

**Remarks by the Chief Justice  
The Honourable Sir Burton Hall  
Opening of the Legal Year on 12 January 2005**

My Lords, My Ladies, Mr Attorney, etc,

As Head of the Judiciary, I welcome you and I thank each of you for showing us the courtesy of taking the time to share this occasion.

I thank the Very Reverend Patrick Adderley, Dean of Christ Church Cathedral, for allowing use of the Cathedral for our annual official service. I thank Archdeacon Cartwright for his stinging reminder to us to return to first principles and reminding us, in the language familiar to those of us who came of age in the turbulent 1960's, that the poor have nothing to lose but their patience.

On Sunday past, the judiciary and the Bar accepted the invitation of His Grace, the Most Reverend Patrick Pinder, Archbishop of the Catholic Archdiocese of Nassau, to attend the traditional "Red Mass", invoking the guidance of the Holy Spirit on the work of the courts. We acknowledge the reminders of the incidents of justice in society articulated by Archbishop Pinder in his homily

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.

This is the fourth occasion on which, as Chief Justice, the task has fallen to me to report on the work of the Supreme Court and the several magistrates' courts over the preceding year. Last year most of you would recall that I admitted, enthusiastically so, that I had assumed the role of "complainer-in-chief" in the hope of provoking into action those responsible for providing the resources of personnel and premises required to serve the needs for legal services in a rapidly developing society. I was amazed by the wide coverage that those remarks received in the print and electronic media, especially because I had said little that I had not pointed out in comments made in the two preceding years.

Today, as I was tempted to do last year, I could say that little has changed during 2004 and (mercifully, some of you might think) bring these proceedings to an early close.

This year, because we have been able to fulfill an undertaking, given in my maiden address, to produce a written report for the first time, much of what I would have voiced from the Bench is now included in that document and I need not burden you by repetition. I commend it to you.

I now move on to highlight certain specific aspects of the work of the courts during 2004.

The management team (comprising the Registrar, Mrs Estelle Gray-Evans, the Deputy and Assistant Registrars, Mrs Donna Newton, Mr Ernie Wallace and 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 Acting Chief Magistrate, Mr Roger Gomez) under my chairmanship, has continued its meetings at more or less monthly intervals to identify and seek to rectify problem areas. I remind, especially practitioners, that they are at liberty to approach directly any of the above managers, according to the areas for which they have responsibility, in attempting to achieve resolution of the administrative problems that are inevitable.

You may recall that last year I had announced that I had identified an officer within the Office of the Judiciary (Mr Ralph Rolle) to whom all public complaints would be directed and who would otherwise assist by referring inquiries to such other state agencies as have the responsibility for particular problems. I am pleased to report that Mr Rolle, who has also been assigned responsibility for supervising the magistrate's courts in Victoria Gardens, has been able to set this section in motion and is available to members of the general public

Mr Rolle has performed these duties while also compiling such statistics as we have been able to organise. I have, on previous occasions, explained my reasons for the omission of the recitation of statistics in these remarks and I commend Mr Rolle for his industry and initiative in the while confronted by incomplete and inconsistent basic data

### **Computerisation**

Those of you who do not nod off on these occasions might remember that, in my first presentation made three years ago, I had 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 SYSTEM (BIJIS) project that had a target date of May of 2003 for completion and, in 2003 and 2004, 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 as, despite our repeated petitions, no progress had been made during the preceding year.

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

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.

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

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

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

### **Accommodations**

The Executive has, during the past year, negotiated a lease of two floors of the British American Bank Building at Marlborough Street for the use of the Supreme Court. On behalf of the judiciary, I have conveyed to the Government, both at the political and administrative levels, our appreciation for the attention to our urgent request for suitable

premises for the lengthy interval that will intervene before any new “judicial complex” is built.

At the appropriate time, I will, of course, direct the issuance of the required notice under section 53 of the Supreme Court Act declaring the new rental premises to be a courtroom. We have been assured that the renovations to the premises, which we had thought would have been completed six months ago, would be completed within the next few weeks.

It is intended that the Marlborough Street Annex of the Supreme Court will house two sets of judge’s chambers and two courtrooms as well as a sub-registry. One of the two courtrooms will be dedicated to commercial matters, a step in the direction of making particular provision for the hearing of commercial matters as is required for The Bahamas as a financial centre. Apropos the last mentioned point, representatives of the Bar in Nassau and Freeport have been apprised of the intention that, as soon as administrative convenience allows, all major commercial matters which involve a large number of counsel from abroad (as was the case with the “Oracle Fund” matter heard during the past year) will be heard in the Supreme Court at Freeport. The Court will, therefore, have a choice of facilities – in Nassau or Freeport – dedicated to its “Commercial Division”.

Notwithstanding the centrality of its present location, the Chief Justice will relocate his chambers from the Public Square, with its inevitable distraction and disturbance, to the new annex and, for those who have voiced criticism of my relocating even farther from the Registry and the main Supreme Court building, I have two comments: first, so long as we have to be housed in rented premises, we are limited to choosing from what premises are on the market. Secondly, as long as the Supreme Court and its Registry remain scattered, necessitating the movement of papers and personnel between separate buildings around the City, Marlborough Street is no farther from the main buildings than is Parliament Square, to where the Chief Justice was relocated in 1994.

Mr Justice Longley will be the second judge relocated to the Marlborough Street Annex and the chambers vacated by him will be taken over by Madam Justice Thompson who has had to “camp out” in the Chambers of the President of the Senate since she assumed office three years ago. I thank the President of the Senate for the forbearance of that body and assure Senators that their anxiety to resume full control of their facilities is no greater than our frustration at the delays in the completion of the work on our own alternate accommodations.

In addition to those delays, the varying degrees of damage sustained by the main Supreme Court Building and the Parliament Square Annex in the Capital and the Garnet Levarity Justice Centre in Freeport, which houses the Supreme Court and several magistrates’ courts, have yet to be repaired although the damages are not such as to prevent the use of the buildings

### **Judicial Visits and Exchanges**

The printed Report lists participation in visits over the past year and I need not repeat it here.

With the commitment of the government of The Bahamas to host the year's Caribbean Heads of Judiciary Conference scheduled for September of 2004, the Chief Justice of The Bahamas assumed chairmanship of that conference. This Conference had to be postponed due to the hurricanes of September and is now planned for Freeport in late February.

During the past week, we hosted Lord Hope of Craighead who is a Law Lord and, as such, a member of the Judicial Committee of the Privy Council that remains as the highest Court in the Bahamian hierarchy. Lord Hope conducted a seminar on "The Impact of International Treaties/Documents on Decisions Of National Courts"

### **The Supreme Court**

During the year past we bade farewell to Senior Justice Ricardo Marques and Mr Justice Davis each of whom had reached the constitutionally mandated retirement age. We thank them for their service and we wish them all the best for the future.

The Judicial and Legal Service Commission agreed to advise the Governor General that Mrs Vera Watkins, Chief Magistrate, who had previously acted as Justice, of the Supreme Court, be appointed a Justice and that Mrs Claire Hepburn, a distinguished practitioner at the private commercial bar, be appointed to act as a Justice for six months. Both of these appointments took effect from 1 September and I welcome them both to the Bench.

At the beginning of 2003, in an attempt to address the problem of persons in custody pending criminal trials being "lost" in the "system", following discussions with the Director of Public Prosecutions it had been agreed that the Registrar would require the Superintendent of Prisons to make a return to the Court at quarterly intervals of all persons in custody pending a trial in the Supreme Court. A judge in the Criminal Division would sit for three days during the last week in each of the months of March, June and September and the third week in December for which sittings production warrants would be issued for each of the persons named in the returns so made by the Superintendent of Prisons and the Chief Justice would sit for one day during the same week to deal with epistolary applications from persons in custody who do not fall within that classification.

I, as I must, take full responsibility for the failure to follow through with this during the year just past, but I give notice that this practice, which is obviously of greater importance than its non-criminal counterpart, the successful system of "callovers", will be rigidly adhered to in the year now begun, and beyond. At some point formal measures will be proposed to address the problem of unheard criminal cases.

### **The Registry**

Last year, I announced that the Government had 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 in 2004. However, as I pointed out then, while we sought accommodations for him, the Government decided to use his services as Wreck Commissioner in an inquiry into the boating incident of August Monday of 2003, an exercise which took far longer than anyone could have foreseen.

I am now able to say that Justice Strachan has now begun his work on the Registry and it is expected that the Government would have his report by mid-year.

I invite counsel and attorneys, especially heads of chambers, to communicate directly with Justice Strachan sharing their views on how the Registry might better serve the needs of the public in The Bahamas of today.

### **The Magistracy**

Last year I announced that we had been able to fill one of the two vacant posts in the permanent magistracy by the appointment of Mr Clyde Newton. We were shocked and saddened by his sudden death shortly after his appointment and, at the risk of appearing to elevate efficiency over sensitivity, note that the system is still working through the disruption occasioned by his passing.

One of the two vacancies have now been filled by the appointment of Mr Vincent Wallace-Whitfield, who assumed duties at the beginning of 2005 and the other vacancy is in the process of being filled.

With the translation of Mrs Watkins to the Supreme Court, Mr Roger Gomez was appointed to act as Chief Magistrate for six months and the Commission has agreed to advise his confirmation at the end of that period. We congratulate him and wish both him and Mr Wallace-Whitfield years of fruitful service as judicial officers.

I thank the members of the private bar who have continued to assist by sitting as acting magistrates and the "Night Court" magistrates, Dr Peter Maynard, Mr James Moxey, Mrs Jeanine Weech-Gomez and Ms Yvette McCartney will forgive me if I especially commend Ms Renae McKay who took time away from her practice to serve for six months as a full time magistrate in the course of our executing plans to move traffic matters from the night courts to the regular day sittings.

That exercise has demonstrated that the administrative problems to which I alluded last year (and which had led me to announce a suspension of the night court system) have to be resolved while the night court schedule continues because both the volume of traffic matters and the convenience that the community has come to expect require the continuation of that arrangement.

The result is that, over the first half of this year, one of the two night traffic courts will be phased out and traffic matters will continue to be heard in two courts, one of which will sit at nights. The other night court will continue to be dedicated for civil matters.

As for hurricane damage, the court at Eight Mile Rock, Grand Bahama, which is housed in the Local Government building, sustained major damage and I cannot improve on the cry for help articulated by Ms Debbye Ferguson, the Magistrate assigned to that court, in news reports broadcast over the weekend past. I commend her and her staff for their dedication in continuing to provide service to that part of Grand Bahama despite the very difficult conditions that they have had to endure since September.

The other magistrate's court building that sustained severe damage was that in Grand Cay, Abaco, and Mr McKee, the magistrate for the district that includes that settlement, has had to arrange for matters to be heard at Cooper's Town.

I recently chaired a meeting of Stipendiary and Circuit Magistrates who go on "circuit" to address complaints from lawyers and members of the public about inconvenience and expense caused by their traveling to courts in various Family Islands at dates fixed by the court only to find that the court is not sitting. While it is easy to assert that such events are inexcusable and fault the magistrates concerned, the reality on the ground is that the need to provide services, including judicial services, throughout an archipelagic nation is a formidable task. Burgeoning criminal activity in hitherto pacific rural communities and the uneven availability of the persons who are now "Administrators" under the Local Government Act to perform the judicial duties they once did as "Commissioners" compound the fact of geography which demands that either magistrates and their staff have to be transported to and accommodated in the various Family Islands or defendants and witnesses have to be transported to and accommodated in the Capital. Neither alternative can be achieved other than at considerable expense and, even when the bureaucratic machinery makes the funding available in time (to prevent the embarrassment of a magistrate being reminded at an establishment that the bill for accommodations provided on a previous visit had not yet been settled), a magistrate in fixing a case does not always know of the availability of air, sea or ground transportation to get him to court on the adjourned date.

While the solution might appear to be the appointment of resident Stipendiary and Circuit Magistrates in strategically identified townships to service groups of islands, apart from the expense that even this measure would require, the problem would arise as to how such posts should be filled. Experience has shown that, as with other areas of the public service, Bahamian lawyers are reluctant to be rusticated to Out Island settlements (and I deliberately chose that old-fashioned description). Experience also dictates that if recruitment for such posts has to be done outside The Bahamas, care has to be taken to avoid, what I would delicately describe as "cultural dissonance" in selecting candidates because, when this social problem has occurred, it has not enured to the benefit of the administration of justice in the community.

I have requested Justice Strachan to, as an adjunct to his report on the Registry, examine and make recommendations for enhancing the efficiency of the delivery of judicial service to Family Island communities.

In the meantime, we have no alternative to limping along, as we have been doing in recent times, to the admitted inconvenience of the public and the frustration of the magistracy.

In May of 2003 I advanced for the consideration of the Government a number of proposals for reforming the administration of justice (which I prefer to believe are yet under consideration) among which were the reorganization of the subordinate courts separating the categories of work now done by all judicial officers styled "Magistrates". Some of those proposals, such as recasting the present Stipendiary and Circuit Magistrates as "District Judges" would require the political decision to make the necessary statutory revision. However, other of those revisions might be effected by adjustments within the existing legislative regime.

In this vein, I announce today that I intend to institute a pilot scheme for "Community Courts" during the year. At this stage, I need only indicate in broad outline what this exercise is intended to achieve. On the principle that, wherever possible, all public services, including judicial services, should be brought nearer to the people they are intended to benefit, minor summary offences will be devolved from the professionally trained Stipendiary and Circuit Magistrates to "lay" magistrates, identified from the existing roll of Justices of the Peace, thus affording more time to the Stipendiary and Circuit Magistrates to deal with the more serious matters which they alone have the training and the jurisdiction to hear. Two sites will be selected, one each in population centres in the south-west and east of New Providence and the work of the courts so set up in those communities will be those "quality of life" offences such as environmental breaches, minor traffic violations, and public nuisance offences such as petty thefts, vandalism, loitering and use of obscene language.

This may be effected administratively within the provisions of the existing Magistrates' Act.

"Community courts", a concept that has gained acceptance in many countries are an inevitable and necessary adjunct to the principle of "community policing" and represent the logical next phase in addressing the social needs intended to be met by that exercise. When I alerted the Commissioner of Police to this proposal he immediately gave his enthusiastic support and the Attorney-General, who has been a consistent advocate for the introduction of a programme of "restorative justice" in The Bahamas, would appreciate that community courts are the natural home of that innovation.

I have apprised the Attorney General and the Minister responsible for the Public Service and, between the Registrar and myself, we have begun discussions with the Permanent Secretaries in each of those Ministries as to the proposals that will be advanced. It is

expected that the pilot project will require no new public funding and could be achieved by strategic manipulation of existing plant and personnel.

The operation of this pilot scheme will show the way forward for the provision of the appropriate budgetary and other means necessary to establish community courts as a permanent feature of the administration of justice in The Bahamas

### **The Bar**

During 2004, 27 persons were admitted as counsel and attorneys, bringing the membership of the Bar to 717 of whom 128 were enrolled in ceremonies presided over by me during my three years and four months in office.

I have acceded to several requests from the Bar Council to preside at, or otherwise authorise the convening of, special sittings of the Court on the occasion of the death of members. However, it is obvious that, for many reasons, not least among them the size of the Bar, it is neither practical nor appropriate to convene a sitting each time a member dies. I have informally raised this issue with the Bar Council (who agree with the principle that I have just stated) and I hope that, during this year, a practice direction – reflecting the considered views of the Bench and the Bar – can be issued by me which would set out when such sittings would be held and eliminating any criticism of inconsistency in which deceased persons are so honoured and which are not.

### **Civil Procedure Reform**

As adumbrated last year, the amended Rules intended to introduce case management by the court came into force on 1 July and I confess that we are again learning the ancient lesson of placing “new wine in old wineskins” in implementing what we thought to be, as I described it at the time, “modest, uncontroversial, necessary changes to the Rules of the Supreme Court”.

It is obvious that the recommendation of the need to obtain the services of a person with proven experience to advise on comprehensive reform of the Rules be given early attention and we will urge the hiring of such a consultant on the Rules for the new budget year.

### **Training**

The practice of dedicated training days continued in 2004 and, as an additional incentive for supportive staff, judicial officers underwrote the cost of the newly instituted “Maxwell J Thompson Award for Excellence”, named in honour of a distinguished Bahamian, now deceased, who had himself served as a member of the supportive staff of the courts before he qualified as a lawyer, retiring as a Justice in 1974. We were able to present the first of these awards, “The Max”, at an awards luncheon held in December

The training days for 2005 are: 25 February, 27 May, 30 September and 2 December.

## **Conclusion**

I now formally declare the legal year 2005 opened.