to bring a measure of stability to the Court there in the course of this year

and I am pleased to declare that I have begun to deliver on that promise of “stability”. The indefatigable Mrs Estelle Gray-Evans, Registrar of the Supreme Court, was appointed to act as a justice by the Governor General on the advice of the Commission. A “native” Grand Bahamian (albeit by adoption, not birth) she assumed office on 1 September and has been posted to Freeport as the resident justice in the Northern Region with effect from 1 November.

I warmly welcome Justices Adderley and Evans to the bench and have every confidence that each of them will thrive on the challenges which high judicial office brings.

### **The Registry**

Consequent upon the appointment of Mrs Estelle Gray-Evans to act as Justice, Mrs Donna Newton has been appointed to act as Registrar. In September, Mrs Carol Misiewicz, who had been appointed a Deputy Registrar a year earlier, resigned to return to private practice. Mrs Marilyn Meeres, Senior Stipendiary and Circuit Magistrate, has been appointed to act as a Deputy Registrar.

I thank Mrs Misiewicz for her service and wish Mrs Newton and Mrs Meeres well in their new duties as judicial officers cum managers.

In 2004, I had explained that:

It has become apparent that the demands on the Registry, the administrative foundation of the judicial system, have become such that the post of Registrar (in which I include Deputies and Assistants), who is charged with overseeing the support services of the courts, including the supervision of a staff of [now 217] persons in the Supreme Court and . . . the Magistrates’ Courts, requires modern management skills beyond those that would have sufficed when a person formally trained to function as a judicial officer supervised a much smaller support staff. One of the questions that The Bahamas has to face is whether it will follow the lead of most countries in the Commonwealth, including the larger territories of the region, and separate the judicial functions of “master” from the administrative functions of “registrar”.

To this end, in the first half of the year, the Government appointed a Commission to consider and make recommendations on how the Registry should be structured for today’s Bahamas, the sole Commissioner being Mr Justice Strachan (Retired) whose qualifications include his own long years of service as Deputy Registrar and Registrar before his appointment to the Bench. It had been expected that his work would have been completed by the end of 2003 in time for the Government to take any necessary legislative amendments to Parliament early this year.

In anticipation of whatever transformations may have resulted in the duties of “the Registrar” consequent upon Justice Strachan's report, when the Commission which, as Chief Justice, I chair, offered the position of Registrar to Mrs Evans in 2004, it was on the understanding that the post to which she was being appointed might change and she accepted it on that condition. I was obliged to repeat this in respect of Mrs Newton’s recent acting appointment.

At the opening in 2006, I reported that, at the end of December of 2005, Justice Strachan had made his report to the Government and I awaited their response to his recommendations

Today, I am perturbed that the Executive, having had Justice Strachan’s report for more than two years has given me no indication as to which, and to what extent any, of his recommendations will be accepted. I consider it unfair that the Registrar and the Registry should be continually accused of inefficiency, and worse, in the face of inaction on the part of those arms of the Government which, having procured the requested advice, have failed to act or deign to explain why they are unable to do so. More frustrating to me is that I am unable to devise any medium or long term plans for the Registry because I cannot predict how the organisation of the Registry may be changed.

### **The Magistracy**

In October we welcomed to the magistracy Mrs Jannet Bullard who was joined in November by Mrs Gwendolyn Claude. Both of these counsel and attorneys came to the bench from private practice, Mrs Bullard in Nassau and Mrs Claude in Freeport,

I congratulate them and wish that they find the rough work of dispensing justice at the level at which most persons encounter the judicial system professionally rewarding.

Mrs Claude has been posted to Eight Mile Rock, Grand Bahama where, I am pleased to report following several years of complaints, the physical facilities destroyed by hurricanes have been restored during the past year.

Again, I thank the members of the private bar who have continued to assist by sitting as acting magistrates in the “Night Court”, which hears traffic and civil matters.

### **The Bar**

During 2007, 54 persons were admitted as counsel and attorneys, the same number as in 2006, bringing the membership of the Bar to 886.

I would remind practitioners that the Office of the Judiciary's training days for 2008 are: 22 February, 23 May, 19 September and 5 December and, as usual, I invite the Bar to make use of these dates for organised programmes of continuing legal education for its members.

### **Civil Procedure Reform**

Last year, after referring to an earlier recommendation by a committee of judges that the services of a suitably experienced person be retained to advise on comprehensive reform of the Rules, I reported that, budgetary provision having been made for such a consultant during the current period, I was in discussions with the Attorney General to give effect to this appointment.

That I have nothing to report today I can only surmise is as a result of Executive inattention in the months preceding and proceeding the mid-year general elections.

### **General Observations**

As noted earlier, the understandable concern of the public as to the apparent sharp escalation in violent crime generated torrents of public comment, much of it directed against "the judiciary". Since much of this criticism was misdirected and misinformed, I sought, as I have continually urged other responsible persons to do, to use any opportunity presented as one to assist in the general public civic education. The most recent occasion for me was the 3<sup>rd</sup> Annual Crime Prevention Seminar Sponsored by Chamber of Commerce in November (which is reprinted in the Annual Report) when I pointed out that (as updated):

A fact apparently not readily appreciated by the public generally or the bureaucratic machinery, on which the legal system must rely, is that a court – at whatever level – is not merely the presiding judicial officer, whether judge, registrar or magistrate. The judicial officer must have adequate physical facilities in which to sit and from which to work when not presiding and must be supported by the necessary staff to arrange the flow of matters coming on for hearing, to file and record matters which are adjourned or completed, to collect and account for fines and fees, to respond to public queries and to ensure the security of the staff and members of the public.

Additionally, we have to rent living accommodations for two judges in Freeport and one of the magistrates in Freeport and the magistrate in Abaco

Concentrating on the Supreme Court – the court in our system which has unlimited jurisdiction and where the criminal matters which most concern the community are tried – which comprises 11 judges, one of whom sits in

Freeport, in the Capital, the Court which outgrew its facilities decades ago, now occupies five different buildings between East Street and Marlborough Street. Two of these are rental accommodations for which \$748,000 is paid annually. In addition, the support service of court reporting is housed in privately owned premises for which additional rent must be paid. The inefficiencies in terms of management of staff and movement of files occasioned by this separation of facilities are obvious.

. . .

As Chief Justice, contrary to what many persons believe – from complaints that pass through my office – I have no authority to direct any judge or magistrate as to what finding to make in a matter before him. An incident of “independence of the judiciary” is the individual responsibility of each judicial officer to his judicial oath and, if a party is dissatisfied with a decision of a judge, the remedy is to appeal. I do, however, have administrative responsibility for all courts in The Bahamas, except the Court of Appeal and, as such, assign trial judges and magistrates as necessary to accommodate the flow of work. Through the Registrar of the Supreme Court, I manage the more than 200 persons who comprise the support staff of the Office of the Judiciary. However, because in The Bahamas “independence of the judiciary” has not translated into administrative autonomy for the Office of the Judiciary, as the support staff are all civil servants, we have no authority to hire or fire and very limited powers of discipline . . .

The criminal division is but one of the seven divisions into which the work of the court is divided. In [2007], while [80] new criminal matters were filed [exclusive of bail applications and constitutional motions], [1469] matters were filed in the common law, equity and commercial divisions, [1401] were filed in the family division and [667] applications for grants of probate ([97] of which were contentious) were filed. While the public is, understandably, concerned about the movement of criminal matters before the courts (and it is such matters that usually attract the attention of the media) even a casual glance at the broad range of the court’s work demonstrates that, proportionally, only a small portion of judicial time is dedicated to criminal matters.

When a criminal case comes on for trial in the Supreme Court, because it involves a jury it must proceed continually. Therefore, while a trial before a magistrate can be commenced and adjourned over a period of weeks or months according to the availability of witnesses, in the Supreme Court, the prosecution cannot begin a trial which it cannot complete once the accused has been put in the charge of the jury. Furthermore, every criminal trial must have available a pool of 48 jurors from which those who will try the case are chosen and, in my experience, apart from the

reluctance of most persons to perform this civic duty, it is the business community [and government departments] from whom the least cooperation comes in terms of their employees serving as jurors.

Returning to the limitation of our facilities, no provision is made for the separation of jurors from witnesses in the precincts of the court and there are only two jury deliberation rooms. There are no bathrooms available for the use of witnesses, attorneys or the public in [this, the main Supreme Court building or another of the other two] buildings which can accommodate jury trials.

Accordingly, published demands to make more judges available for criminal trials cannot be met because it is simply impractical to run more than three criminal courts simultaneously; previous attempts to run four courts were not successful and it would be wholly irrational to attempt anything beyond this number given our present limitations.

Does this mean that I am satisfied with the present state of affairs? Of course not! However, I remain unmoved by those who have the public ear who either propose or support simplistic solutions to systemic problems.

I urge that all persons would be well advised to take up the challenge represented in the otherwise forgettable 1993 film *Rising Sun*, as a Japanese proverb: **“Fix the problem, not the blame”**.

I remind you of the figures that I earlier mentioned of the work of the various divisions of the court and the figure of [1401] for the family division. [1289 of these are] divorce petitions (which, in terms of judicial time, each generates an average of three fixtures requiring a judge to deal with matters of maintenance of minor children and division of property). This is the work that most engages my own judicial time and when, one considers that what I see in this division is but a slice of the problems affecting family life in this country, I find the rancour and discord exhibited by so many of the parties, sometimes even in the face of the court, a disturbing expression of misconduct which is probably not isolated to the parties themselves and most likely infects the most impressionable and innocent, namely the children of these unions, who cannot escape that environment.

Persons who commit criminal offences are the products of families and the communities which form them. As you drive the streets of New Providence during the morning and afternoon “school run”, observe how many children – from kindergarten up through when they themselves reach an age to wreak their own havoc on the roads – are being taught the lesson by their own driving parents that rules do not matter. As you visit the supermarkets observe how many children are taught to steal by

their parents “grazing” in the produce or snack section and not paying the cashier. When you next present yourself at a port of entry, notice the number of returning residents, children in tow, teaching their children how to be deceitful in declaring their foreign purchases to the customs officer.

In an interview conducted by a ZNS reporter following this speech, I pointed out that the continuous public questions about persons awaiting trial who were on bail wholly missed the point that should be “blindingly obvious”, namely, that the concern should be the number of persons charged with serious offences who have not yet been brought to trial, some of whom were on bail but some of whom remain in custody!

To this end, I now announce that, early this year, I will be issuing a practice direction consolidating a direction issued by my predecessor on the setting down of criminal cases with a memorandum that I had circulated some years later dealing with arraignments. A feature of this new practice direction will be a revival of the procedures conducted at the time of “traverses”, which older practitioners would recall fell away with the abolition of quarterly sessions when the new Supreme Court Act took effect in 1997 although, as far as I am aware, the companion requirement under the Habeas Corpus Act for the Superintendent of Prisons to make quarterly returns to this Court remains in force. The new practice of “criminal callovers” will require the Crown, both as prosecutor and as custodians of persons on remand awaiting trial, to appear in open court at intervals not less frequent than every six months, to explain why persons charged before the court, whether on bail or in custody, have not been tried. Though tedious and prodigal of time, I consider this a necessary exercise of the court’s duty and, in the public interest, I hope the press will attend and accurately report on these proceedings.

I have previously referred to ill-informed comments about the judiciary. While the judiciary like every other public institution is open to criticism by an alert and concerned public, there are limits on baseless attacks which amount to an assault on the judiciary as an institution. Put another way, any judge may be accused of being incompetent and his judicial reasoning is always open to critical analysis (indeed, that is the basis of the appeal process and the rationale of learned journals). However, if a judge is corrupt or disobedient to his judicial oath it is the duty of every person having knowledge of such malfeasance to report it to ensure that the processes are speedily invoked to keep pure the streams of justice. In the absence of an evidential basis for such action, personal attacks on a judge are not merely irresponsible, they are contemptuous and the courts have a duty to protect their institutional integrity by not ignoring these attacks.

To those who may think that they have the “constitutional right” to say whatever they please, I refer them to Article 23 (1)(a)(ii) of the Constitution – the reservation for “maintaining the authority and independence of the courts”.

In the course of the past year I had occasion to formally lodge a complaint with the Attorney General consequent upon a comment made by a certain prominent local clergyman, that: “. . . the law of the land is being played with by lawyers and judges – playing games with it”, pointing out that this statement, which asserts that “judges” have not been true to their judicial oath, is clearly offensive and, probably, contemptuous and, whether arising out of a sense of frustration with the apparent sharp escalation in offences against the person or a lack of appreciation of the workings of the intricate machinery that is the criminal justice system, this assertion, made in public by a member of the leadership cadre of the Bahamian society, could not go unchallenged. My complaint also included certain statements about the election court posted on a popular political website. I did not include in that complaint comments anonymously posted on another website sometime earlier accusing me of “corruption” because of a decision I had made while sitting as a Justice of Appeal and, more recently, two other judges have been similarly accused of corruption as a result of their decisions in particular criminal cases.

In exercise of their duty, judges cannot long forbear to execute their peculiar responsibility to deal with these assaults on the public confidence in the system that underpins an ordered society.

In conclusion, I return to the observations of Chief Justice Hammel-Smith of Trinidad and Tobago with which I concur and which I commend for the consideration of the Attorney General:

The approach to criminal justice is in need of fundamental restructuring. It is time to introduce a system, even if legislative underpinning is required, that is not only court driven, but purpose driven in the sense that on every occasion a case is called before a court a specific purpose is served and not simply for the purpose of an adjournment. This is the cultural change that is required. Criminal justice is not served by adjournments; it is far better served by trial date certainty; and until we put in place those measures that will take us there, we are surrendering to the criminal elements in this country.

. . .

When cases collapse because witnesses have been eliminated, when accused persons are acquitted because confessional statements have been deemed inadmissible . . . it is society that suffers. Thus, one measure that requires immediate implementation is provision for videotaping the taking of statements from accused persons. This will immediately lift the credibility of those officers who go to great lengths to

maintain integrity in what they do. It will also reduce time spent in long drawn out *voire dire*s to determine the admissibility of a statement.

This, however, is but a small measure in the fight against crime. What we need is a complete set of rules that will move criminal cases through the system effectively and efficiently, both in the magistrates' courts and in the [Supreme Court]. Some time ago, a system was put in place requiring attorneys to attend a cause list hearing at which issues would be identified and various orders made in order to shorten the length of a trial. When all this was done a trial date was fixed. Some attorneys complied, some did not, and slowly but surely the system began to wane. There was no legislative underpinning making mandatory to attend the hearing. As a result, trial dates that were fixed well in advance had to be vacated. It is time to make a change.

One of the fundamental changes we need to implement in the Criminal Justice System is to replace the preliminary enquiry as we know it today with a more streamlined procedure, to ensure that indictable offences are disposed off in a timely manner. . .

The primary purpose, if not the sole purpose, of an enquiry is to determine whether a *prima facie* case has been made out. It is not for the purpose of chalking up as many inconsistencies or contradictions as possible for use at the ultimate trial. Sadly, we have lost sight of the real purpose with the result that much judicial and public time and expense are wasted. It is time to embark on a more expeditious procedure to break the gridlock that prevails in our system. It requires no rocket science to change the system into one that serves the administration of justice in a more purposeful way.

A simpler and more acceptable system would be to provide that when an accused person appears before the magistrate on the first occasion, a decision is made whether the case will proceed indictably or summarily. If indictably, the question of bail is settled and the matter is immediately transferred to a High Court Judge.

At the first hearing before the Judge an opportunity can be afforded to the accused to show that there is no case to answer. This is done by way of written submissions. If cross-examination is required the request is also made by a written submission. The Judge will decide both issues. If not persuaded, the judge will advance the case to the next stage - the case management stage. Here directions can be given for the obtaining of witness statements and other investigations within a permitted time limit. At a further stage, directions pertaining to disclosure and exchange can be made, and, at yet another, the determination of the salient issues to be tried. This can be achieved within a frame-work of specific case management rules.

With a criminal system that is properly structured to manage cases effectively and efficiently through the courts, we will find that witnesses will no longer be exposed to the criminal element for any considerable length of time. . . There will no longer be trial by ambush and a measure of confidence will be restored by the introduction of a properly structured system that is geared for efficient use of judicial time.

### **Conclusion**

I now formally declare the legal year 2008 opened and I invite you to repair to the Eastern upper floor courtroom where the Director of Court Services will be your host until the Justices and Registrars are able to divest themselves of their costumes.

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