

**Remarks by the Chief Justice
The Honourable Sir Burton Hall
at the Opening of the Legal Year on
14 January 2004**

“Moral codes survive only if they are constantly taught and recognize. Rules are kept by convention, habit and self-interest, and, to a large extent, because other people keep them. Self-interest works for the common good. Operating a code of behaviour is like a pyramid sales operation. As long as it continues, its working guarantees its future. Once a significant number of people start to breach the code with any frequency, self-interest becomes self-centredness and the whole system falters. People behave badly; other people then behave badly because they have lost trust. They do not have the confidence to follow what their consciences often prompt them to do. Disorder becomes its own recruiting sergeant.”

My Lords, My Ladies, Mr Attorney, etc.

On behalf of the Judiciary which I am privileged to 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.

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 Dean Adderley for his sermon urging that we, who claim to be Christian, have the responsibility to be “salt” and “light” in bringing the legal system to the service of our fellow human beings.

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. On Sunday past, the Catholic Archdiocese of Nassau, following the centuries old tradition of the Roman Catholic Church, celebrated a “Red Mass” invoking the guidance of the Holy Spirit on the work of the courts, to which the judiciary and the Bar were invited and which we were pleased to attend. The Bench joins the Bar in thanking Archbishop Burke for the reminder in his homily of the several incidents of responsibility owed, especially by us who are agents of the law, to enhance civic virtue.

I thank the Commissioner of Police, who is also the Provost Marshal of this Court, for the usual excellent presentation of the guard of honour by the Internal Security Division of Royal Bahamas Police Force accompanied by the Force Band that is one of the traditional features of these ceremonies. I also thank the Traffic Division of the Force for facilitating our procession to and from Christ Church Cathedral today.

Over the years, the practice had developed that the Chief Justice, as Head of the Judiciary, uses 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. In

January of 2002, my first year in this position and having been in post for only four months, I was careful to avoid specifics and, in 2003, I repeated that pattern of avoidance, explaining that the obligation to be both candid and kind on public occasions such as the present did not permit me to say more than that the year had been one more of frustration and disappointment than one of demonstrable progress. Today, I could say that little has changed during 2003 and bring these proceedings to a close without more.

The insufficiency of resources in the areas of personnel and premises to serve the needs for legal services in a rapidly developing society to which I have referred on those occasions has resulted in our achievement being limited to holding on to our present state without regressing.

To those who think me a complainer, I take no offence.

In one's progress from childhood to adulthood, certainly by the time of adolescence, one is taught that to whine and complain is a measure of immaturity that achieves nothing and serves merely to irritate others. However, as one continues development through young adulthood onto whatever age at which it is recognized, one learns to distinguish that whining, indulgent self-pity (which appears to be a source of pleasure for some people that each of us would have met) from the type of complaint which is rooted in dissatisfaction with how things are and which recognizes action in oneself or those on whom one must rely and which has been the impetus to most human progress, from the invention of the wheel onward.

All persons who have to look to the services we provide have a right to complain and we, in common with all who operate the levers of state power have a duty to listen courteously and patiently and do whatever we can to remedy their legitimate grievances. The tendency of all systems toward indolence and apathy is arrested by encouraging complaints and criticism.

In sum, you have the right to complain and we have a duty to act.

Accordingly, when jurors, witnesses and others who have to use the services of the courts complain, I assure them that they should never be embarrassed to complain. If you have experienced a problem, your complaining brings it to our attention and we will make every attempt to correct it, if it is within our power to do so and, if it is not, we will point you in the direction along which you should proceed.

I must emphasise that I am speaking now of the ancillary services provided by the court – not hearings before judges, registrars or magistrates – the remedy for dissatisfaction with decisions being well laid out by statutory prescription.

While there is the risk of having to deal with persons who are incapable of being satisfied (and the legal system has the means of dealing with those who are found to be “vexatious”) my experience continues to be that most persons are satisfied if they have been fairly dealt with, even if the resolution is less than they would have hoped for.

One of the disadvantages of being a country at the earlier stages of development is that we do not have the sophisticated state supported social services such as citizens advice bureaux or legal aid and many residents simply lack the knowledge of where to go to seek advice and assistance on a wide range of personal and social problems.

In order to harness effectively the ability of our own resources to deal with public complaints and to reduce the stress caused to the support staff, who would have their own complaints (I have often told my own staff that, from some of the exchanges which I hear on the other side of my door they should be eligible for a “harassment allowance”) in consultation with the Registrar, I have identified an officer within the Office of the Judiciary to whom all complaints would be directed and who would otherwise assist by referring inquiries to such other state agencies as have the responsibility for the particular problem.

Mr Ralph Rolle has enthusiastically accepted the challenge and appropriate notices will soon be posted to direct the public to his office.

As such complaints make their way up the recognitional ladder for resolution at their appropriate level, I consider it my responsibility to carry forward those complaints as should, but cannot be, resolved by us due to inadequacies of resources. 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. Therefore, I will continue to plead, persuade, cajole, complain, and even annoy those whose responsibility it is to provide the resources that the judiciary manages in order that the Office of the Judiciary is enabled to provide the services that the 21st century Bahamas is entitled to expect. I have long held the view that the parable of the importunate widow (Luke 18:1-6) is a lesson we should all heed in dealing with officialdom

To assist in this task, I have formed the Acting Registrar, Mrs Donna Newton, the Deputy and Assistant Registrars, Mrs Estelle Gray-Evans, Mr Ernie Wallace, Mrs Tabitha Cumberbatch, along with the Director of Court Service, Mrs Dolly King, the Manager of the Court Security Unit, Mr Jaciel Williams and the Chief Magistrate, Mrs Vera Watkins, into a management team which, under my chairmanship, meets at roughly monthly intervals to identify and seek to rectify problem areas.

I now move on to report on certain specific aspects of the work of the courts during 2003.

Computerisation

Those of you who actually recall what is said on these occasions might remember that, in my first presentation made two years ago, I pointed out that, while a feature had been the recitation of statistics by the Chief Justice, I did not intend to do so at that time because I was not satisfied that there yet existed 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 indicated that a new approach to reporting on the

progress of matters before the courts would be adopted and promised – quite rashly, as subsequent events have shown – that, in advance of the opening of the legal year in 2003, the Registrar would produce a written report on the work of the courts which would be available to the public and which would include such statistics as we are able to produce.

My expectation was based on the successful implementation of the BAHAMAS INTEGRATED JUSTICE INFORMATION SYSTEMS (BIJIS) project that had a target date of May of 2003 for completion and last year I expressed great disappointment that, primarily due to the lack of the necessary administrative and technical personnel, this 2.5 million dollar exercise had slowed to a crawl.

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

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

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

Accommodations

This is the other major source of frustration. I need only invite interested persons to look at the facilities out of which we are expected to serve the public (you would not, of course, be misled by the cosmetics such as the recently applied paint).

On Monday next, the Supreme Court will begin to hear a major commercial trial that will engage a large number of lawyers, including five leading silks from the English commercial bar. It is set to last for at least three months. The Bahamas, which boasts of being a leading financial centre and which, as a consequence, would be expected to offer accommodations for such trials, must make do with a courtroom which overlooks the busiest part of Bank Lane, the exchange point for persons in custody who have to be moved between the various courts, and so must compete with the high level of ambient noise with the judge working out of cramped chambers in a poorly maintained building which should make any Bahamian embarrassed as we try to project an image to the world of competence and professionalism.

Any new court building is years away and the necessity to rent suitable accommodations is painfully patent. The Director of Court Services, sometimes with the Chief Justice in tow, has to devote too much time identifying and viewing suitable premises and putting forward proposals the fate of which is the void of inactivity.

Judicial Visits and Exchanges

While I have criticized the Executive for its inadequacy of support in certain areas, I must express my gratitude for their provision of funds to enable judicial officers to participate in a number of regional and international conferences during the year. Expenses occasioned by such travel are an unavoidable fact of life.

Despite the rumblings of discontent which are heard on radio talk shows and elsewhere about public funds being used to provide “vacations” for officials, thinking persons recognize that, in an interconnected world, officials of all countries great and small, no less than business persons, have to meet and interact with their like numbers and that participation in meetings is the only way in which the country’s views and interests can be advanced and erroneous impressions corrected.

While, for reasons external to The Bahamas and despite the local provision of funds, The Bahamas did not participate in this year’s Commonwealth Law Conference in Melbourne, Australia, judges, registrars and magistrates were able to attend conferences in Cambridge, England, Miami, Florida, San Jose, Costa Rica, St Lucia and Barbados covering the areas of economic crime, commercial law, judicial education, judicial management, judicial writing and judicial statistics. In addition I attended a meeting of Chief Justices in Barbados that dealt with setting up a regional institution for judicial training and I also participated in the 6th Annual Conference of Heads of Judiciary of the Caribbean in Belize.

With the commitment of the government of The Bahamas to host this year’s Caribbean Heads of Judiciary conference, the Chief Justice of The Bahamas has assumed chairmanship of that Conference.

Continuing the process of inviting distinguished jurists to visit, we were privileged, during the past week, to host Lord Bingham of Cornhill who is the Senior Law Lord and, as such, the senior member of the Judicial Committee of the Privy Council which remains as the highest Court in the Bahamian hierarchy. Lord Bingham’s very full week included the presentation of a paper on the impact of Judicial Decisions on the Economy and leading a discussion on Constitutional Reform and the Independence of the Judiciary.

The Supreme Court

Senior Justice Ricardo Marques reached the constitutionally mandated retirement age on 5 January but he takes his place on the Bench today as the Governor-General, in exercise of the provisions of Article 96(2) of the Constitution has permitted him to remain in office within the intendment of that Article until 31 March. We thank Justice Marques, who has served The Bahamas for more than 20 years, as legal draftsman, Director of

Legal Affairs and a member of this Court, and we wish him and his wife all the best for the future.

The Judicial and Legal Service Commission has agreed to advise that Mr Stephen Isaacs, Registrar, who has been acting as a Justice and assigned to Freeport since August of 2002, be appointed a Justice with effect from 1 March 2004 from which date Mrs Estelle Gray-Evans, Deputy Registrar, will be appointed as Registrar. I congratulate Mr Justice Isaacs and Mrs Evans on their respective appointments and I thank Mrs Donna Newton, Deputy Registrar, for her dedicated service as Acting Registrar since Mr Isaacs's translation to the Bench. I wish all these judicial officers many more years of productive service.

The Registry

It has become apparent that the demands on the Registry, the administrative foundation of the judicial system, have become such that the post of Registrar (in which I include Deputies and Assistants), who is charged with overseeing the support services of the courts, including the supervision of a staff of approximately 139 persons in the Supreme Court and 87 in the Magistrates' Courts, requires modern management skills beyond those that would have sufficed when a person formally trained to function as a judicial officer supervised a much smaller support staff. One of the questions that The Bahamas has to face is whether it will follow the lead of most countries in the Commonwealth, including the larger territories of the region, and separate the judicial functions of "master" from the administrative functions of "registrar".

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

However, while we sought accommodations for him, the Government decided to use his services otherwise and anyone who would have noticed the progress of the inquiry into the boating incident of August Monday last, would understand that it would be a while yet before Mr Justice Strachan could assume his registry task.

The Judicial and Legal Service Commission decided that it would be imprudent to delay further the appointment of a Registrar but, bearing in mind the statutory changes which may occur in that office upon the acceptance of any recommendation which the Strachan Report might make, it offered the post to Mrs Evans with the understanding that the nature of the office might be changed and she has been willing to accept the appointment on this understanding.

The Magistracy

I must, again, commend the dedication of the permanent Stipendiary and Circuit Magistrates 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.

We were able to fill one of the two vacant posts in the permanent magistracy by the appointment of Mr Clyde Newton who joined the magistracy from the private bar and we welcome him.

Some of you would recall press reports of earlier in the year where administrative difficulties threatened the continuation of the “night courts” which have been in operation since 1989 and on two occasions during the year, accepting the advice of my administrative team, I gave notice that I would suspend the operation of these courts for six months to facilitate resolution of these matters. On each occasion I was prevailed upon to reconsider this decision largely because of the difficulties that a sudden transfer of a large number of traffic matters to the lists of the permanent magistracy would create. I however, on the basis of such information as is available to me, remain convinced that such a suspension is necessary to enable us to properly recognize the support structure of this service and at the mid point of the newly begun six-month rotation of the part-time magistrates, I will review the situation.

A separate concern of the night courts was the tension which was developing between the permanent magistracy and part time magistrates, some of whom had a practice which brought them as counsel during their practice before magistrates with whom they would be colleagues when they sat. The impropriety of this situation is patent and the Judicial and Legal Service Commission has agreed that, as of January 2004, it will be a condition precedent to the appointment of any practitioner as a part-time magistrate that he or she give up practice in any magistrate’s court during the period of his appointment.

Security

The Court Security Unit under the able leadership of retired Assistant Superintendent of Police, Mr Jaciel Williams in its third year of service is gradually evolving into its intended form as a cadre of trained professional exclusively in the service of the courts. At present the 30 officers (four of whom serve in Grand Bahama) remain as serving police officers who the Commissioner of Police has, as it were, lent to himself as Provost Marshal. Consultation is continuing between the Office of the Judiciary and the relevant ministries for the transfer of these officers from the Police Force without prejudice to their existing benefits. It is generally agreed that the Commissioner of Police will remain as the titular head of the department of the Office of the Judiciary, by whatever name called, to which they would be assigned. I am on record as favouring the consolidation of the security unit, bailiffs and similar staff into a “Department of the Sheriff” which will have responsibility for security, for serving process and otherwise enforcing the orders of the court.

At present efforts are being made to meet the requests of the Court Security Unit for further equipment, including radios and transportation, and the need for additional manpower will be pressed through the usual channels

The Bar

During 2003 28 persons were admitted as counsel and attorneys, bringing the membership of the Bar to 690, of whom 101 were enrolled in ceremonies presided over by me during my 28 months in office.

Having given notice of my dissatisfaction with the length of time these ceremonies took, I, after consultation with the Bar, published a practice direction revising the procedure with effect from the first ceremony for 2003 and which only now requires the education of lawyers who present petitions that it was a “Direction”, not a “suggestion” and that “two minutes” means 120 seconds and not what lawyers, in the full flight of rhetoric, regard as two minutes.

Civil Procedure Reform

Last year, I reported that Senior Justice Marques and Mrs Justice Allen, along with Mr Justice Mohammed, had been constituted into a sub-committee to prepare a report recommending modest, uncontroversial, necessary changes to the Rules of the Supreme Court.

I am pleased to report that they have reported by presenting draft rules which the Rules Committee considered and revised and has now put to the Bar for their comments with a view to bringing them into force on 1 April.

This judges’ sub-committee has also recommended that the services of a person with proven experience in more than one Commonwealth country be retained to advise on comprehensive reform of the Rules. During the June exercise of paring the budget for the Judiciary in line with Ministry of Finance directives to all agencies, we were able to provide for only one of the two consultants we had sought and we gave priority to the Strachan Commission. We will propose the consultant on the Rules in the new budget year.

I am also pleased to report that practitioners and the clerical staff of the Registry have moved smoothly into the classification of matters into “Divisions”. At mid year, experience having demonstrated that the flow of “commercial” matters was, contrary to expectations, not sufficiently consistent to justify the dedication of judges exclusively to this division, the judges so assigned at the beginning of the year were reintegrated into the pool of non-criminal judges to whom the listing office directs matters. While the Commercial Division will remain for classification purposed, as the current roster indicates, the judges so assigned are the same as are assigned to the Common Law and Equity Division.

It appears that I may not have fully explained to practitioners and the public my intention behind the assignment of registrars as “managers” of the several divisions. The aim is

that, in order to enhance the principle of transparency in the allocation of scarce judicial time designed in the listing system created by my predecessor, the listing officers, who are not lawyers, should be shielded from the possibility of confrontation with competing attorneys and, so as not to involve the judge who might be seised of the case, attorneys who have listing difficulties should seek resolution from the relevant division manager. Furthermore, for the benefit of the judges who should not be burdened with chasing down the appropriate member of the support staff to deal with those administrative irritants as are bound to arise, the manager of the division to which the judge is assigned would be responsible for dealing with these problems.

I remain open to suggestions from the Bar as to the success of this system and, internally, to judges and registrars as to how it could be refined.

Training

Mrs Evans, whom I had designated as the person within the Office of the Judiciary who would coordinate training, successfully recognize programmes on each of the four Fridays set aside as “Training Days” for 2003: 28 February, 30 May, 26 September and 5 December. These days were arranged for, respectively, the entire support staff, registrars and magistrates on the software developed for BIJS, magistrates, and judges.

For the benefit of that section of the press that questioned what it chose to describe as the courts being closed while there was a growing backlog, I repeat my explanation given last year:

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 . . . 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.

Continuing the practice, all judicial officers have been asked to reserve free from fixtures the following Fridays as Training Days for 2004: 27 February, 28 May, 1 October and 3 December and the Bar and the Office of the Attorney General have been notified accordingly.

Statistical summary

I proceed down this path despite the reservations previously expressed, which I still hold.

During the year, the practice of “call overs” was resumed. This is the process by which civil cases in which substantial time has elapsed without action by the plaintiff are examined. It is to weed out the undergrowth -- which serves only to exaggerate the number of pending cases and add to the perception of a “backlog” – and leave “live” cases to make their way through the system. Of 471 cases so called up, all but 19 have been withdrawn or struck out.

The Bar and the general public should note that it is intended that call overs be conducted throughout the year and all attorneys of record should expect to be notified by the Registrar of the dates. In consultation with the Registrar, I will devise means of notification to parties that would reduce the high cost of publishing the notices of the type you would have seen in the press during the past year.

Apart from matters disposed of through call overs, judges assigned other than to the Criminal Division, sitting in chambers and open court, heard a total of 1553 matters. Registrars heard a total of 1206 applications and 657 grants of probate were issued.

In order to recognize delays in the grant of probate, the Probate Registrar, having certified that all the necessary steps have been taken by applicants, will distribute files to all judges, no longer exclusively to the Chief Justice.

In the Criminal Division, the Attorney General filed 100 new informations during the year, 38 of which were voluntary bills of indictment. This number is, of course added to the total of cases filed in previous years which remain outstanding and 135 cases were completed, nine of which a nolle prosequi was entered.

A considerable amount of time of the judges is devoted to bail applications and 460 applications were heard in which 131 applicants were admitted to bail.

Returns from the magistrates' courts being incomplete, I can only say that, at least 3,940 cases were completed, of which 440 were coroner's matters and 624 were from the juvenile court.

Having sat in the chair now occupied by Mr Bernard Turner, the Director of Public Prosecutions, I am not unaware of the challenges that he faces in marshaling witnesses and otherwise making ready cases for the courts. Nevertheless, I must correct some of the misinformation that is put about in public discussion, much of it maliciously misleading in terms of its effect on the public confidence in the system which has built into it a necessary tension between the courts on the one hand and prosecutors and police on the other.

The courts have no responsibility to bring anyone to trial and certainly accused persons cannot bring themselves to court. The courts stand to hear matters brought before it. During the year, judges assigned to the Criminal Division complained about the number of judicial days lost because trials could not proceed. Between Nassau and Freeport a total of 90 sitting days were so lost and this should be a source of grave concern to everyone.

It is against this background that I have decided, as the published roster shows, to assign only two judges continuously to the Criminal Division for this year and reserve a third judge to such work only as needed. The Criminal Division is but one part of the court's work and efficiency demands distribution of judicial time among divisions that will best recognize it.

I must repeat, and continue to repeat, what I have said on other occasions because the public debate appears not to have yet absorbed the lesson and we in the judiciary, who do not enjoy that freedom of speech which we sit to guarantee to others, are alarmed 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 one's home and person.

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.

While it is especially in relation to criminal matters that members of the public ventilate their frustrations with the system of justice, the principle cannot be over-recognized that a complaint serves merely to initiate a process and guilt is not determined on the street, in a police squad car or station, or the prosecutor's office. It is not sufficient to simply accuse someone of a crime. The State, acting on behalf of all of its members, must prove it. That some alleged crimes, by their nature, are more difficult to prove than others cannot lessen 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 the popular incantation, 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 recognize 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 – while the individuals truly responsible for wrongdoing remain undetected and unconvicted.

It should be noted that of 38 murder cases heard last year, 15 persons were convicted of a lesser offence, 5 had their prosecutions stayed and 12 were acquitted. For sexual offences, trials resulted in 19 acquittals as against 13 convictions and the like figures for armed robbery were 17 acquittals and 18 convictions.

Conclusion

The observations with which I began my remarks were quoted from one of the essays published by the British weekly, *New Statesman*, in its Christmas edition titled "People no longer have the confidence to follow their own Consciences". It was written by Frank Field, Labour MP for Birkenhead, and, while he was addressing his concerns to an English readership, his caution has a universal resonance.

When persons seek to lay responsibility for what they lament to be the breakdown of the social order on inefficiencies and incompetence in the legal system (or other state agency such as the police), they should pause and reflect on whether their own behaviour builds up or breaks down the common good. As with every other society, the legal system of the

Bahamas is incapable of delivering justice according to law if its several operators, and the public at large. Fail to cooperate and, in the worse case, seek to sabotage it.

As we cross the threshold of a new legal year, on behalf of all judicial officers, I thank each member of the support staff, administrative, supervisory and clerical for their work under difficult conditions throughout the past year and I also thank the officers 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 encapsulated in the oath we each took on assuming office:

to “well and truly serve . . . and . . . do right to all manner of people after the laws and usages of The Bahamas without fear or favour, affection or ill will”.

I now formally declare the legal year 2004 opened.”
