

Opening of the Legal Year 11 January 2006

Remarks by the Chief Justice

The Honourable Sir Burton Hall

TODAY

***Today** I will delete from my diary two days: yesterday and tomorrow.*

*Yesterday was to learn and tomorrow will be the consequence of what I can do **today**.*

***Today** I will face life with the conviction that this day will not ever return.*

***Today** may be the last opportunity I have to live intensely, as no one can assure me that I will see tomorrow's sunrise.*

***Today** I will be brave enough not to let any opportunity pass me by, my only alternative is to succeed.*

***Today** I will invest my most valuable resource: my time, in the most transcendental work; my life;*

*I will spend each minute passionately to make of **today** a different and unique day in my life.*

***Today** I will defy every obstacle that appears on my way trusting I will succeed.*

***Today** I will resist pessimism and will conquer the world with a smile, with the positive attitude of expecting always the best.*

***Today** I will make of every ordinary task a sublime expression,*

***Today** I will have my feet on the ground understanding reality and the stars' gaze to invent my future.*

***Today** I will take the time to be happy and will leave my footprints and my presence in the hearts of others.*

***Today**, I invite you to begin a new season where we can dream that everything we undertake is possible and we fulfill it, with joy and dignity.*

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. The sermon, preached by His Grace, the Most Reverend Drexel Gomez, was a timely reminder that the "mark" for which we – particularly who claim to be disciples of Jesus Christ – as the overwhelming majority of persons in this society do – must aim in our social and professional dealings is the standard of behaviour set by the Lord himself.

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. The Archbishop's call for a return to the codes of civility as an indispensable component of a just society should, I trust, have struck a chord with members of the Bench and Bar because one of our "dirty secrets" is that the public expressions of the practice of law with its – sometimes exaggerated – rituals of language and gestures is too often at odds with the discourtesies – occasionally quite vicious – that operate just below the surface, outside the public's gaze.

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 the 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 fifth occasion on which, as Chief Justice, the task has fallen to me to report on the work of the Supreme Court and the subordinate courts over the preceding year and, as with 2005, because we have been able to produce a written report – our second – the contents of which I commend to you – I need not try your patience by voicing what you can yourselves read

When the Registrar was completing our first published report last year, she and I, having decided to adorn the cover with a suitable representation of what the courts are about, settled on the familiar image of the ancient goddess of justice ("Themis" to the Greeks and "Justitia" to the Romans) but, on my insistence that we use one without a blindfold (because, in the history of that representation, the blindfold has been interpreted as an indication of ineptitude, rather than impartiality as is popularly thought) having trawled through cyberspace, we

ended up with a diaphanously clad Justitia, striking an almost seductive pose. We, nevertheless, preferred the mild embarrassment of that display to a blindfolded Justitia.

This year, you would observe that the cover is decorated with the logotype that has been specifically commissioned for the Court in both its adjudicative and administrative capacities and a complete explanation of the symbols and their use is to be found within the report. You would note that it is only the logo of the administrative side of the judicial system – the side which supports and facilitates all adjudicative functions – the “Office of the Judiciary” which has a motto, **TODAY**, and the poem, by an unknown author, with which I began expounds this theme of our commitment to the duty to provide judicial services to this Commonwealth, without undue delay.

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

Computerisation

Last year, I mentioned the commitments that had been made to us for the provision to the Office of the Judiciary of personnel for a dedicated Information Technology (“IT”) department. In the last quarter of the year, the Office of the Judiciary was given permission by Cabinet to engage the services of additional staff, including IT personnel, and we are currently reviewing applications with a view to filling the vacant positions, including that of an IT Manager.

The urgency of these appointments is that the BAHAMAS INTEGRATED JUSTICE INFORMATION SYSTEM (BIJIS) project has, so far, been unable to function at the level which justifies the substantial sums of public money which have been ploughed into it.

Were it not for certain technical problems that arose over the weekend past I would have, today, announced that, following an overlong gestation period and difficult labour, the Registrar had successfully midwifed our website, to be christened **courts.gov.bs**, into existence. I am advised that this infant, will, nevertheless, yet celebrate a mid-January birthday.

Accommodations

Last year I informed the public that the Government had negotiated a lease of two floors of the British American Bank Building at Marlborough Street for the use of the Supreme Court. We were able to move in July of last year with the Chief Justice and Mr Justice Longley (as he then was) relocated there. With the elevation of Mr Justice Longley to the Court of Appeal, Mr Justice Lyons will

move to that location sometime during the current month. Mrs Donna Newton, Deputy Registrar, occupies the sub-registry which is also located in those premises.

While the fourth floor which is utilised as the judge's private offices, with separate chambers for hearings, are of a standard which is unlikely to be surpassed when the much touted "judicial complex" is eventually constructed (and lawyers who have had occasion to attend hearings there would have heard my mantra that the Bar should ensure that any new building not present a diminution of the standard of judicial accommodations now set), it is a disappointment that the courtrooms, located on the third floor, suffer the vice inherent in converting premises not originally designed as a courtroom for trials. Accordingly, while it is still intended that one of the two courtrooms in the Marlborough Street Annex be dedicated to commercial matters, constraints of space will still necessitate judges presiding over matters involving a large number of counsel or parties relocating to one of the courtrooms in the main building.

The Supreme Court

As mentioned, incidentally, earlier, In September of last year, Mr Justice Longley was elevated to the Court of Appeal.

In October, the Governor General, on the advice of the Judicial and Legal Service Commission conferred the title of "Senior Justice" on Madam Justice Allen.

The Judicial and Legal Service Commission also agreed to advise the Governor General that Mr Norris Carroll, who is in private practice in the city of Freeport, be appointed to act as a Justice for six months, from 1 October, and that Mrs Cheryl Albury, Deputy Chief Magistrate, be appointed to act as a Justice for 12 months, from 1 November.

I congratulate each of these Justices on their appointments.

The Registry

At the end of December Mr Justice Strachan (Retired) who had been appointed by the Government as sole Commissioner to consider and make recommendations on how the Registry should be structured for today's Bahamas, made his report to the Government. I am not in a position to reveal any of his recommendations today but I expect that when we assemble 12 months hence, *Deo volente*, such of the Commissioner's recommendations as have been embraced by the Government will be a feature of my remarks.

I continue to receive reports of complaints by attorneys who have a probate practice that grants are not being processed with sufficient dispatch. I am concerned that, when these complaints are made to persons outside the Office of the Judiciary, as they invariably are, they reflect an inaccurate view of the state of affairs of the Probate Registry.

Internal investigations reveal that, during the year 2005, the probate clerks checked 759 new applications, and 650 of those applications checked were returned to the respective law firms for correction. Put another way, approximately 85.6% of the new applications checked were returned for correction and only 14.4% of those new applications submitted were in order. On many occasions, documents were returned to law firms for correction, only to be sent back to the Registry with the errors uncorrected. This places a tremendous burden on clerks who spend an inordinate amount of time checking and re-checking the same application, sometimes as many as three times, before the corrections are complete.

The Registry received 785 new applications and the Court issued 700 grants of probate. There is no backlog of applications to be checked either by the clerks or by the Probate Registrar.

The Probate Registry has laboured under the problem of insufficient staff at the clerical level, staff who, because of the level of scrutiny required in the processing of probate applications, should be proficient in reading, writing, comprehension and analysis, and it is hoped that the staff additions to which I have earlier referred would eventually eliminate this area from the public complaints about the failure of the courts to fulfill its promise of TODAY.

In the Registry for the Northern Region, Ms Stephana Saunders was confirmed as Deputy Registrar with effect from the beginning of the year.

The Magistracy

In October, we welcomed Mrs Carolyn Vogt Evans to the magistracy, in an acting capacity with a view to confirmation.

There remain two vacancies in the magistracy which are in the process of being filled.

In the course of the year Mr Roger Gomez was confirmed as Chief Magistrate and we congratulate him.

On these occasions I am obliged to thank the members of the private bar who have continued to assist by sitting as acting magistrates. The "Night Court" could not function without their commitment.

Last year I reported that on the hurricane damage sustained by the court at Eight Mile Rock, Grand Bahama, which is housed in the Local Government building. The most recent hurricane virtually destroyed the building and I must, again, commend the dedication of Ms Debbye Ferguson and her staff who, in their continuing effort to provide service to that part of Grand Bahama are reduced to working from a building without electricity or telephones, adjourning matters other than emergency cases, until suitable alternate accommodations can be identified.

Expanded premises and additional staff have been procured in the Abaco District and I am scheduled to view the commissioning of these new premises on my visit to courts in the Northern Region next week.

I have previously mentioned proposals for, among other things, recasting the present Stipendiary and Circuit Magistrates as "District Judges". I will continue to push this recommendation which I consider both a necessary fillip to the magistrates and a clearer indication to the public at large as to how the jurisdiction and responsibility of the modern Stipendiary and Circuit Magistrate have expanded beyond the duties historically performed by the generic "magistrate".

It will be recalled that, last year, I announced an intention to institute a pilot scheme for "Community Courts" during the year. I restated the principle that, wherever possible, all public services, including judicial services, should be brought nearer to the people they are intended to benefit and expressed the hope that the operation of this pilot scheme would 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.

To this end, an inter-agency committee, chaired by the Registrar was appointed to report on:

1. the duration of the pilot project;
2. how suitable persons from the roll of Justices of the Peace should be selected;
3. the identification of suitable premises;
4. the method of determining which matters should be diverted from the S&C Magistrates to the new courts;
5. the times of sittings, whether evenings, Saturdays, or otherwise;
6. clerical staffing;
7. security.

I was disappointed when the Committee, after careful consideration of all the issues, reported that it was not possible to implement the pilot project by strategic

manipulation of existing plant and personnel without new public funding and I have been obliged to refer the Committee's report to Cabinet.

The Commissioner of Police, who shares my enthusiasm for the early implementation of the project, has offered the assistance of Research and Planning Unit of the Police Force in "fine tuning" some of the proposals now under consideration.

The Bar

During 2005, 61 persons were admitted as counsel and attorneys, bringing the membership of the Bar to 778 of whom 189 (roughly 24 per cent) were enrolled in ceremonies presided over by me during my 52 months in office. While, a significant number of these persons come to the law at a mature age, where law is a second (or third or fourth career), these numbers starkly point to how "bottom-heavy", demographically, the legal profession is.

While in a "liberal", rather than a "planned", economy, where market forces of supply, demand and personal ability and competence determine how many persons plying a trade or practicing a particular profession can be successful, it is a source of concern to the judiciary that, despite the statutory requirement for pupillage after call in The Bahamas, too many inexperienced and ill-prepared practitioners are out there, often as sole practitioners, dis-serving an unquestioning and unsuspecting public, so many members of which require legal services in their family and property disputes, business dealings, landlord and tenant disagreements and, of course, criminal matters. Even though modern methods of procedure allow a more interventionist role by judges than has historically been the common law culture, the system remains an adversarial one and, however painful it might be for a judge to see a litigant harmed by an incompetent lawyer, the judge is constrained from attempting any rescue lest he compromise his duty as impartial arbiter.

I would, respectfully, urge the Bar to follow the lead of the judiciary and insitutionalise continuing legal education. Indeed, I would have thought that the days which the judiciary blocks out as "training days" for itself (one Friday in each quarter) would be an ideal time for the Bar to make available organised programmes for its members.

(I would remind practitioners that the training days for 2006 are: 24 February, 26 May, 29 September and 1 December)

The numbers of persons presenting for admission on the designated call days have often become so large (with the number of invitees accompanying petitioners) that they could not always be accommodated in the present court facilities. The solution had been to hold multiple ceremonies (which, in October,

required, three sittings over two days). I have previously complained of the prodigality of time involved in these ceremonies and, in addition to this, the support staff has the task of assigning and re-assigning rented chairs which are only available immediately before the event.

For the December call, with the full support of Bar Council, I was able to effect a previously considered plan to find alternate accommodations and the Registrar secured permission from the Ministry of Youth, Spots and Community Affairs to use the National Centre for the Performing Arts. I am pleased to report that the inevitable apprehension attendant upon innovation proved unfounded and I expect that this will be the model for future call ceremonies where the number of petitioners exceeds the capacity of this courtroom.

Civil Procedure Reform

The innovation of Dispute Resolution Conferences, introduced as an aspect of case management by the court under the amending Rules, have progressed this year although that progress has been uneven. Mr Justice Lyons chaired a committee (including the Registrar and a nominee of the Bar in the person of Ms Elma Campbell) which produced a draft of a Practice Direction that judges considered during their training day in December. This Practice Direction will shortly be issued by the Chief Justice.

To those practitioners who have grumbled (usually in a “stage whisper”) of the judges who conduct Dispute Resolution Conferences being too assertive in their conduct of conferences, I remind them that that is the intent of the reform. It is in the public interest that civil litigation comes to be directed by the court and not by the convenience or whim of the parties and their lawyers and, to the extent that parties can be “encouraged” to resolve matters at this stage before incurring the additional expense and delay of a trial, dispute resolution is in every one’s interest. Judges are, therefore, expected and entitled to be as forceful as necessary in their attempt to reserve the trial process for matters which cannot be otherwise resolved.

Other Matters

Three years ago, Madam Justice Thompson and I, constituted as an Election Court following the general election of 2002, observed:

This matter was initiated by the application for leave to present the petition filed on 30 May 2002 and it concludes 38 weeks and 5 days later. . .

We note that the process of leading evidence in respect of each challenged voter and evaluating that evidence in this single petition was

such that it takes little imagination to apprehend that a multiplicity of such petitions following general elections would engage two justices of the Supreme Court – the constitutionally mandated composition of the Election Court – over almost the life of the parliament which such elections would have been intended to institute.

Accordingly, we respectfully urge Parliament to examine the substantive laws related to the Election Court, with a view to effecting economies of time and resources, in the wake of which the Rules Committee could consider the consequential revision of the procedural provisions.

We had stated earlier in our judgment:

The Court is also able to take judicial notice of what would be a fact notorious to all residents of The Bahamas. . . . [M]any persons who were born [in the subject constituency] have had to travel elsewhere in The Bahamas for education and employment. Yet there has been the attempt to maintain a “connectedness” with the island in which they were born and grew up. In Bahamian parlance, as was evidenced by most of the witnesses who testified in this case, those islands are regarded as “home”, despite extended stays in the capital and elsewhere. Although badly frayed in many instances, those bonds are maintained through the popularity of such periodic festivals as “homecomings” and regattas.

As we have stated, nowhere is there an allegation of fraudulent registration and the challenge in each case is that, notwithstanding the subjective belief of the person challenged that he was entitled to vote in [the constituency], on the available evidence, he was not ordinarily resident for the purpose of the Act.

. . . [W]e feel constrained to observe that, having regard to this history of the Election Court having to decide the issue after several General Elections, Parliament, which being comprised of Bahamians and, presumably, aware of the sociology of life in this archipelago, could have provided greater assistance to the Court in specifying rules for the amorphous concept of “ordinarily resident” in the peculiar context of The Bahamas. Parliament not having done so, the Court is obliged to employ its judicial sense of each situation, which exercise may be inconsistent with the expectation of the voters in their experience as residents of the islands.

As another general election nears, I again, respectfully, invite Parliament to address this question. In the history of the modern Bahamas, elections have, not unusually, been followed by claims necessitating the appointment of an Election Court. Mercifully (from the court’s point of view) of the petitions filed following the 1992 elections did not come to trial because of the “technical” error

made by the attorneys for the petitioners in the preparation of the affidavits. In the wake of the 1987 elections, the petitions filed engaged the then Chief Justice and Senior Justice for days.

Without gainsaying the right of persons to appropriately file petitions to an election court Parliament ought not, by inadvertence, to allow the Election Court to become a means of paralysis to the ordinary work of the court

On a more topical note, misinformation continues to be disseminated about the role of the courts in what is perceived to be a crisis in criminal activity in this country. The common thread is, even among the press – whom one would have thought, would educate themselves in these matters so as to better inform the public – the failure to separate, and, therefore, apportion responsibilities, as between police, the Office of the Attorney General, the Bar and magistrates and judges, often referring to all as all being part of “the Judiciary”.

Within the past week, one newspaper carried an item which included the claim that:

. . . bail was granted to more than 120 people charged with murder and more than 160 armed robbery suspects in recent times.
These accused were released over the last five years because the courts failed to try them in a reasonable time . . .

A few days later, another daily reported:

The Bahamas court system is letting down the police force in its fight against crime . . .
Many cases are being dropped because of long court delays and vanishing witnesses . . .
[T]he court system is leaving the police very frustrated, especially in view of the impressively high detection rate.

Three years ago, in response to similar criticisms of magistrates and judges I noted that:

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 . . .

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. . . . 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 . . . years.

. . . That is the oath that we have taken. That is our duty to the society

A year later, I was obliged to repeat, “because the public debate appears not to have yet absorbed the lesson”:

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. . .

The Criminal Division is but one part of the court’s work and efficiency demands distribution of judicial time among divisions that will best utilise it.

While it is our belief that we should “fix the problem, not the blame” and it is not for me to presume to tell the Press what qualifies as “news”, it seems to me that elementary fairness would require that, when next they are minded to parrot anyone’s assertions on delays in the criminal justice system, they exercise the initiative of investigating **why** the accused persons have not been brought before the courts to be tried “within a reasonable time” as is mandated by the Constitution. Furthermore, uninformed critics should also contemplate the social consequences if the courts were, as has happened in other countries, to stay criminal proceedings because of the failures by persons who are not part of the judiciary and over whom the judiciary has no control. The failure of the “chattering classes” to have done so to date makes it highly improbable that they take the next step and analyse the number of trials that result in not guilty verdicts. For example, during the past year, in seven murder trials there were three acquittals; of 12 armed robbery trials, seven resulted in acquittals and there were 13 acquittals as compared to 7 convictions in cases alleging sexual assault.

In addition to the information contained in the Annual Report, a more detailed statistical report (intended for a more restricted circulation) has been prepared (and I must, again, commend Mr Ralph Rolle for this production). The Registrar will make available a copy of this report to each bona fide news organ and I trust that an examination of the material therein contained will provide to diligent members of the press a context for some of the assertions that emanate from other sources.

Conclusion

I began with a poetic expansion of our commitment to timely action in service to the public. I close, in a similar vein, with the thoughts of another unidentified poet, which I will ask the Registrar to distribute as a reminder to all the support and administrative staff of the Judiciary. (It is taken as a given that judicial officers have already been conditioned in this direction.)

Begin Now

*Dream not too much of what you'll do tomorrow,
How well you'll work another year;
Tomorrow's chance you do not need to borrow -
Today is here.*

*Boast not too much of mountains you will master
The while you linger in the vale below,
To dream is well, but plodding brings us faster
to where we go.*

*Talk not too much about some new endeavour
You mean to make a little later on.
Who idles now will idle on forever
'till life is gone.*

*Swear not some day to break some habit's fetter,
When this old year is dead and passed away;
If you have need of living wiser, better,
Begin now.*

I now formally declare the legal year 2006 opened.

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