

Opening of the Legal Year 9 January 2002

Remarks by the Chief Justice

The Honourable Sir Burton Hall

WE express our joint belief in the central place enjoyed by the judiciary in the realisation of just, honest, open and accountable government. These are the hallmarks of the democratic society which our people are guaranteed by our Constitution and which our people are entitled to expect.

WE believe that it is entirely consistent with best democratic practices for the actions of governments to be scrutinised by the courts at the instance of citizens, to ensure that decisions taken and administrative practices followed comply in all respects with the Constitution, with relevant statute law and with best administrative practice.

IN the development of administrative review of executive action, the law now provides not only a means for citizens to seek redress where they believe they have a grievance against official action, but also for them thereby actively to promote good administrative practice.

SUCH administrative law requires, among other things, that executive action be confined to areas authorised by the law; that the rules of natural justice be followed; that each case be dealt with on its merits and without taking into account extraneous factors; that similar cases be treated in the same way; and that persons taking decisions should not have any personal or other interest in the outcome.

ADMINISTRATIVE law in these and other ways provides a firm basis for the guidance of ministers of government and civil servants in the discharge of their duties. By upholding these principles, the judiciary serves the public interest, not only in specific cases but by providing both guidelines for future administration and sanctions where proper procedures are not followed.

HOWEVER the judiciary has a broader role than this. In a democracy, the people can exercise their franchise only periodically and can be expected to remove from office those who systematically abuse positions of political trust and responsibility. In the interim, it falls to the judiciary to hold the executive accountable under the Rule of Law, and to ensure (on the people's behalf) that government takes place on a Constitutional basis and under the law. It falls, too, to the judiciary to

ensure that minorities and minority interests are protected under the law, for although the government is chosen by the majority, it must in a democracy rule for all.

FOR such procedures to function properly it is essential:

that the executive ensure that senior civil servants have a full appreciation of their own responsibilities for good administrative practice, and of the proper role of the judiciary in ensuring that these, in fact, are discharged;

that senior civil servants ensure that their own staff receive appropriate training and guidance in good administrative practice, in conformity with the requirements of administrative law, so as to ensure that the best administrative practice is followed and that the room for individual citizens to feel aggrieved is kept to a minimum;

that the judiciary be well versed in the judicial review of administrative action . . . and be adequately resourced with up-to-date legal materials, including promptly produced [local] Law Reports;

that the legal profession be equipped both through proper training in law faculties and through Continuing Legal Education programmes to discharge their own vital function in assessing and preparing cases that should be brought before the courts for consideration;

that the general public be informed -- and be kept informed -- of their rights in these, as in other, matters and have an awareness of the fact that the law does provide redress in cases of arbitrary, discriminatory and unfair administrative action by government.

IT IS OUR belief that if the above programme of action can be implemented effectively, the quality of administration will be greatly improved and sustained, to the ultimate betterment of the lives of all our citizens. They can expect no less from us all.

My Lords, My Ladies
Mr Attorney
Registrars
Magistrates
Madam Director of Legal Affairs, Mr Director of Public Prosecutions
Other Law Officers of the Crown
Mr Provost Marshal
Other Officers of the Judicature
Members of the Diplomatic Corps
Senior government Officials
Reverend Gentlemen
Counsel and Attorneys of this Court
All other distinguished visitors to these ceremonies.

On behalf of the Judiciary which I am privileged to now lead I welcome you and I thank each of you for showing us the courtesy of taking the time out of one of the busiest days of the work week to share this occasion. It is not by choice that these ceremonies are held on a Wednesday. That the Legal Year commences on the second Wednesday in January is a statutory mandate of the Supreme Court Act of 1996, which provision merely replicated the like provision in the 1939 amendment to 1896 Act which was replaced by the present Act.

I thank the Very Reverend Patrick Adderley, Dean of Christ Church Cathedral, for allowing use of the cathedral for our annual official service. I thank him, too, for the challenge extended to the Judiciary and the Bar in his sermon and the forceful reminder that we are accountable for our work, not only to clients and the society, but., ultimately to the Almighty who is a God of justice.

As most of you would be aware, today's service is the second of two religious services in which we participate to mark the opening of the Legal Year. The Catholic Archdiocese of Nassau, following the centuries old tradition of the Roman Catholic Church, on Sunday past celebrated a "Red Mass" (so called because of the liturgical colour scheme for votive masses of the Holy Spirit, whose blessings are invoked on the work of the courts) to which the judiciary and the Bar were invited and which we were pleased to attend. Those of us who were present would have had our complacency disturbed and our sobriety provoked by the trenchant observations of Archbishop Burke on the theme of restoring (as noun and verb) justice and the urgent need of the system to be sensitive and responsive to the peculiar needs of victims of crime and offenders. I am certain that the President of the Bar and Bar Council will be receptive to the criticisms of His Grace of the apparent inability of the Bar to police its errant members and that the Bar joins the Bench in thanking the Archbishop for his inspired homily.

One of the traditional features of these ceremonies is the inspection of a guard of honour presented by the Internal Security Division of Royal Bahamas Police

Force accompanied by the Force Band. Superlatives are not inappropriate to describe the pleasure to the eye, the delight to the ear and the stirring of the spirit produced by the drill and music which the police display on ceremonial and national occasions and, as has been earlier stated by myself and others, the discipline and talent so demonstrated speaks volumes about what Bahamians, especially young Bahamians are capable of. I thank and congratulate Superintendent Sylvester George and Superintendent Christopher McCoy for the panache that they have so added to today's pageantry. I am particularly pleased that the Band was able to locate the score for that oft-forgotten 1948 work of Mr Timothy Gibson, "Nassau Calling", which they executed beautifully

On 5 September of this year, I assumed office as the ninth Chief Justice of an independent Bahamas. I share the distinction with my immediate predecessors, Sir Cyril Fountain and Dame Joan Sawyer, now President of the Court of Appeal, of, being members of the local Bar, having appeared as counsel, before each of the former office holders. Time and circumstances mean that I am probably the last Chief Justice to have this privilege and I acknowledge the lessons that I would have learned from each of these persons who, in the dedication and determination which each demonstrated in holding together and advancing a system which has never had the sufficiency of resources of personnel or purse to serve the needs for legal services of a rapidly developing society.

I am especially grateful to the last occupant of this chair, Dame Joan, for the dynamism which animated her period of service as seen in the several initiatives, not all of which were enthusiastically embraced by those whose cooperation would have been vital for their success, which she took as incremental steps necessary to make our system more responsive to the demands of a modern Bahamas.

I began these remarks with a quotation that was lengthy only because a contraction of it would have diluted its import. That was a recitation of "The Lusaka Statement on Government Under Law", and is the product of a conference organized by the government of Zambia in conjunction with the Commonwealth Secretariat in the wake of the Commonwealth Heads of Government Conference which was held in Zimbabwe in October of 1992 and which produced the "Harare Declaration" with its emphasis on, inter alia, the rule of law and independence of the judiciary. The statement, described as "one which has the potential to act as a powerful agent in favour of a more activist approach by judges to the judicial review of administrative action" appears in the editorial note to volume 18 of the *Commonwealth Law Bulletin*, July 1992.

The principles there articulated, which are basal to our own constitutional economy, often in practice come hard up against the practical political realities best verbalised in one of the "sacred texts" authored when the foundations of American constitutionalism were being laid more than 200 years ago. Alexander Hamilton in *The Federalist Papers, Number 78* advised:

“Whoever attentively considers the different departments of power must perceive that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in capacity to annoy or injure them. The Executive not only dispenses the honours, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may be truly said to have neither force nor will, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

This simple view of the matter suggests several important consequences. It proves incontestably that the judiciary is beyond comparison the weakest of the three departments of power; that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks. . .”.

Why do I suggest that the former proposition may be in conflict with the latter? It is because of my experience of more than 11 years of judicial service, the last four months of which have been in the office of “head of the judiciary”. We are all aware from history and contemporary events elsewhere that attacks on the judiciary by those who wield political or economic power – sometimes, as with one Commonwealth country on the African continent, employing mob violence against members of the judiciary – are not unknown. I join my predecessors in declaring that, in The Bahamas, the political directorate has never attempted to subvert or direct the judiciary in the exercise of their judicial functions. I go further and add that, at the level of the principal managers of the public service, the Permanent Secretariat, there does exist an instinctive appreciation of the Judiciary as an entity external to the conjoined reality of the Ministers of the Crown and their supportive machinery. In short, both at the level of the Executive and the Administration, fidelity to the basal principle of judicial independence exists.

Once we move beyond first principles, however, we arrive at the day-to-day problems that the judiciary finds as irritants which, like grains of sand in a machine, serve to make the administration of justice difficult. For some reason which no Minister nor Permanent Secretary is able to correct – indeed, in my several conversations with them, they too complain of being as much victims of the process as is the judiciary – that phantom entity, “the bureaucracy”, succeeds in frustrating the due administration of the system by an inadequate response,

when there is a response, to the necessary ancillary needs of the system. I cite but one example. Any person with even a nodding familiarity of the work of the courts appreciates the role of a judge's clerk, that indispensable link between the judge and everything beyond the judge's chambers, from the parties and their lawyers to the files housed in the Registry. For eight months we had a judge in place who had to function as his own clerk despite the strenuous efforts of the Registrar, the Director of Court Services and two Chief Justices. The problem was eventually only partially solved by poaching a member of the supportive staff of the magistracy -- the type of solution adopted by the man whose blanket could not reach his chin and he sought to solve the problem by cutting a piece from the bottom of the blanket and sewing it onto the top! -- and I thank Magistrate Cheryl Albury for her assistance in this regard. (I admit the element of cajolery employed by me in this case and I assure Mrs Albury that her needs will be addressed as a matter of priority in a manner which I shall highlight later.)

To the extent that language informs culture, members of the judiciary have long felt that the civil service culture may have developed a lack of appreciation of the role and responsibility of the judiciary from the unfortunate and inappropriate reference in so many official documents to the "Judicial Department", the implication being that it is simply another division of some ministry under the supervision and direction of a Minister and Permanent Secretary. The reality that the Judicature is a separate and independent branch of Government, supported by its own administration under the direction of the Registrar who is responsible to the Chief Justice as head of that branch of government, tends to become obscured when one moves below the level of the principal managers of the public service. It is for this reason that we are not merely playing semantics when, within the judiciary, we avoid the use of the term "Department".

There is a school of thought, which holds that the problems which the judiciary experiences with the bureaucracy would be solved by the Judicature having autonomy over its budget and personnel. While this proposition has a superficial attraction as a clear exhibition of the judiciary not standing as mendicants on the doorstep of the executive, I do not favour such a regime. My reasons are that all of the difficulties that we experience can be reduced to one of two issues: matters of money or of personnel. As regards money, if there is one incident of democracy which is more fundamental than the principle of independence of the judiciary is the principle of accountability: all public funds are the fruits of taxes and fees which the citizens are compelled to pay and all who have access to public funds must be held accountable to the citizens for whom those funds are held in trust. This accountability cannot be other than political and, in a small country such as The Bahamas, any change would serve to merely move the political control to another point in the process which is likely to be more intrusive into the judiciary than is the present system. As for personnel, the supportive staff of the Judicature, beyond the level of those who hold legal qualifications, numbers approximately 220 distributed among the various premises which house the Supreme Court and its annexes in the capital and Freeport, the Court of

Appeal and the magistrates' courts in New Providence and other Islands in the archipelago and it is necessary for each of these persons to be part of a structure competent to deal with their appointment promotion and discipline. Again, the size of the Bahamas makes it wholly impractical to attempt to set up a parallel system to the public service in order to manage its staff and, while we have complained and will continue to do so about staff trained in the peculiar duties of the courts being moved out of the Judicature at the whim of other agencies (and, correspondingly, wholly unsuitable persons being visited upon us), we recognise that many of our support staff prefer for their own development and advancement to enjoy mobility within a public service broader than the courts.

If, then, the ancillary aspects of an independent judiciary – finance and personnel – are subject to the vagaries of the normal civil service bureaucracy, how do we ensure that bureaucratic inertia and indifference do not eviscerate the principle of judicial independence? It seems to me that this will only be met by the creation and maintenance of a culture of mutual respect and goodwill as between the administrators of the Judicature and the officials throughout the several government departments through which we must necessarily operate, all with the goal of making the system work. For ourselves in the Judicature, we will adopt the attitude as reflected in what purported, in the dialogue of a certain unremarkable movie from the middle of the last decade, to be a Japanese proverb: “fix the problem, not the blame”

When the deficiencies of the bureaucracy are combined with the unfortunate modern tendency of too many members of the private bar to employ delay as tool of litigation is it any wonder that the ideal of justice – to give each person his/her due – in a courteous, efficient and timely fashion so often fails to be achieved in the day-by-day experience of those who must have recourse to the courts?

I now move on to report on certain specific aspects of the work of the courts during 2001.

Those who have attended these proceedings over the years would recall that a feature has been the recitation of statistics by the Chief Justice. I do not intend to do that today. While the relevant officials have faithfully compiled statistics of the divisions of the courts for which they are responsible, I have not been able to digest these figures to the extent that I might intelligently report on them to the public. More importantly, I am not satisfied that there yet exists objective and consistent standards for the compilation of the necessary information so that one might have confidence in the results which the figures purport to reflect. I hasten to say that I am not criticising the persons who have sought to make diligent reports of their work over the year. The problems are systemic and among the initiatives which will be taken during this year is a new approach to reporting on the progress of matters before the courts.

It is intended that, in advance of the opening of the legal year in 2003, the Registrar will produce a written report on the work of the courts. Such statistics as we are able to produce will be contained in this report, which will be available to the public, a format which would make it more useful for those interested than mere recitation of figures from the bench.

The Supreme Court

During 2001, two new Justices took their places on the Supreme Court bench. Mr Justice Hugh Small, who had not previously held judicial office, but who had a distinguished career in politics and at the private bar in his native Jamaica, assumed office in March.

At the risk of embarrassing her, any one having any knowledge of the history of the legal profession in The Bahamas would appreciate the enthusiasm with which we greeted Ms Jeanne Thompson who, having tested the waters during a three month stint in 2000, took the oath of office as a Justice two days ago. We warmly welcome her and eagerly anticipate her application of experience gained over 30 years in the rapid evolution of the modern Bahamas to the myriad of social problems which present themselves to us for a legal solution; the cliché of round pegs and square holes is apt to describe the difficulties which we often face.

On 1 November, Mr Justice Austin Davis, who was appointed to this bench in 1996 and who had been granted leave of absence to midwife the Eugene Dupuch Law School, the Bahamian manifestation of the Council of Legal Education of the West Indies, returned to his duties.

The statutory complement of Justices, apart from the Chief Justice, is eleven. Today, eight of these positions are filled and, on 1 February, Mr Jon Isaacs, who is substantively the Chief Magistrate, but who has been acting as a Justice of this Court since September of 2000, is scheduled to be confirmed as Justice. One other person has been appointed a justice and is expected to assume the post during the year. These additions will bring our numbers to one short of the statutory maximum.

While proposals to amend the Constitution to extend the upper age at which Justices of the Supreme Court become ineligible to continue in office have been advanced, it would be presumptuous of me to anticipate the fate of those proposals and, as a judge, I must act within the context of existing law. By operation of that law one of the members of the Bench will reach that limit of service in July of this year and another two years hence.

It is no longer the subject for debate that the judges cannot be considered competent to meet the increasing demands of a modern society without being

exposed to continuing legal education. The Bahamas is only now laying the foundations for this and Mr Justice Carey, who, following his retirement as President of the Court of Appeal, was contracted by the government to formally structure a system of continuing legal education successfully organised a residential seminar for judges of the Court of Appeal and the Supreme Court during March.

Another aspect of continuing education, of older vintage than formal training programmes, is the exchange of visits between judges from different jurisdictions – “judicial contact”. For reasons rooted in the development of The Bahamas, unlike other countries in the region, this was never a feature of judicial life here. My predecessor, Dame Joan, sought to put us on this path and, in parallel to her own visits to several jurisdictions, following her invitation to the Lord Chief Justice of England who visited The Bahamas during December of 2000, she invited two Lords of Appeal in Ordinary, Lord Millett, who was here at this time last year, and Lord Steyn, who it was my pleasure to host during December past. Lord Steyn also conducted a seminar on “The Interpretation of Westminster Style Constitutions during his visit.

Lord Steyn’s visit, in respect of which a commitment had been made in July, before the calamities of fire, terrorist attacks and hurricane forced a revision of budgetary priorities, was successful because of the commitment of the Executive and the energy and dedication of the principal officers in the Registry and the Office of the Attorney General to all of whom I am grateful.

Shortly before she demitted office, Dame Joan on a visit to England met with the Lord Chancellor, Lord Irvine, and positive discussions were held on the Lord Chancellor lending assistance in the setting up of a commercial division of the Supreme Court. Upon her return to The Bahamas, she opened discussions with the Prime Minister as to the provision of the not insignificant funds necessary to effect this. I was involved in these discussions which I continued on my assumption of office. Unfortunately, the radical review of government expenditure in the wake of the contraction of revenue following those events to which I have referred, has delayed indefinitely the plans we had hoped to implement for a mutual judicial exchange as a means of ensuring that this project had a sound beginning.

For the benefit of the wider public beyond the legal profession, some explanation is, perhaps, in order here. I begin by re-affirming two bedrock principles. First, the Bench in The Bahamas is too small for there to be specialist judges. While, as in any other area of life, individual judges may have particular preferences or greater skills in specific areas of the law, each judge must be a generalist and able to take the bench in any division of the Court. Secondly, the principle of equal access to the courts means that no aspect of the court’s work can ever be seen as less important than any other area: those accused of criminal offences, those involved in contractual disputes, parties in divorce actions, those with

claims in land law, etc., all have a legitimate expectation for the timely resolution of their matters. However, that having been affirmed, the practicality is that, The Bahamas having chosen the provision of financial services as one of the pillars of its economy (and, consequently, a source of revenue necessary to fund other court services), the commercial business of the court is work which affects parties from every corner of the planet and, as we are then participants on a stage not confined by our national borders, international litigants who fail to obtain access to our courts for the fair, efficient and speedy resolution of their disputes, have the ability disproportionate to their numbers as litigants to ruin our reputation around the globe.

It is for this reason that, although circumstances have forced us to modify the ambitious plans to dedicate facilities and staff to commercial work, I have attempted to meet the perceived need in the modest manner apparent in the roster of judges which I have issued. The listing officers have been instructed to segregate commercial matters from the other non-criminal work of the courts for assignment to the judges assigned to this part of the list. Again, without gainsaying the principle of generalist judges, I expect, as the assignment of judges changes over time, that three or four judges will develop the facility for disposing of these matters.

Before I move to another area of concern I feel obliged to address briefly the vexed topic of Bahamianisation of the Bench. The proposition that the work of judging should be performed principally by nationals whose roots are in the community and who, with their families, must live under the regime constructed incrementally by their judicial decisions needs no arguments to support it; this can be regarded as a Jeffersonian “self-evident” truth.

After the late Sir Leonard Knowles demitted office as Chief Justice in 1979, five years elapsed before another Bahamian, and this person, Mr Neville Smith, a Bahamian by choice, joined this Court. The first Bahamian by birth, after Sir Leonard, to join the Court was Mrs Joan Sawyer (Dame Joan as she now is) in 1988 and she remained the sole Bahamian by birth on this Bench until joined by myself and Mr Joseph Strachan in October of 1990 and January of 1991, respectively. Unlike most other countries, therefore, an indigenous judiciary is relatively new to The Bahamas. Does this process mean that the Bench should be exclusively Bahamian? As a native Bahamian, I am not persuaded to this view. My reasons are twofold: first, all judicial officers must be live to the appearance of bias in their presiding over matters before the courts and the recent decision of the House of Lords, (whose views we regard as so highly persuasive as to be almost binding as precedents for the obvious practical reason that the Law Lords also sit as members of the Judicial Committee of Her Majesty’s Privy Council, the highest court in our hierarchy) in the *Pinochet* case means that we must be even more sensitive to these concerns than we had heretofore thought it necessary to be and, consequent our limitations of size, where we all live, work, worship and play cheek by jowl with litigants and

potential litigants, there arises from time to time cases where it is preferable that the presiding judge be chosen from among those whose roots are not as deep in this community as those of a native or long time resident. Secondly, that tired cliché, “globalisation”, means that The Bahamas is no longer an isolated fishing village whose lawyers had to meet the undemanding needs of an unsophisticated populace. Especially, but not exclusively, in the areas of financial services and shipping, the courts of The Bahamas are required to relate to and interact with courts and lawyers from around the world and this Bench should take the benefit of judges whose broader experiences enliven and enrich its talent pool. Apart from contributions from those judges whose origins lie beyond our borders who are a permanent feature of the Bench, we are joined from time to time by Professor David Hayton, a practitioner and an academic and the author of a leading textbook on the law of trusts. I favour the use of the term “cross-fertilisation” to describe this process, though I am chastened by the observation which a senior practitioner made to me a few weeks ago that, unfortunately, to date, it appears that The Bahamas has always been the egg in the fertilisation process. I believe the view of most persons is that, while the Bench should be overwhelmingly manned by Bahamians, it need not be exclusively Bahamian and there will always be a public debate as to the appropriate ratio.

The Magistracy

I begin by commending the dedication of the 15 permanent Stipendiary and Circuit Magistrates, especially the 11 who work in New Providence whose numbers are supplemented by four members of the private bar who sit part time in the evenings to deal with civil and traffic matters.

Shortly after I assumed office I visited each of the buildings occupied by the courts and I am satisfied that, today, the magistracy is that portion of the system most in need of attention by those who decide priorities in the disbursement of public funds. I will address the matter of physical facilities separately and confine my observations here to remuneration and conditions of service.

In any legal system it is the magistrates who, in terms of sheer numbers, carry the load of the system. Their lesser status as judicial officers relates to the limits of their jurisdiction and powers, not the number of persons who pass before them. As a result, most members of the public who encounter the legal system do so at the level of the magistrates’ courts. All judicial officers, beyond the fact that as human beings we are always expected to be courteous in our dealings with others, because they are the face of justice to the citizen, are especially enjoined to bring to their work – along with the necessary formal training and integrity of character – the virtues of sobriety, forbearance, courtesy and punctuality, always mindful of the fact that the persons who come before the courts, whether as litigants or witnesses are not there voluntarily and, in varying ways depending on their circumstance, are persons in crisis.

When judicial officers, especially magistrates, are expected to manage large volumes of cases out of cramped facilities that are poorly ventilated, damp, inadequately lit and / or penetrated by ambient noises that range from the merely irritating to the disruptive, it requires extraordinary efforts to perform consistently to the standard, which the citizenry are entitled to demand of their judicial officers

When these adverse conditions are combined with inadequate remuneration, the discontentment of the magistrates is understandable.

During the year past, Parliament and the Executive took action on the report of the statutory committee appointed to advise on the salaries and conditions of service of Justices of the Court of Appeal and the Supreme Court and the adjustments took effect at the commencement of the new budget year on 1 July. After that report had been completed and prior to the decisions on its implementation, my predecessor, Dame Joan, in a comprehensive analysis of the relativity of the remuneration proposed for the higher judiciary to other legal public officers, laid out a formidable case for increases for the magistracy, among others. While I recognise the present financial constraints on the public purse, which would not have existed at the time that she made her proposals, I fully endorse her recommendations that the needs of magistrates be addressed as a matter of urgency and I assure the magistrates that I will continue to urge the adoption of those proposals, mutatis mutandis, as soon as it is financially possible to do so.

Returning to the need for continuing legal education, I am disappointed that during the past year, two attempts to hold seminars for magistrates failed because of the inability to secure the necessary financial approval. This, too, is an area in which the relevant agencies can expect agitation from me during the year now begun

The Registry

I have placed this item here because the same recommendations of the former Chief Justice includes Registrars and I make the same pledge to them as I have made to magistrates. Also, a training seminar proposed for the support staff in the Registry suffered the same fate of indefinite postponement for the same reason as affected plans for the magistrates and, again, I pledge to continue to push for this, especially in light of the computerisation project to which I will shortly turn

Apart from these concerns, the urgent need of the Registry is for space. It is a fact of life that litigation generates paper and, contrary to the advocates of computerisation of a decade ago, modern technology has transformed the production of paper in litigation from a flow to a deluge.

I alluded earlier to the role of judges' clerks as the conduit between the individual judge and everything beyond the judge's chambers. In fact the clerk is the personification of the Registry to the judge and it is at the level of the Registry where all matters begin and where the final disposition is recorded for all times. Because, as a former occupant of this chair has put it, the Registry is open to everyone who could afford the filing fees, the consequence of this phenomenon is an ever-burgeoning number of files all of which have to be managed and judicially disposed of.

Security

For obvious reasons, I will not, in this public forum, go into details of the security concerns in an about the courts which need to be immediately addressed. Our present facilities reflect a different era when crimes of violence were few, an intuitive respect for and deference to authority was normative and when The Bahamas was cocooned from events beyond its borders.

The present needs of the courts are such as cannot be adequately met form the scarce resources of the Royal Bahamas Police Force.

The Executive has agreed to the appointment of a manager for court security and a person, a retired senior police officer, has been identified and he is in the process of taking up residence in the Registry under the administrative arm of the Registrar, the Director of Court Services. When he is in place he will be joined by other soon to retire police officers of lower ranks and some of these persons will form the nucleus for the security arm of the court.

I said "some" of these because the Registrar and Court Administrator will have to select from this group persons needed to fill urgent vacancies among the ranks of judges' clerks (in which I include a replacement for the court presided over by Magistrate Albury who hears domestic matters) and the bailiffs.

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 office holder, Mr Paul Farquharson, to attend in a substantive capacity, I congratulate him on behalf of the judiciary.

On another recent occasion, I have considered it necessary to try to explain what his military title of "Provost Marshal" means and I repeat what I said then. 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. However, I am in continuing dialogue with his office and we are establishing a process to vivify the otherwise titular title of Provost Marshal for the oversight of the security division of the courts, an important component of which will be an armed, uniformed section who will gradually assume all of the duties now performed by police officers.

THE BAHAMAS INTEGRATED JUSTICE INFORMATION SYSTEM (BIJIS)

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

Senior Justice Ricardo Marques and Mrs Justice Anita Allen, respectively, Chairmen of the Criminal Task Force and the Civil Task Force previously appointed by the then Chief justice, were 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 Mr. Charles Knowles, National Information Technology Coordinator from the Ministry of Finance and Mr Wayne Munroe and Mrs Caryl Lashley of the private Bar.

After many hours of work and over several months of meetings, the Committee, with the assistance of Dr. Bob Roper, 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. Since that time the agencies have been working feverishly to ensure that everything is in place to commence a pilot of the software. A new IBM AS/400 computer was recently installed and technicians are in the process of ensuring that all other computer equipment within the Judiciary is connected to the AS/400 in preparation for installation of the JEMS® software.

It is anticipated that the JEMS® software will be installed in the courts and training of court personnel will commence later this month. The prosecutor's module is being developed and is expected to be ready for installation and integration with the courts between April and October of this year.

It is also anticipated that integration with the Police and Prison systems will occur in December of this year and that Probation will be brought on line during the month of April 2003

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

New Buildings

My remarks to this point have had as a refrain the desperate need we have for space.

At present the Supreme Court with its annexes and its Registry are spread out among five different buildings in the city, two of which are privately owned. Magistrate's Courts are housed in five other buildings one of which is privately owned. The rental for such buildings as are not public buildings is approximately \$458,000 per annum and the inefficiency occasioned by the replication of personnel, books and equipment and the risks inherent in the continuous movements of files is obvious.

The government has accepted, in principle, the urgent need for a new purpose built building in the City to house the Supreme Court and the Court of Appeal. It will be recalled that, in 1999, architectural plans were approved and a site identified. Then came Hurricane Floyd, and ensuing catastrophic events, natural and man-made, have pushed this project farther and farther into the background.

I acknowledge with gratitude the assistance of the President of the Senate in, once again, making available a portion of the Senate to house another annex to the Supreme Court. We are at present in discussions aimed at securing further space in the Senate building to accommodate the immediate needs of the courts.

I earlier used the term "purpose-built" in relation to court buildings. Courts are buildings having peculiar architectural characteristics centered on security and the requirement to segregate different categories of persons having business there. One of the features of modern courtroom design reflects the need to be sensitive to the concerns of witnesses, especially those who complain about crimes of a sexual nature or of violence to the person. (It will be noted that I have avoided the use of the word "victim" because, whatever the views of persons outside the courtroom may be, the bedrock principles as to the burden and standard of proof in a criminal trial are such that there is no "victim" until the tribunal of fact is satisfied that a crime has in fact been committed and, within the past two months, I have presided over two criminal trials, one alleging an armed robbery and the other alleging sexual abuse of a young girl and in each case the jury's verdict of acquittal with which I agreed made it clear that, on the evidence, they were not satisfied that any crime had, in fact occurred.)

The role and duty of the courts is to determine questions of guilt or innocence in criminal matters and to determine liabilities and obligations in other suits and it can only do so by requiring persons, by invitation or compulsory process, to attend before it. The sensitivity which the system ought to display to all who come before the courts should be such that accused persons, relatives, complainants and other witnesses, jurors, police officers and members of the general public do not have to be all crowded together in one waiting area or, worse still, under a tree outside.

Our present buildings are irreparably inadequate to meet the modern requirements for security and convenience, support and safety for those who work in them or those who are required to seek assistance therefrom.

I have been advised by the Prime Minister that the government is now in a position to begin to remedy some of these deficiencies by the construction of a new magistrate's court complex. While I look forward to these new facilities I must record my disappointment that it appears to be inadequate to our needs even before ground is broken. We have 11 magistrates in New Providence yet a new building is intended to house only 10!

Such new courts are, at least, two years away once construction commences and, in the meantime, I am advised that a contract has finally been awarded for the repair of the magistrates courts in Nassau Street which were damaged by fire earlier this year. The lack of availability of these premises has resulted in further

delays in the disposal of matters because the three magistrates assigned there have had to rotate with other magistrates in the use of premises downtown.

The Bar

During 2001, 39 persons were admitted as counsel and attorneys bringing the membership of the Bar to just over 600. The rapid expansion of the Bar is highlighted by the fact that, on a roll commencing with Mr Maxwell Thompson in 1946, I appear, 30 years later, as number 108. A further 30 years have not yet elapsed and that number has increased more than five-fold.

I have earlier made reference to the disturbing tendency among some practitioners to seek to frustrate the orderly disposal of matters before the courts by employing delaying tactics. There are other practices which have crept into the behaviour of counsel in recent times which often lead judges to question whether the culture of the legal profession has so changed from law as a profession rooted in courtesy, honour and erudition to a mere business where the rule is that nothing is beyond the pale in the pursuit of a high profile and fat fees.

The Bar is possessed of a wealth of skills and talent among its many members and I am satisfied that, as a whole, it retains the sense of a duty to provide a special type of service to people in need. My predecessor was wont to say that the administration of justice is a cooperative exercise. I adopt this view and add that the judiciary, as with the wider community, is entitled to expect that the Bar will remain alive to the need to discipline that minority of its members who are intent on frustrating, rather than cooperating, in the fair, timely delivery of justice.

I have been approached by some members of Bar – I am not sure whether any members of the Bar Council have been among them – to consider a revival of the moribund Bench and Bar Committee. I am certainly open to the idea but, having some small acquaintance with the history of this committee being abused by the lawyers on it to vent their disagreements with judges who have given decisions with which they have been disappointed, I warn any lawyer who so intends to use the Bench and Bar Committee that it will, once more, have the life of a hibiscus.

On a more positive note, hand in hand with the administrative changes necessarily incidental to the BIJIS project, the Rules of the Supreme Court must be changed and it would be appropriate to revisit the Rules with a view to the early implementation of what has come to be called throughout the Commonwealth, “Woolf” reforms, those radical changes begun in England and replicated elsewhere intended to simplify civil procedure making it more efficient and cost effective for clients, and more accessible to litigants in person and which shifts the power to move cases along from the litigants and their lawyers to the judge.

Although, as with every other country which has done this, there will be a measure of resistance from some members of the Bar, the Bar as a whole will embrace the need to reform the system as we move into a new age where a more critical and informed consuming public will simply not put up with nonsense from any provider of products or services – not even from lawyers!

Conclusion

It may be thought that when one considers the substantial resources that the keepers of the public purse have channeled into the maintenance of the machinery of the Judicature it is time for competing applicants – schools, health care, public works – to take priority over our needs. While I accept the reality of having to compete for scarce resources (the expression of having “more will than wallet”, elegantly crafted by Peggy Noonan for the inaugural address of the first President George Bush, is probably the refrain of all governments), as head of the judiciary my brief is to keep the needs of the judiciary, who are the guarantors of a safe and ordered society, high in the considerations of those arms of the government which control the purse as well as the wider community and it is a simple fact that the provision of legal services can never be made inexpensive.

Correspondingly, therefore, we who operate the system – judges, registrars, magistrates, support staff – owe the highest duty of accountability to the community which sustains us and which we are appointed to serve to do so with integrity with diligence and with courtesy.

As we move across threshold of a new legal year I thank our partners in the other branches of the one government of this Commonwealth for their necessary support and assistance to us, the judicial branch, on whose behalf I renew the commitment to faithfully serve our country.

I now formally declare the legal year 2002 opened.

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