

ADDRESS BY CHIEF JUSTICE, SIR MICHAEL BARNETT, AT THE OPENING OF THE LEGAL YEAR ON WEDNESDAY, 13TH JANUARY, 2010.

May I begin by noting with sadness yesterdays tragic earthquake which devastated the Republic of Haiti. My thoughts and prayers are with the people of Haiti and I urge all persons to support generously relief efforts to assist our neighbours in the south.

I would like to thank all who have participated in the events that have traditionally marked the Opening of the Legal Year.

My thanks to Archbishop Patrick Pinder for inviting us to celebrate the Red Mass last Sunday. Law and the courts are rooted in tradition. The Red Mass has been part of legal tradition for centuries and is celebrated by the judicial and legal fraternity throughout the world. We are indeed happy to continue to participate in this tradition.

We are grateful to Dean Patrick Adderley for the service this morning. It is not a statutory requirement that the Opening of the Legal Year commences with a religious service. It is however a tradition that recognizes the importance the worship of God plays in the life of the nation and the duties we discharge. Indeed, the preamble to our Constitution refers to our “recognizing the supremacy of God”. We intend to continue this tradition and are grateful to Christ Church Cathedral for again leading us in prayer as we ask God’s guidance in the discharge of our duties.

The Royal Bahamas Police Force Band and the Guard of Honour are national treasures. Bahamians and visitors alike are always enchanted by their performance. I express my appreciation for their contribution to this morning’s proceedings.

We are pleased to welcome a new Provost Marshall of the Supreme Court. Mr. Ellison Greenslade, the new Commissioner of Police, also serves as the Court's Provost Marshall and we look forward to developing our relationship with his office.

The past year, 2009, was a year of transition in the Courts.

Most significantly, in the summer of 2009, the nation and more specifically, the Bahamian judiciary, was honoured when its Chief Justice was invited by the Secretary General of the United Nations to serve as a Permanent Judge of the International Criminal Tribunal for the Former Yugoslavia. Sir Burton Hall accepted this invitation and in August 2009 demitted office as Chief Justice of The Bahamas and constitutional head of the Judiciary. It was a singular honour for this country of less than 350,000 persons to have one of its own sit as a Presiding Judge of an International Criminal Tribunal established by the United Nations. Sir Burton, who is present with us this morning, served for 8 years as Chief Justice and I direct it be recorded in the annals of this court, the judiciary's grateful appreciation of his years of distinguished service. We are proud of his accomplishments and wish him the best as he continues his public service albeit now to a wider public, than this country.

As a result of his demitting office, it was my privilege to accept an invitation to serve as the 10th Chief Justice of an independent Bahamas. Although my appointment was not without some controversy, I trust that my service of the past four months has demonstrated my fidelity to the judicial oath that I took "to do right to all manner of people after the laws and usages of The Bahamas without fear or favour, affection or ill will". By the Grace of God, I pledge to devote all of my energies and intellect to the proper discharge of my office.

To my colleagues in the work of the Office of the Judiciary, I wish to publicly thank you for your support over the past four months. We are often the subject of public

criticism, much of it borne out of a misunderstanding of the nature of our judicial responsibilities, some of it out of pure malicious mischief.

We are not ignorant of the society in which we live or the wider world of which The Bahamas is a part. However, judges act on the evidence presented before the Court by the parties and based on our understanding of the law. Whilst Cicero may be right that the safety of the people is the highest law, we must balance the needs of the public with the rights of the individual. The right to a fair trial within a reasonable period of time, the presumption of innocence and the proof of guilt are fundamental freedoms guaranteed by the Constitution for which we must be the most ardent of protectors.

Of course, we are by no means infallible and are not immune from criticism. However, no one should question our fidelity to our oath of office. We are not pawns of the State nor do we act based upon public opinion. I assure all involved in the administration of justice, including those in the administrative and support staff, of my complete support in the proper discharge of your duties.

There have been other changes in the personnel of the Court. In May, 2009 Senior Justice Lyons resigned as a Justice of the Supreme Court. We are grateful for his years of service. Justice Lyons brought an energy and a work ethic to the Court, particularly on its commercial side that was a hallmark of his career. The Courts will miss his colourful personality as well as his judicial acumen and we wish him well in his future career.

The judiciary has been pleased to welcome two other judges to the Bench.

In August, 2009, Madam Justice Rhonda Bain joined the judiciary after a 33 year career at the Bar in both public and private practice. This included service as the Director of Legal Affairs.

In December, 2009 Mr. Justice Bernard Turner was appointed a Justice of The Supreme Court. Justice Turner was called to the Bar in October, 1987. He served his entire career in the public service retiring as Director of Public Prosecutions. He brings an internationally recognized expertise in the criminal law as well as financial services legislation. We look forward to his valuable contribution to the work of the judiciary.

It appears to be a misconception that the appointment of Justices to the Supreme Court is made by the Government, the Prime Minister or the Cabinet of The Bahamas. Whilst the Prime Minister, after consultation with the Leader the Opposition, recommends to the Governor General the appointment of the Chief Justice, all other justices of the Supreme Court are appointed by the Governor General on the advice of the Judicial and Legal Services Commission. Under the Constitution, the Commission is made up of the Chief Justice, the Chairman of the Public Service Commission, another Justice of the Supreme Court or the Court of Appeal and two lawyers of not less than 10 years standing at the Bar. It is this Commission which considers applicants and advises the Governor General on the appointment of judges of this Supreme Court. It is a function which the Commission takes seriously and intends to faithfully discharge.

This year 2010 will see further changes in the make up of the Supreme Court. Justice Cheryl Albury will demit office on the 31st January.

Justice of Appeal, Hartman Longley, will retire as a Justice of Appeal effective 31st January, 2010. The Judicial and Legal Services Commission has advised the Governor General that Justice Longley be appointed a Justice of the Supreme Court with effect from 1st February, 2010. We are pleased that the Supreme Court will again have the services of this experienced judge. Justice Longley will be assigned as a resident justice in the northern region. This will result in the northern region having two resident justices, Justice Evans and Justice Longley. This will eliminate the need for a justice resident in New Providence having to be assigned to Grand

Bahama for short periods of time to conduct criminal trials. Both criminal and civil matters will be able to be heard in Grand Bahama on a year round basis.

Under section 3 of the Supreme Court Act, the statutory complement of the Supreme Court is the Chief Justice plus 11 other justices. Contrary to inaccurate published reports of statements purportedly made by me, the Supreme Court does not have its full complement. It is imperative that we fill the complement of justices. Indeed, there is a powerful case for increasing the complement of the Supreme Court in order to address the backlog of matters, particularly on the criminal side of the Court, as well as keeping current with new matters being filed in the Court on a daily basis to ensure that they are dealt with on a timely basis. However, there is no point in appointing persons to serve as justices of the Supreme Court unless we have the facilities for them to properly carry out their work. This includes properly outfitted courts and support staff.

The challenges of proper court facilities remain.

When I sat in a different place, a decision was made to renovate this Supreme Court Building and to carry out repairs to the Hansard Building where Senior Justice Allen sat. As a result, steps were taken to depopulate this building and temporary courts were created in Saffrey Square and Charlotte House. I must confess that I was filled with an enthusiasm that this national imperative could be accomplished in 12 to 18 months. I recall vividly that my Brother Senior Justice Jon Isaacs cautioned me that I was unreasonably optimistic and advised that he would not move until it was absolutely necessary.

I am humbled by experience.

As was pointed out last year by my predecessor, the work of the Supreme Court in New Providence is carried out from premises in this building, British American House on Marlborough Street, Charlotte House on Charlotte Street, Ansbacher

House on East Street and Saffrey Square, also on East Street. This is simply unacceptable and hampers the efficient administration of the Courts.

Whilst we continue to pursue in earnest the objective of renovating and acquiring new premises, I have determined that this present building should again be rehabilitated for immediate occupancy to ensure that the work of the court continues. Whilst architectural drawings for this building have been completed, more detailed engineering specifications still remain to be done. At best, renovations to this building will not commence until June 2010. In the meantime therefore, I intend to fully utilize this building for the conduct of matters in both chambers and open trials particularly criminal trials until further notice. I do so reluctantly, as I am convinced that we should do nothing which would reduce the pressure for the urgent carrying out of the needed renovations and or the acquisition of new premises. "Hope springs eternal in the human breast."

But the work of the Court must continue and we will work with what we have available to us.

On the Criminal Division, we have advised the Attorney General that we are prepared to operate three Courts in New Providence and one Court in Grand Bahama to conduct criminal trials on a daily basis throughout the year. Senior Justices Allen and Isaacs and Justice Watkins will preside over criminal trials in New Providence. It is expected that in the month of January, fixtures will be set by these three courts in New Providence for the cases to be heard throughout this year. Once these dates are fixed, save in extreme cases, the matters will be heard on their scheduled dates and will not be adjourned simply to accommodate the convenience of counsel on either side or witnesses. Each trial judge will have a pre trial conference in these criminal matters, not less than one week before trial date to ensure that there are no unresolved issues which would necessitate an adjustment of the trial date. The purpose of the pre trial review is to ensure that in the event, for some extraordinary reason, the scheduled trial is unable to be conducted, another

matter can be inserted. This is designed to ensure that valuable court time is not wasted. Justices are expected to aggressively manage their calendars and the trials before them. Counsel and jurors should understand that the Court will begin on time at 10:00am and will sit until 4:30pm or later if necessary.

We have impressed upon the Commissioner of Police that persons in custody should be in court so that the court can commence at 10:00am. Too much time is wasted if persons in custody are not brought to court until 10:30am or even later.

Jurors should also be aware that it will be the policy of all Courts that all electronic devices must be given by jurors to the Clerk of the Court for safekeeping before jury deliberations begin. No electronic communication devices will be permitted in the jury room.

It should be noted that retired Justice of Appeal, Mustafa Ibrahim, has been retained as a Law Reform Commissioner to consider reform of the Penal Code and the Criminal Procedure Code. Justice Ibrahim began his work at the end of September, 2009. We look forward to his recommendations for reform of the Criminal Procedure Code which will I hope result in measures which facilitate a more efficient and speedier conduct of criminal cases.

On the civil side of the Court, members of the profession and the wider public should be aware that the Rules Committee has been reconstituted. The Rules Committee has mandated the preparation of new Rules of Civil Procedure calculated to make simpler, the process of civil litigation, to provide for the expeditious determination of relatively simple cases, and to reduce or make certain the costs of litigation. We have retained the services of Mr. David di Mambro, a member of the Civil Rules Committee of England and editor of the Caribbean Civil Court Practice, to assist in the drafting of the new rules. A first draft of the new Rules has been prepared and has been circulated amongst a small committee for consideration. This committee includes myself, Justice Neville Adderley, Mr.

Charles Mackay, Mr. Brian Moree, Mr. Milton Evans, Mrs. Diane Stewart, Mr. Damian Gomez, Mrs. Kathy Hassan and Ms Shirl Deveaux. The Registrar of the Supreme Court also serves on the Committee. The Committee's next meeting is scheduled for this Monday, 18th January when further work will be carried on that draft. It is not likely the Rules will be completed before September of this year. A period of time will be required for the familiarization of the Rules before they are implemented.

However, it has become apparent that parts of the attempts at reform of the Rules of Civil Procedure which were implemented in 2004 have not achieved their desired objective. The requirement that all civil matters be referred to a Dispute Resolution Conference ("DRC") immediately upon close of pleadings has not resulted in a material number of cases being resolved, but has unwittingly contributed to a further delay in the prosecution of the cases as they cannot be referred to a Case Management Conference until after that DRC process has been completed. The Rules Committee has therefore determined to revoke Part II of Order 31A which requires matters to be referred to DRC immediately upon the close of pleadings. Matters presently in DRC will be referred by the Registrar to a Case Management Conference for directions as to the further conduct of the litigation. It must be emphasized that the Judge will retain the power throughout the course of litigation to require parties to consider mediation, with sanctions if a party unreasonably refuses to engage in bonafide settlement talks. This mediation need not be and is unlikely to be one conducted by a court official. Parties will be encouraged where appropriate to utilize the services of senior lawyers or the increasing numbers of retired judges as persons to conduct DRC conferences.

In the meantime, lawyers should expect that more and more fixtures will be scheduled for 9:30am. I have asked Judges, including Registrars, to pay greater attention to delivering their judgments on a timely basis. We are all aware that the need for timely judgments with adequate reasons has been the subject of judicial comment at the highest levels of the judiciary.

In addition to the commercial side of the Civil Division of the Court, we will seek to improve the procedure in the Family Division. I have asked retired Justice Rubie Nottage to work with me on reviewing the procedure of this Court. It appears to me to be an inefficient use of valuable judicial time for matters of custody and maintenance to be adjudicated upon in both the Magistrates and Supreme Court, nor does it seem to me to be an efficient use of judicial time for a Justice of the Supreme Court to go in open Court to hear evidence in an uncontested divorce in which the Petitioner has already sworn to the truth of the contents of the Petition! Regrettably, I have not been able to advance these matters as far as I would have wished. More time and energy has been spent on issues relating to the facilities of the Supreme Court and the reality is that much of the reforms in this area will be dependent upon the provision of facilities suitable for the conduct of sensitive family law matters.

Members will also be aware that new Probate Rules have been in circulation. Although it is lamentable that we have received limited feedback from practitioners, it is expected that when we meet next year at the Opening those new Rules will have been fully implemented. Members of the profession and the public will no doubt agree that the time for processing applications for Grants of Probate and Letters of Administration has significantly improved. I hasten to add that I take no credit for this and that its improvement is the work of my predecessor, Sir Burton Hall, and the members of the Probate Registry under the able leadership of Assistant Registrar Cumberbatch.

Ladies and Gentlemen,

The Magistracy continues to receive our attention. You will be aware that in October and November, 2009 we advertised for persons to serve as resident Magistrates in five of our major Family Islands, Abaco, Andros, Eleuthera, Exuma and Long Island. In a Bar made up of over 1,000 practicing lawyers, I was

astonished at the limited number of applications received. The process of selection continues and it is expected that such magistrates will be in place in a few months. This is a matter of urgency. The Family Islands cannot continue to be served by magistrates from New Providence traveling to those islands on an itinerant basis.

As the Attorney General said, the Magistrates Court Complex on South Street is nearing completion. You are all invited to pass by and see the edifice. It will house twelve courts. We believe that having all those Courts in one complex will lead to greater efficiencies.

I am particularly concerned about the need to provide more resources to support the work of magistrates in Grand Bahama. This includes the need for increased support staff as well as court reporters. This issue has been long outstanding and will be given urgent attention this year.

I have met with Magistrates and, just as I urged of the Supreme Court Justices, I have urged upon them the importance of aggressively managing their courts. Courts should begin on time and adjournments should be limited. The Courts are not for the convenience of counsel. Where they have conflicting obligations in different courts, lawyers must be prepared to surrender their briefs to other counsel. Long winded lawyers must be controlled.

Attention is being paid to the coroners court. It is my expectation that at least two coroners court will be operational by the end of the year.

Before concluding these remarks, I would be remiss if I did not acknowledge, with appreciation, the steps taken to enhance the dignity of the judicial offices by amending the Order of Precedence. Under the new Order of Precedence, the Office of Chief Justice, as the constitutional head of the Judiciary, was upgraded from number 5 in the Order to Number 3 immediately behind the Prime Minister. The Office of President of the Court of Appeal was elevated from Number 14 to Number

6 and the offices of Justices of Appeal and Justices of the Supreme Court were upgraded from Numbers 22 and 23 to Number 12. As members of the judiciary, we hasten to add that the dignity of our offices has nothing to do with the identity of any particular office holder. The dignity is derived from the office itself and it is a reflection of our society how we regard the offices of members of the judiciary.

Ladies and gentlemen, the work of the courts continues.

The problems that exist are well known. They were not created overnight and they will not be solved overnight. The solutions are not obvious. If they were, many would have been solved long ago. Indeed, they are not peculiar to The Bahamas.

However, the problems are not insurmountable. They require focused attention and qualified and committed personnel. Some matters can be ameliorated without money. Greater cooperation amongst lawyers, better preparation of cases by both the prosecution and the defence or the plaintiff and the defence, the greater use of stipulations for the admission of undisputed evidence, more complete written submissions to reduce the need for long oral submissions, starting court on time, working beyond 4:30, if necessary, and the reform of rules of procedure to do things differently today than we did them 20, 30 or 50 years ago will all go a long way toward improving the administration of justice.

At the same time, however, the people of The Bahamas must be prepared to invest substantial sums of money in the administration of justice if we are indeed going to see needed improvements. We must be under no illusions. Whilst we are aware of competing demands on the public purse, having regard to the present state of affairs, the needs of the administration of justice must be given a higher priority and must be given a greater portion of the proverbial pie.

To paraphrase the words Sir Winston Churchill said to United States President Franklin Roosevelt: “Give us the tools, and we will get the work done”

I declare the Year open and invite you to the East Hill Street grounds of the Ministry of Foreign Affairs for a modest reception.