Opening of the Legal Year
8 January 2003

Remarks by the Chief Justice

The Honourable Sir Burton Hall

Reform is change. Judicial and legal reform to a great extent involve changing the habits and behaviour of humans, - often contrary to their personal and vested interests. This is not as easy as building roads and bridges, - most people by nature tend both to resist change and to revert to former ways when a short-term pressure for change goes away. Experience shows us that to successfully achieve long-term behavioural change requires a combination of incentives to change, participatory identification and articulation of changes required by those to be most affected by the reforms and sanctions for failure to change. To achieve this we need to create an environment open to change, an important part of which is to inculcate in the judges, support staff and bar an ethos of service and openness to reform.

. . .

Judicial education is the foundation of judicial reform. The desired end product of judicial education is improved service to the community delivered by an impartial, competent, efficient and effective judiciary whose performance attracts the confidence and respect of the people it serves.

. . .

"Impartiality" and **"Independence"** are often used interchangeably. [T]he analysis of judicial independence . . . includes mechanisms that have been found to be supportive of the environment that is most likely to ensure an impartial judicial mind. It includes:

(1) substantive independence – which means that in the discharge of his/her functions a judge is subject to nothing but the law and the commands of his/her conscience,

(2) internal judicial independence – which requires that the judge be independent from directives or pressures from his/her fellow judges regarding his/her adjudicative functions and

(3) collective independence – which extends to the independence of the judiciary as a whole, as a corporate body and is measured by its administrative independence.

This concept of judicial impartiality-independence identifies roles and responsibilities for the judiciary, the Executive, the media, the legal profession and the public.

. . .

Competency . . . refers to an adequate level of legal knowledge both substantive and procedural. In many developing countries there is insufficient information and material provided to the judges to maintain and adequate level of competency.

Efficiency . . . includes efficient judicial court room management, case flow and process efficiency, reform of rules and procedures to early narrow the issues and encourage timely settlements, court annexed and free standing mediation and other ADR practices. Efficiency also relates to appropriate physical structures, adequate equipment and timely access to such judicial tools as laws, precedent cases, legal texts and other scholarly writing.

[There are] several aspects of judicial **effectiveness**. One is bridging the gap between law and justice by judicial techniques such as domestic application of international human rights norms, judicial activism in interpretation of constitutions or through the exercise of discretion. All these judicial techniques are in use to achieve justice in particular cases.

Judicial predictability is a second aspect of judicial effectiveness. A third aspect is the collective judicial responsibility of listening to the community's complaints about the justice system and using its influence to shape the justice system to respond to responsible complaints. For example, judges often do not consider a low rate of judgment recovery their responsibility. In many countries, however, difficulties in enforcing judgments make successful litigation a hollow victory and bring the judiciary into disrepute. There are legal and administrative ways of improving judgment recovery. Should the judiciary not be interested in supporting these?

Another aspect is the reality and perception of impartiality . . . to attract the confidence of the community the judiciary serves.

(*emphasis added*)

My Lords, My Ladies
My brother, Sir Dennis Byron, Chief Justice of the Eastern Caribbean,

Mr Attorney
Mr President, Mr and Madam Vice Presidents of the Industrial Tribunal
Registrars
Magistrates
Madam Director of Legal Affairs, Mr Director of Public Prosecutions
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.

As I did last year, the first occasion on which I had the privilege of presiding over these ceremonies, I begin by explaining that it is not by choice that they 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 and, on behalf of the Judiciary, 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.

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 His Grace, Archbishop Gomez for today's challenge to us to commit ourselves to service and to excellence.

I am grateful too, to His Grace, Archbishop Burke of the Catholic Archdiocese of Nassau, for the invitation to attend the Annual Red Mass on Sunday past. As always, his homily presented a challenge to each of us who are privileged to operate the levers of the machinery of justice to ensure that the disadvantaged and the marginalised members of our society benefit from what they have a right to expect the system will secure for them.

Again, I repeat the observation that the discipline and talent demonstrated in drill and music by the Internal Security Division of Royal Bahamas Police Force who, accompanied by the Force Band, presented the guard of honour for inspection, as one of the traditional features of these ceremonies, speaks volumes about what Bahamians, especially young Bahamians, are capable of. I would ask the Provost Marshal, in his other capacity as Commissioner of Police, to convey my thanks and congratulations to the Director of Music and the officer commanding the guard for the panache that they have so added to today's pageantry.

It has become the tradition that the Chief Justice, as head of the judiciary use the occasion of the commencement of the legal year to report on the work of the Supreme Court and the several magistrates' courts over the preceding year.

Last year, in remarks which some of you would recall did not have brevity as one of its characteristics, having been in office for only four months, I was careful to avoid specifics. Although I cannot advance that excuse this year, I will repeat that pattern of avoidance as the obligation to be both candid and kind on public occasions such as the present do not permit me to say more than that this year has been one more of frustration and disappointment than one of demonstrable progress.

Clearly, in common with other agencies that rely on the public purse for their sustenance, the deleterious effects of terrorist attacks and threats of war on an interdependent world economy, has been the immediate local result of an insufficiency of resources.

Computerisation and Civil Procedure Reform

It will be recalled that I had reported last year that THE BAHAMAS INTEGRATED JUSTICE INFORMATION SYSTEM (BIJIS) project had a target date of May of this year for completion. 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, the system over which Sir Dennis presides, 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.

I commend Mrs Estelle Gray-Evans, Deputy registrar, who serves as "BIJIS Coordinator", along with her staff of two, for their success in, to borrow the popular misstatement of the plight of the Hebrew slaves as recounted in the book of Exodus, producing bricks without straw.

One of the consequences of our failure in this regard is that the type of written statistical report, which I had promised on this occasion last year, has not been produced. My experience cautions against making any such rash promise for this year.

I treat the computerisation exercise under the same head as civil procedure reform as our history is that both initiatives had a common genesis. The co-chairs of the BIJIS Steering Committee were Senior Justice Ricardo Marques and Mrs Justice Anita Allen who had, respectively, served as Chairmen of the Criminal Task Force and the Civil Task Force appointed by my predecessor.

It is a matter of record that the proposals of the civil task force for revision of the Rules of the Supreme Court to simplify the process and make it more accessible to litigants were not greeted with enthusiasm by many members of the Bar, too

many of whom use delay as a tool of litigation and who resist any attempts to move control over the progress of matters filed in court from lawyers to judicial officers. As a result, those recommendations have lain dormant.

I have decided to move this matter forward on two tracks. Senior Justice Marques and Mrs Justice Allen, along with Mr Justice Mohammed, have been constituted into a sub-committee that will prepare a report recommending modest, uncontroversial, necessary changes to the Rules of the Supreme Court, which the Rules Committee will be invited to adopt within the first quarter of the New Year. The second track is the preparation of a formal report inviting the Executive to retain the services of appropriate expertise from abroad to advise on the best approach for more wide-ranging civil procedure reform to make for a less expensive and more efficient and accessible system. Experience demonstrates the futility of attempting this exercise by exclusive reliance on such resources as are available locally.

The Rules Committee is one of the organs through which the Bench and Bar co-operate to meet the challenges which access to justice for all require. It was reconstituted within the past few months in anticipation of the receipt of the report to which I have alluded. However, practitioners will be relieved to learn that the first action of the new Committee was to change the prescribed size of paper for use in the courts to the more manageable 8 ½ by 11 (or A4) size, thus bringing The Bahamas into line with most of the rest of the world. While this new rule came into force on 1 January, in order for practitioners to exhaust their stocks of "legal" length paper, either size would be receivable by the Registry until 31 December of the year.

Finally, under this head, I draw the attention of practitioners to the Order, which I have made under the Supreme Court Act, formally abolishing the pre-1976 system of filing matters in the Supreme Court according to "Sides". Matters will henceforth be allocated among the sub-heads falling within one of seven "Divisions". While, for consistency, judges are now assigned to one or more of such divisions, each of which is under the management of a Registrar, I hasten to reassure practitioners that this is largely a notional classification intended to facilitate the computerisation exercise of filing matters and that we do not yet have the luxury in The Bahamas of assigning any judge exclusively to any particular aspect of the myriad work of the Court.

Training

The observations with which I began were those of the Honourable Judge

Sandra Oxner, President of the Commonwealth Judicial Education Institute (of which our distinguished visitor, Sir Dennis Byron is Vice-President) and appear in a paper which she delivered to the International Forum for Training of the Judiciary in Jerusalem, Israel, during March of 2002.

During June of 2002 I, along with Mrs Donna Newton, Acting Registrar, was privileged to participate in the CJEI workshop, a workshop in which several other judicial officers in the Bahamas have taken part over the years. International fora such as this provide the opportunity, not otherwise available, to interact with colleagues from beyond ones immediate environment and learn both in formal sessions and in social interaction, of the extent to which your problems are not peculiar and which solutions (those which have and have not proved successful elsewhere) might be considered for local implementation.

While the principle of continuing education for all judicial officers and their support staff has been accepted in The Bahamas, as elsewhere in this region, it has been a source of frustration, especially to those of us who are CJEI "Fellows", that we have not been able to garner the resources for formal and systematic training programmes and that such work as we have been able to do has been on an ad hoc basis.

Mr Justice Carey who, following his retirement as President of the Court of Appeal, was contracted by the government for three years to, among other things, formally structure a system of continuing legal education, and who departed The Bahamas at the end of 2002, was able to organise two seminars for magistrates and one for registrars during the year.

While I have received no indication from the Executive as to what resources will be provided to facilitate continuing legal education in the immediate future, I have designated the Deputy Registrar, Mrs Estelle Gray-Evans, as the officer within the judiciary who will coordinate such training as we are able to organise internally and I have identified the following four Fridays as "Training days" for 2003: 28 February, 30 May, 26 September and 5 December. To avoid the disruption to the courts' calendar and consequent inconvenience to litigants when a seminar is arranged a month or so beforehand, in October of last year, I requested all judicial officers to ensure that these dates are kept free from fixtures and Mrs Evans and I will, after consultation with judges, registrars and magistrates, decide on the groups to whom these dates will be assigned for training.

While the courts will remain open on those days in accordance with statutory mandate, no cases will be fixed for those dates and I invite counsel to so note that in their diaries.

If our experience justifies it, henceforth, the last Friday in February, May and September and the first Friday in December will be institutionalised as training

days.

One of Mr Justice Carey's last acts before he departed was the formal presentation of the first Criminal Bench Book produced for The Bahamas. The nature of bench books is that they have to be continually revised as the law evolves and, in the absence of a local "Judicial Education Institute", each judge will have the responsibility to ensure the relevance of this "manual'.

I thank Mr Justice Carey for the assistance that he afforded our training programmes over the past three years and we will build on that work in the years to come.

Movements within the Judiciary

I have made mention of "Mr Justice Mohammed". Justice Mohammed, who had served for many years as Law Commissioner, assumed office in February of this year. As indicated in my remarks of last year, Mr Justice Isaacs, former Chief Magistrate, who had acted as a Justice for about 18 months, was confirmed shortly after the year commenced. I now formally welcome them both.

Mr Justice Moore, who served in the Court at Freeport, attained the mandatory constitutional retirement age on 1 July and, on the recommendation of the Prime Minister, had his tenure extended by the Governor-General to enable him to complete part-heard matters. He demitted office on 31 December and, although I would have previously done so privately, I now formally thank him for his service to the judiciary of The Bahamas.

One of the challenges that each Chief justice has faced since 1994 is ensuring the continuation of the work of the Supreme Court in the "Northern Region", that is, at Freeport. Upon the retirement of Justice Moore, the Judicial and Legal Service Commission recommended that the Registrar of the Supreme Court, Mr Stephen Isaacs, be appointed an acting justice assigned to Freeport. He took up the post on 1 September of 2002, assuming responsibility for the entire work in that court. From the beginning of this year, it is expected that Justice Isaacs will ordinarily take the civil list and three Justices from Nassau have volunteered to each do two-month stints in Freeport to take the criminal list. This arrangement is, admittedly, far from satisfactory and a better solution for Freeport will have to be devised.

Consequent upon Mr Isaacs' acting appointment as a Justice, the Deputy Registrar, Mrs Newton, has been appointed to act as Registrar and Mr Ernie Wallace, a Stipendiary and Circuit Magistrate previously assigned to Eight Mile Rock has been moved to the capital to act in the position substantively held by Mrs Newton.

In the magistracy, on Friday past, fully acknowledging the complaints of the Director of Public Prosecutions about “poaching”, Mrs Debbye Ferguson formerly of his office, was sworn in as magistrate and has agreed to be posted at Eight Mile Rock.

In New Providence, in November we bade farewell to Mrs Gladys Manuel who had served for approximately a decade and a half. I thank and commend her for her many years of faithful service and wish her well for the future.

With the departure of Mrs Manuel, there are now two magisterial vacancies, both in New Providence, which have to be filled to prevent the creation of an unmanageable workload on the other magistrates.

In this vein, I acknowledge the assistance of the several private practitioners who have volunteered to serve as magistrates on a part-time basis in the “Night Courts”. It would be inappropriate in this forum to elaborate on the reasons for the degree of tension that exists between the substantively appointed magistrates and those who serve part time. I have promised the former and cautioned the latter that I take the concerns seriously and that the Registrar, the Chief Magistrate and I must find a fair solution. I would, however, say this. The system and the community as a whole would benefit by having volunteers from the private Bar sit as regular magistrates for, say, periods of six months.

Relations with the Bar

I have previously dealt with The Rules Committee. The other organ in which Bench and Bar interact is the Bench and Bar Committee. Many of you recall my warning last year that, in yielding to the entreaties of the Bar to revive that Committee, if practitioners were tempted to use it to vent their spleen against particular judges that committee would have “the life of hibiscus”. I am pleased to report that, over the past year, members who have served on that Committee have produced a flower which promises a longer life and the year ahead will determine whether it is shrub that might take root.

Among the tentative first steps of the resuscitated Bench and Bar Committee has been a subcommittee that met with the Probate Registrar, Mrs Tabitha Cumberbatch, to deal with the embarrassing problem of the inexcusably high number of estates in which grants of probate had not yet been signed. Practitioners have come to appreciate the constraints of time, space and personnel under which the Probate Registry works and I, along with the Probate Registrar, have been educated to rethink the method of processing applications both to meet the immediate needs of native beneficiaries and also to preserve the international reputation of The Bahamas as having an efficient judicial system for dealing with the estates of persons who invest in The Bahamas.

I am pleased to report that the probate backlog has, for all practical purposes, been eliminated and I commend the zeal and dedication of Mrs Cumberbatch and her staff and I thank Senior Justice Marques and Mr Justice Longley for their assistance is dealing with the volume of grants which the industry of Mrs Cumberbatch produced for signing at the end of November.

The group that the Bar has organised to assist in probate matters should stand ready to assist the Rules Committee which I have invited to examine the Probate Rules with a view to streamlining our processes and improving efficiency.

The ranks of the Bar have continued to expand and, during 2002, I admitted 34 persons as Counsel and Attorneys of the Supreme Court which means that, in my 16 months in office, I have admitted 73 persons to the Bar.

I had announced during one of the calls last year my intention to revise the ceremonies with effect from this year. In The Bahamas of the 21st century there can be no justification to devote 3 hours to mark the entry of persons into but one of the several professions and activities which service the Bahamian society and for the Chief Justice, whose courtroom is too small for these exercises, to displace the Senior Justice on these occasions, in some instances for two such ceremonies in a day because of the number of persons, is not the best utilisation of time and resources.

Accordingly, I will shortly be sending to the President of the Bar Association my draft of the simplified call ceremony that will take effect with the first calls for 2003 scheduled for April.

Security

As in the past, for obvious reasons, I will not, in this public forum, go into details of the security concerns in an about the courts.

Last year, I alerted you that Cabinet had agreed to the appointment of a manager for court security and a retired senior police officer had been identified. That Officer, retired Assistant Superintendent of Police, Mr Jaciel Williams, was able to form a “Court Security Unit” at the beginning of January of 2002 with a total of 14 officers, which number has been increased to 26, posted between Nassau and Freeport. At present, all of these officers are still members of the Royal Bahamas Police Force and the reason for the delay in their reassignment to the Office of the Judiciary is the resolution of the administrative difficulties which such reassignment involves between two different ministries of the government and the Office of the Judiciary.

The scattered nature of court premises poses a continuing challenge for this unit

and, despite some incidents well reported in the press over the past year, on behalf of Mr Williams, whom I commend, I would invite the Provost Marshal to advise the Commissioner of Police that he might confidently report to his Minister that this pilot scheme is working probably as well as it could having regard to those limitations of resources well known to the Commissioner.

Conclusion

The role and duty of the courts is to decide questions of guilt or innocence in criminal matters and to determine liabilities and obligations in other suits, whether of a family, constitutional, commercial or other nature. This is what the "Rule of Law" entails.

It is especially in relation to criminal matters that members of the public ventilate their frustrations with the system of justice and we in the judiciary, who do not enjoy that freedom of speech which we sit to guarantee to others, are alarmed and distressed when those who have the public ear join in the public hysteria, rather than using moments of public outrage as teaching opportunities to explain the importance of such principles as the burden and standard of proof in criminal trials, freedom from arbitrary arrest and detention, freedom from torture and the right to the security of ones home and person, which, while "inherited" by us as part of the colonial legacy, were only secured elsewhere after centuries of turmoil and struggle, .

The popular cant, here and abroad, about the need to redress the balance as between "victims" and accused persons sets up a false dichotomy as it fails to recognise that the person wrongly accused is, too, a "victim" and it cannot enhance the public's security if, for expediency, we are careless about depriving persons of their liberty -- or even their lives -- by process of law if the individuals truly responsible for wrongdoing remain undetected and unconvicted.

No matter how heinous the transgressions of terrorists, drug traffickers, murderers and rapists are, it is not sufficient to simply accuse someone of these crimes. The State, on behalf of all of its members must prove it. That some alleged crimes, by their nature, are more difficult to prove than others -- sexual offences, financial crimes and frauds being the obvious examples -- cannot lesson the burden on the State to establish why a person accused should be deprived of his liberty. It is by the process of trial, not popular denunciation, that guilt is established and it is the work of the courts to conduct the process. And, when the State fails in its obligation to proceed in a timely fashion against those in respect of whom accusations are made, it is the duty of the courts to deal with such failures. Accordingly, the courts are not to be blamed when a person charged with murder is released on bail because the prosecuting authorities have failed to bring him to trial after detaining him for four years

This often misunderstood and misrepresented aspect of the work of judges is all part of being an “impartial, competent, efficient and effective judiciary” That is the oath that we have taken. That is our duty to the society

I now formally declare the legal year 2003 opened.

~ ~ ~ Ω ~ ~ ~