

The Continuing Relevance of the Jury System
in the English-Speaking Caribbean



The Honourable Sir Marston Gibson, K.A.
Chief Justice of Barbados



The Continuing Relevance of the Jury System in the English- Speaking Caribbean



Trinidad and Tobago Judicial Education Institute

Third Distinguished Jurist Lecture 2013

By The Honourable Sir Marston Gibson, K.A.

Chief Justice of Barbados

J Trinidad & Tobago Judicial Education Institute

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"Ladies and Gentlemen of the Jury ..."
Supreme Court, San Fernando
First Criminal Court:
Showing Jury Box and Judge's dais

Foreword



The topic of the 2013 Distinguished Jurist Lecture was: *'The Continuing Relevance of the Jury System in the English-Speaking Caribbean'*. Our distinguished jurist was Sir Marston Gibson, K.A., Chief Justice of Barbados. The lecture was held at the Convocation Hall, Hall of Justice, Port of Spain, Trinidad, on 11th July, 2013. It was followed by a panel discussion on the topic, held on the following day, also at the Convocation Hall. Our panellists were: The Honourable Chief Justice of Trinidad and Tobago, Mr. Ivor Archie O.R.T.T.; Sir Marston Gibson, K.A.; The Honourable Justice Jacob Wit, Judge of the Caribbean Court of Justice; Professor Dr. Ramesh Deosaran, esteemed psychologist and criminologist; and Her Worship Ms Nalini Singh, Magistrate, Trinidad and Tobago.

Both the lecture and the panel discussion were outstanding successes. The discourse on the topic was interesting, informative, educational and challenging. That there was, at the end of the panel discussion, no unanimity of opinion on the topic, was a testimony to the quality and forcefulness of the perspectives presented. There was consensus, however, about one matter: the urgent need for proper research and analysis into the functioning and continuing relevance of the jury system, as it operates at present in the English-speaking Caribbean territories that still use it, before any final judgment is made about its continuing utility. In addition, it was clear that most, if not all, present recognised that the jury system as currently organised needs to be reconsidered and, if thought worthy of retention, to be reformed.

International research demonstrates that certain characteristics of jurors can predispose them towards their eventual verdicts (such as sympathy or cynicism towards the prosecution or defence). It also shows that the understanding of the criminal burden of proof, 'beyond reasonable doubt', is influenced by attitudes and life experiences, which in turn influence interpretation and therefore verdicts. These and other 'extra-evidential' factors invariably affect jurors' assessment of evidence and their decisions. After all, jurors are human beings, not robots! However, innocence or guilt, freedom or incarceration, depend on



the decisions of jurors. It is therefore imperative that the jury system, if retained, function in the most effective and efficient manner. Individual lives depend on it literally for survival, and the credibility of the criminal administration of justice hangs in the balance because of it.

Locally, Professor Dr. Ramesh Deosaran and Her Worship Nalini Singh have done significant research and analysis on the jury system in Trinidad. More research and analysis needs to be undertaken in light of this lecture and panel discussion. This undertaking may be the most pressing outcome of this entire event.

Caribbean states are small societies in the context of the world. They were all colonised by European powers, whose ideas and ideologies have had and continue to have an enormous influence on local thought. As invaluable as these influences have proven to be, small cultures also need to be able to respond to them creatively and with a measure of reflective and responsible irreverence, if they are to discover and create institutions that are relevant to their own changing needs and demands. The jury system is one such institution that now clearly demands robust inquiry and review. Can we as a people move beyond the 'ole talk' to action? Do we have the courage and the will to consider change?

On behalf of the Board of the Trinidad and Tobago Judicial Education Institute and its President, the Honourable Chief Justice Mr. Justice Ivor Archie O.R.T.T., we wish to thank all those who have contributed to making the 2013 lecture and panel discussion a success. In particular, we wish to thank Sir Marston Gibson, K.A., for his unhesitating acceptance of our invitation to be our distinguished jurist and to deliver the lecture. His lecture was no mere 'talk', as the depth of his scholarship and the quality of his erudition was simply marvelous and inspired. Our panellists brought a variety of perspectives and presented them with such clarity and wit that it made the entire process engaging and enlightening. As always, there was need for more time.

Our hope is that this publication will serve as source material for future research and dialogue on the continuing relevance of the jury system. We know that all who choose to read and consider this material will be forced to reconsider their opinions on the relevance of the jury system in the Caribbean. We therefore commend this publication to all.

THE HONOURABLE MR. JUSTICE PETER JAMADAR JA
Chairman, Trinidad and Tobago Judicial Education Institute

Welcome and Opening Remarks



On behalf of the President of the Trinidad and Tobago Judicial Education Institute, the Honourable Chief Justice, Mr. Justice Ivor Archie O.R.T.T., the Chairman, the Honourable Mr. Justice Peter Jamadar JA, the Board and Staff of the Institute, I would like to welcome all of you to the Third Distinguished Jurist Lecture of the TTJEI. We are honoured this evening to have as our featured speaker, the Honourable Chief Justice of Barbados, Sir Marston Gibson, K.A. who will share his thoughts with us on the topic “The Continuing Relevance of the Jury System in the English-Speaking Caribbean.”

Before I give way to Sir Marston, I would like to take a few moments of your time to outline the progress and achievements of the Trinidad and Tobago Judicial Education Institute over the past year. In 2011, Cabinet approved a restructuring of the Judicial Education Institute that, up to that time, had consisted of a Board and two staff members – a Coordinator and a Judicial Education Assistant. There are now eleven persons and this increase in staff has been matched by a corresponding increase in our responsibilities, activities and commitments.

The Institute’s mission is to “promote excellence in the administration of justice in the Republic of Trinidad and Tobago” through the creation of an environment of learning in the Judiciary in order to “improve the lives of Judicial officers and staff and enhance the quality of service delivered by the Judiciary”. Constructivist educational theory posits that learning is a collaborative, participatory exercise that takes place in an environment where knowledge is shared, expanded and managed by a community of practitioners. For many of us whose educational experience in school revolved largely around ‘talk, chalk and licks’ and who got into serious trouble for what was called ‘copying’, this definition may sound strange but it is an effective working model particularly for adult learners and a way forward for the TTJEI. Instead of ‘training’, ‘education’ or ‘professional development’, I would like to offer the alternative of ‘knowledge



management'. In this model, institutes like ours create the environment in which knowledge of the institution is shared, interrogated, discussed, disseminated and expanded with every member of the institution participating in the process.

This is not a new or revolutionary process and, at the moment, is done in the Trinidad and Tobago Judiciary primarily through education seminars and workshops. Apart from the Annual Continuing Education Seminars for all groups of Judicial Officers, the Institute has embarked over the past year on a number of other exercises, including workshops in such areas as Security Awareness, Difficult Conversations, Human Trafficking and Summation. It is significant and a source of pride for the Institute that many of these seminars, workshops and discussions are using our own Judicial personnel as facilitators and tutors.

This process of collaboration and dissemination also finds expression in our second area of activity: research and publication. After the lecture, you will see on display the second in what will become a series dedicated to the publication of each year's Distinguished Jurist Lecture and Panel Discussion. September is the due date for the publication of the *Handbook of Awards of Damages for False Imprisonment and Malicious Prosecution in Trinidad and Tobago* and a committee led by Madame Justice Alice Yorke-Soo Hon JA is already at work on compiling the text for a Bench Book to be published in the new year.

While I am not one of those loudly proclaiming the death of the book (I love the weight of a book in my hand and the smell of the pages; an e-book reader just does not cut it for me), nevertheless, it is important for the JEI to develop a digital presence and it is in this area that I hope the New Year will bring the most development. An active and effective community of practice uses digital media to promote and enhance its collaborative efforts. Working with other Units within the organisation, such as Human Resources, Information Technology and Communications and Protocol, the JEI hopes to offer online workshops for staff and to facilitate conferencing and discussions on an e-platform. It is my hope that in the not-too-distant future, our outreach to the Judicial and non-Judicial members of staff will be a mixture of face-to-face and online offerings, allowing everyone to access learning opportunities that are relevant, convenient and effective in their particular situation.

A greater online presence will also make the JEI more accessible to judicial officers in other territories in the Caribbean and will have the positive effect

DISTINGUISHED JURIST LECTURE 2013

of widening the community of practice to include colleagues from across the region. This can only be beneficial to the officers themselves and to the Caribbean people as a whole. The model of the Judiciary as inhabiting an ivory tower, removed from the challenges and struggles that impact on the lives of the majority of the population, no longer exists, and there are many who will argue that a judicial community of practice must create ways to encompass the learning and experience of the people we serve.

Which brings me to the reason why we are here today. Last year's Distinguished Jurist, Justice Adrian Saunders of the Caribbean Court of Justice, challenged Caribbean jurists to be bold. I see the topic of this year's lecture as a response to that challenge. For the Caribbean to move forward as a society, we must be willing to challenge long-held beliefs, to discuss dispassionately serious issues, to contemplate change in what seemed permanent. Why? Because we need to own what we have; to claim our space as ours. In the words of St. Lucian author, Derek Walcott: "Break a vase, and the love that reassembles the fragments is stronger than that love which took its symmetry for granted when it was whole."

And so, we are here this evening to break one of the vases that our colonial history has given us – the jury system. Who knows what it will look like when we put it back together, but that uncertainty is not a reason to disengage from the process. It is my pledge that the JEI will continue to walk with the Judiciary of Trinidad and Tobago and the wider region in the pain and joy of this journey of breaking and reassembling the pieces of our history, our lives, our very selves.

To take us forward, therefore, I now call upon Madame Justice Judith Jones to introduce our 2013 Distinguished Jurist Lecturer.

MR. KENT JARDINE

Judicial Educator, Trinidad and Tobago Judicial Education Institute



Introduction of The Honourable Sir Marston Gibson, K.A. Chief Justice of Barbados



THE HONOURABLE MADAME JUSTICE JUDITH JONES

*I*t is not very often that the dictates of protocol align almost exactly with reality. It does for me this evening. I have the honour and the pleasure of introducing to you our distinguished Jurist for 2013, The Honourable Sir Marston Gibson K.A., the Chief Justice of Barbados. For the more astute of you who picked up my use of the words “almost exactly” rather than “exactly”, let me confess to a slight reservation: Sir Marston’s biographical sketch contains so many accolades and honours that I am afraid I will be a while in the introduction.

Many years ago Sir Marston, like many of our Chief Justices in the Caribbean, would have been referred to by members of the public and the then existing Barristers and Solicitors alike as a “locally assembled” lawyer. Those disparaging words uttered and often repeated in and out of Court as the first few batches of graduates of the regional Law Schools entered practice have come back to haunt our detractors. As we will see as we follow the distinguished career of Sir Marston, graduates of our Law Schools now form the backbone of the Caribbean legal systems and represent a product of which we, as a Caribbean people, can be truly proud.

The Hon. Mr. Justice Marston C.D. Gibson assumed office as the 13th Chief Justice of Barbados on 1st September, 2011. He does not disclose, nor have I asked, what

the “C.D.” stands for, but I have no doubt that the names are equally as distinguished as his career. Born in Barbados on 3rd March, 1954, Sir Marston received his early education in Barbados, culminating with his pursuit of legal studies at the Cave Hill Campus of the University of the West Indies in 1972. He obtained the Bachelor of Laws (LLB) in 1975 and in 1977 he was awarded a Rhodes Scholarship and read for the Bachelor of Civil Law (BCL) at Keble College, Oxford University in England. After obtaining his BCL in 1979, Sir Marston returned to the Caribbean, attending the Hugh Wooding Law School at St. Augustine from 1979 to 1981.

While attending the Law School, he lectured in Criminal Law at the Faculty of Law, St. Augustine Campus. Despite the time devoted to lecturing, Sir Marston was able to earn the Chairman’s Special Prize for Evidence and Procedure in his graduation from the Hugh Wooding Law School in 1981. From 1981 to 1987, he was a lecturer at the Faculty of Law, Cave Hill Campus, UWI, where he taught Criminal Law, the Law of Real Property, Law in Society, as well as Equity, Doctrines and Remedies.

In 1987, Chief Justice Gibson migrated to the United States, where he remained until appointed as the Chief Justice of Barbados in 2011. He was admitted to practice law in the State of New York in 1989 and thereby began a career that spanned some 22 years in the New York State Court system, starting as an Appellate Court Attorney. In 1992, he was appointed a Judicial Referee in the Surrogate’s Court, New York County in Manhattan, hearing cases involving estates and trusts. In 1998, he transferred to the Supreme Court of New York, Nassau County in Long Island, a court with a jurisdiction not dissimilar to that of the High Court of Barbados. There, Sir Marston heard civil and matrimonial cases. In keeping with his interest in teaching and desire to share his knowledge, while in New York Sir Marston was an Instructor in the Paralegal programme at Lehman College, City University of New York. There he taught various subjects including Estates, Wills and Trusts, Legal Drafting and Business Law.

Black Stalin’s quintessential *Caribbean Man*, Chief Justice Gibson holds Bar membership in several jurisdictions including Barbados, Antigua and Barbuda, and Trinidad and Tobago. In his capacity as a friend of the TJJI he has participated and assisted in training sessions held for our Judiciary. He is also a member of the New York State Bar and is admitted to practise before the United States Supreme Court, as well as the United States Federal Courts for the Eastern and Southern Districts of New York.

Lest you think that all work and no play makes Sir Marston a dull boy, let me assure you otherwise: Chief Justice Gibson is also a musician and plays the guitar. He



confesses to a preference for the bass guitar. From 1981 until 1987, he was a member of the National Crop-Over Festival Orchestra, which supplied accompaniment to the participants in the Pic-o-de-Crop competition that takes place during the Crop-over Festival in Barbados. I have discovered that our Chief Justice is not the only Chief Justice who can boast of a fine singing voice: Sir Marston sings bass in the choir at St. Ambrose Anglican Church in Barbados and has been a member of the choir of St. George's Episcopal Church in Hempstead, New York.

His interests do not end here. While at the Surrogate's Court of New York County and Supreme Court, Nassau County, he was a union delegate operating in the capacity of shop steward. A graduate of the Foundation School in Barbados, he was also Vice President of the Foundation School Alumni Association of New York and is a current member of the Foundation Old Scholars Association of Barbados. He is a member of the Barbados Cancer Association of New York and the Caribbean-America Medical and Scientific Association. From 1984 to 1987, he was the moderator of "Guttaperk", a call-in radio programme on the Caribbean Broadcasting Corporation, and for over 15 years was a member of the St. Matthias' Scout Troop where he attained his Queen's Scout Badge.

On 30th November, 2012, as part of the National Independence Honours, Chief Justice Gibson was conferred the Honour of Knight of St. Andrew with the title Sir Marston Gibson K.A.

As we can see, Sir Marston brings to his job, and to our topic *The Continuing Relevance of the Jury System in the English-Speaking Caribbean*, a wealth of knowledge, broadened by a background of over 32 years of teaching, working in the Judiciary in the Caribbean and abroad, and tempered by his diverse hobbies and interests.

And therefore, after taking up so much of your time and delaying the lecture that we all eagerly await, I can do no better than to adopt the age-old and time-honoured phrase used over the years in introductions of all kinds all over the world: "Ladies and Gentlemen, I give you Sir Marston Gibson, our Distinguished Jurist 2013."

MADAME JUSTICE JUDITH JONES

The Continuing Relevance of the Jury System in the English-Speaking Caribbean



THE HONOURABLE SIR MARSTON GIBSON, K.A.
CHIEF JUSTICE OF BARBADOS

Introduction

Let me commence by first expressing my deepest gratitude to the Judicial Education Institute of Trinidad and Tobago for inviting me to deliver their Third Annual Distinguished Jurist Lecture.¹ The efforts of the Trinidad and Tobago Judicial Education Institute to fulfil their mandate to promote excellence in the administration of justice through continuous training of judicial and non-judicial officers must be commended. I specifically applaud the foresight directing their decision to host annual public lectures with an accompanying panel discussion on current legal topics relevant not only to Trinidad and Tobago

¹ I want to take this opportunity to publicly thank my Judicial Assistant, Ms Sumaya Desai, Attorney-at-Law, for her invaluable assistance to me in putting together this lecture.



but to all the jurisdictions of the Commonwealth Caribbean. Such a venture not only contributes to the jurisprudence of our region, but stimulates discussion and discourse that can surely benefit all of us, not only of this generation but of generations yet to come.

It is thus with both honour and humility that I accept a role in this initiative, doing so, I am aware, in the shadow of two of the most renowned legal minds that our region has currently produced. Although this initiative is still in the early years of its inception, the topic on which I have been asked to speak today is not. And in part because of its age, as well as the considerable attention it has consistently received, like Lord Devlin many years before me, I fear that this subject is not one on which *“it is possible to say anything very novel or very profound.”*²

Trial by jury and its continuing relevance to the Commonwealth Caribbean is the subject on which I am asked to address you. Although my topic is not constrained to trial by jury for criminal proceedings, and although trial by jury is still available in some jurisdictions in the civil sphere, civil jury trials have virtually disappeared in all but a few cases and my discussion will therefore be limited to the jury as it operates in the criminal system.

Jury trial is one manner of determining the guilt or innocence of a person accused of an offence; it is reputed to have a lengthy lineage. Its history precedes both the European discovery of our islands and the political independence that most of us subsequently obtained. But although we politely requested, and have unlocked, the political shackles of English colonialism that at one time bound our nations, none can deny that our colonial heritage has been the primary force shaping the contours of our legal landscape and it is the reason why we currently bear this ancient institution fashioned, it must never be forgotten, not by the customs of the peoples of this region, but inherited from, or perhaps bequeathed by, those that once colonised/ruled us.

Given the learned audience that I address, a definition of jury may be entirely unnecessary. You are all aware, I am sure, that a jury refers (at least in the common law tradition to which we belong) to a body of ordinary persons, usually twelve in number for capital offences and fewer in number for less serious offences, who are selected from a larger number summoned by the State and entrusted with the duty of inquiring into matters of fact in a particular trial in order to

² Sir Patrick Devlin, *Trial by Jury* (London: Stevens & Sons Limited, 1956)

return a verdict solely based on the evidence that has been properly admitted before them.³

Using a jury to represent the conscience of the community to try someone accused of a crime has from quite early on attracted both praise and criticism.⁴ Indeed, few other legal institutions as well-established as trial using a jury have attracted such passionate polarising views, inspired more perhaps by emotions than scientific logic or reason. Lord Camden proclaimed the jury to be “*the foundation of our free constitution*” without which “*the whole fabric will moulder to dust.*”⁵ Thomas Jefferson, principal author of the American Declaration of Independence and the third President of the United States of America, declared that like equal and exact justice to all men and freedom of religion and freedom of the press, “*trial by juries, impartially selected*” formed part of “*the bright constellation which has ... guided our steps through an age of revolution and reformation; the “wisdom of our sages and the blood of our heroes”, he declared, “have been devoted to [its] attainment.”*⁶

However, his fellow countryman Mark Twain was not of like mind. The author and social commentator cynically described the jury system as “*the most ingenious and infallible agony for defeating justice that human wisdom could have devised*”. In his views he was joined by Judge Jerome Frank who considered the jury to be “*the weakest spot in [the] judicial system,*”⁷ and cited a quote by a fellow jurist, Judge John Carter, who suggested that:

“*... our boasted trial by jury which affirms that all grades of capacity above driveling idiocy are alike fitted for the exalted office of sifting truth from error may excite the derision of future times.*”⁸

The contradictory views on this ancient institution have as yet failed to converge. Just as Britain announced in 2010 that, for the first time in four centuries, it had completed its first trial of an indictable only offence that was tried before and determined solely by a judge⁹ and as Belize follows closely

3 See Black's Law Dictionary (Ninth Edition)

4 Christopher Granger et al, Canadian Criminal Jury Trials (Toronto: Carswell, 1989) p. 3-6

5 Richard Ward, Walker & Walker's English Legal System (London: Butterworths, 1998) p. 230

6 Thomas Jefferson, First Inaugural Presidential Address, March 4, 1801. Available at: http://avalon.law.yale.edu/19th_century/jefinau1.asp

7 Judge Jerome Frank, “Something's Wrong with our jury system” Collier's Weekly, December 9, 1950 at p. 64. Available at: <http://www.unz.org/Public/Colliers-1950dec09>

8 John Carter cited in Jerome Frank, Courts on Trial: Myth and Reality in American Justice (Princeton University Press, 1963)

9 Mark Hughes “Armed raiders jailed after trial without jury” The Independent March 31, 2010. Available at: <http://www.independent.co.uk/news/uk/crime/armed-raiders-jailed-after-trial-without-jury>



in the steps of our former colonial master,¹⁰ jury trials or a version thereof are being introduced for the first time in the former Soviet Republic of Georgia, the People's Republic of China, Japan and Mexico.¹¹ And, having been reintroduced into Russia by the judicial and constitutional reforms of former President Boris Yeltsin scarcely more than a decade ago, the government of President Vladimir Putin has now sought to severely curtail its availability.¹²

These legal and political developments occur amidst unceasing advancements in technology and the capabilities and use of the cybersphere, most prominently in the form of social media (a term unknown a few years ago), which increasingly infringe upon the principles on which jury trial in England and hence our jurisdiction have been founded. It is against this backdrop that I am asked to consider whether the system of trial by jury remains relevant to our jurisdictions or whether the time has now come for us to slowly but surely eliminate this method of determining the guilt or innocence of an accused person.

Where was it born and what was its aim?

To truly understand and appreciate trial by jury as it operates in our legal systems today, it is necessary to have some familiarity with its origin and history and how it came to arrive upon our shores.

It must be stated at the outset, however, that there is no definitive consensus as to the precise origin of jury trials and how they evolved into the form they take today. One legal historian of some repute declared in his treatise on the jury system that "*few subjects have exercised the ingenuity and baffled the research of the historian more than the origin of the jury.*"¹³

While the true origin and evolution of the jury remain elusive, there are certain facts that are generally undisputed. First, it is clear that the jury, albeit not in the form it currently exists, can be traced back several centuries. It is not, however, traced to Magna Carta, as a surprising number of people seem to

ry-1932167.html. See also Barry James, "Trial by Jury: 800 year English Tradition in Jeopardy", New York Times, July 9, 1993. Available at: <http://www.nytimes.com/1993/07/09/news/09iht-jury.html>

10 "Second trial by judge gets underway" The EL Guardian January 13, 2013. Available at: http://www.guardian.bz/index.php?option=com_content&view=article&id=5817:second-trial-by-judge-gets-underway&catid=39:crime&Itemid=73

11 "The Jury is Out" The Economist February 12, 2009. Available at: <http://www.economist.com/node/13109647>

12 Nick Holdsworth "Russia scraps right to jury trial" The Telegraph December 12, 2008. Available at: <http://www.telegraph.co.uk/news/worldnews/europe/russia/3725300/Russia-scraps-right-to-jury-trial.html>

13 William A. Forsyth, History of Trial by Jury (Jersey City: Frederick D. Lyn & Co,)

believe. The article of Magna Carta credited with establishing the right to a trial by jury is article 39, which provides as follows:

“No freeman shall be seized or imprisoned, or dispossessed, or outlawed, or in any way destroyed, nor will we condemn him to prison, excepting by the legal judgment of his peers, or by the laws of the land.”

Yet while Magna Carta was an important historical document by which the English monarch recognised that his authority could not be exercised arbitrarily, to give it the honour of instituting the jury system is baseless, regardless of how widespread this delusion may be. Magna Carta was the Great Charter that King John was required to sign in 1215 at Runnymede in order to quell the open rebellion of a group of feudal barons. Its aim was thus not to grant any rights to the English populace, but merely to reassert the authority of certain members of the nobility. Article 39 whether by the literal meaning of its own terms or a historical analysis, does not guarantee right to trial by jury.

In fact, most historians accept that jury trials of some form or the other occurred long before this point. And it was not in Britain that they first appeared either. The first written description of a procedure similar to trial by jury is attributed to an Athenian statesman named Solon who lived between 638 and 558 BC.¹⁴ The city-state of Athens had a form of trial not unlike the jury where dicasts or male citizens above a certain age were randomly selected to hear charges brought against fellow citizens and paid a nominal sum by the state to do so. Thus, the famous Greek philosopher Socrates, who was charged with corrupting youth and impiety, met his end before five hundred fellow citizens, including his student, Plato, who determined not only his guilt but his sentence of execution by consumption of hemlock.

Another precursor to the jury trial was the *laffif*, which was developed between the 8th and 11th centuries by the Maliki school of Islamic Law and which operated in North Africa and Sicily. The *laffif* was a body of twelve men drawn from the neighbourhood who swore to tell the truth and give a unanimous verdict about matters that “... *they had personally seen or heard, binding on the judge to settle the truth concerning facts in a case between ordinary people and obtained as of right by the Plaintiff.*”¹⁵ Professor John Makdisi of St. Thomas University of Law hypothesises that the *laffif* may have been introduced into England by the Normans who conquered both England and the Emirate of

¹⁴ Rene Worsmser, *The Law* (Simon & Schuster, 1949) pp 52-58.

¹⁵ John Makdisi, “Islamic Origins of the Common Law”, 7 (1999) *North Carolina Law Review*. 1635-1739.



Sicily, as the *laiff* was the legal institution most closely resembling in character and function the early English jury.¹⁶

The early English jury consisting of twelve individuals originated in the reign of Henry II. It was initially used to settle land disputes and was therefore constituted of persons “*drawn from the neighbourhood who were taken to have knowledge of all the relevant facts*” who were required on earth to determine, based on their knowledge, which of two litigants was entitled to land. When Pope Innocent forbade the participation of clergy in trial by ordeal, which assumed that God would protect the innocent and was then the primary method of trial, a new method of trial had to be found and it was located in the jury or body of twelve “free and lawful” men. The accused was therefore judged by his own neighbourhood.

In stark contrast to what occurs nowadays, jurors were initially selected for their prior knowledge of the person or matter being tried; they were not expected to be empanelled without having been contaminated by this information. However, over the following centuries, the role of the jury evolved, so that by the 15th century, the idea of the “self-informing” jury gave way to one that heard the evidence evolving as it was presented at trial. Even then, however, there was no need for them to be neutral in the way that the modern juror has to be and their verdicts could be grounded not only on the information presented before them but on what they knew.

There were other differences as well. A separate panel was not constituted for each trial and, indeed, it is reported that until the 1770s, two 12-man juries used to sit at the Old Bailey for several days and dispose of the entire caseload of 50 to 100 trials for that session.

The Attraction of Trial by a Jury

What appeal does trial by twelve of our fellow countrymen and women have over trial by a judge sitting alone? What makes this form of trial, more than any other a “*bulwark of liberty*”, to quote Lord Devlin? And are these advantages merited or are they exaggerated?

As opposed to a bench trial, i.e. by a judge sitting alone, an accused in a jury trial is judged by ordinary people chosen from amongst society, not by a

¹⁶ Ibid

ruler or leader or his appointed representative. Trial by jury therefore carries great symbolic value, some would perhaps say greater symbolic value than practical significance. Use of this form of trial demonstrates that people are not accountable to the state in the form of an appointed judge, but to their fellow citizens.

As juries are constituted of randomly selected individuals taken from the community generally, who arrive to hear the matter without any vested interest, verdicts given by them may be considered to have been given by the people or the populace. Their verdicts are also considered to be representative of the governing social mores and norms of the society in which they are situated. Additionally, as the jury would not be hardened by repeatedly hearing cases bearing similar facts, they can view the matter with fresh eyes.

The greatest strength of the jury lies, however, in the involvement of ordinary persons. By including them into the judicial process, the legal system is to an extent democratised. Their participation also provides greater transparency and legitimacy to verdicts that are rendered.

Many judges have declared, as former US Supreme Court Justice Byron White did, that a right to jury trial was granted in order to provide ordinary persons with *“an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge.”*¹⁷ These words may appear exaggerated, but the truth underlying them is evident from the experience of Russia. It is no coincidence that Spain and Russia introduced lay participation in the judicial system after dictatorship and communism respectively were dismantled.

Lord Carswell stated in *R v Smith (No.2)* [2005] UKHL 12 that *“the institution of jury trial, with all its imperfections, is still trusted by the public as a method of determining the guilt of persons charged with criminal offences.”*

In his seminal work on trial by jury in the Caribbean¹⁸, Prof. Ramesh Deosaran cites the notable Caribbean jurist Justice Telford Georges, former Chief Justice of Zimbabwe, who opined that *“since jurors serve only for a short while, they can be expected to bring to their tasks a freshness of outlook which may be lacking in the professional judge constantly exposed to a succession of stories revealing the iniquities of which man is capable.”* Deosaran adds that *“the social mixture*

¹⁷ *Duncan v. Louisiana*, 391 US 145, 155 (1968) per Justice Byron White.

¹⁸ *Trial by Jury: Social and Psychological Dynamics*, at p. 259



within the jury is exactly the quality which makes it superior to the judge in determining the facts in serious offences. The jury is a democratic institution, historically designed to 'speak for the people'. Being democratic, community representatives is as important as its legal efficiency."

Criticisms

Much of the criticism directed at this mode of trial can be captured in the following quote attributed to Oppenheimer who pointed out that in trying a person using a jury:

We commonly strive to assemble 12 persons colossally ignorant of all practical matters, fill their vacuous heads with law they cannot comprehend, obfuscate their seldom intellects with testimony which they are incompetent to analyze or unable to remember, permit partisan lawyers to bewilder them with their meaningless sophistry, then lock them up until the most obstinate of their number coerce the others into submission or drive them into open revolt.¹⁹

No less a judicial personage than Sir Burton Hall, former Chief Justice of The Bahamas and now judge at the UN International Criminal Tribunal for Yugoslavia, has been highly critical of trial by jury, urging for its removal. He has urged that not only is trying cases in this manner inefficient *"both in terms of time and in terms of money"* but, he contends, it is not right that the most serious criminal charges are being determined by a body that was not required to give any reasons for its decisions.²⁰

There is also an economic cost to trial by jury, although the precise amount of this cost remains unquantified in our jurisdictions. It has been estimated that the cost of trial by jury in England amounts to £6 million as opposed to the £1.6 million assigned to trials without a jury.²¹ This cost, it is alleged, is more than thrice that of the cost of having a non-jury trial. Scrapping the jury, it has been argued, will save the government more than £120 million a year.²² The cost does not only include the money expended by the state to hold the trial, but the

19 Oppenheimer "Trial by Jury", U.Cin. L. Rev. 141, 142 (1937)

20 "AG wants to abolish jury trials in certain cases" *Nassau Guardian* June 11, 2013. Available at: http://www.bahamaslocal.com/newsitem/75017/AG_wants_to_abolish_jury_trials_in_certain_cases.html

21 Henry Porter and Afua Hirsch, "Trial by Jury is the basis of British Justice" *The Guardian* April 10, 2010. Available at: <http://www.guardian.co.uk/commentisfree/henryporter/2010/apr/01/trial-by-jury-heathrow-case>

22 Thom Brooks, "Defence of the jury is an open and shut case" *Times Higher Education* March 2, 2007. Available at: <http://www.timeshighereducation.co.uk/208058.article>

personal economic cost suffered by jurors hearing matters, particularly where those jurors are self-employed. The compensation offered by the state for jury duty does not come close to matching the actual economic loss suffered by the individual juror.

The inefficiency of the system is evident, critics say, from the number of mistrials that can occur. Just two months ago, Guyanese newspapers reported that a jury that had been empanelled at the Demerara High Court to determine whether an accused person was unfit to stand trial found the accused fit to do so in clear contradiction of the report of an expert witness who, as a duly qualified and experienced psychiatrist, had examined the accused and concluded that in his medical opinion he was suffering from paranoid schizophrenia and could neither understand the charge against him nor give instructions to an attorney.²³ The accused has now been remanded to await trial by another jury who are expected to return a verdict in line with the psychiatric findings.

This issue has occurred closer to home for me. About three months ago, one of the Justices in my Court, Justice Maureen Crane-Scott, called me on the phone, obviously infuriated. She reported to me that she had just declared a mistrial. It was the cause of the mistrial that infuriated me as well because, after five weeks of a murder trial, the judge had begun to hear some chatter about potential juror misconduct. When she investigated, it was discovered that one of the witnesses was the father-in-law of one of the jurors. What was interesting is that the judges in the Continuous Criminal Sessions, which replaced the Assizes, have developed the habit of reading out loud to the jurors the names of all the witnesses slated to be called to testify. The offending juror sat stolidly mute while his wife's father's name was called as a witness.

Jury service may, depending on the length and nature of the trial in question and the personality of the juror involved, also be a very stressful experience with lingering consequences. Jurors who had deliberated on trials where detailed descriptions of gruesome crimes were given have reported suffering from anxiety and nightmares simply because of what had been seen and heard.²⁴

²³ George Barclay, "Jurors give verdict in contradiction of psychiatrists' findings" Guyana Chronicle March 28, 2013. Available at: http://guyanachronicle.com/site/index.php?option=com_content&view=article&id=57182:jurors-gave-verdict-in-contradiction-of-psychiatrists-findings-murder-accused-remanded-to-await-trial-by-another-jury&catid=2:news&Itemid=3

²⁴ Daniel Goleman "For many jurors trial begins after the verdict" The New York Times May 14, 1991. Available at: <http://www.nytimes.com/1991/05/14/science/for-many-jurors-trials-begin-after-the-verdict.html>. See also Murray Wardrop, "Jurors suffer trauma in gruesome cases, scientists warn" The Telegraph March 19, 2009. Available at: <http://www.telegraph.co.uk/news/uknews/5013391/Jurors-suffer-trauma-in-gruesome-cases-scientists-warn.html>



In correspondence between himself and Sir Frederick Pollock, the renowned American jurist Oliver Wendell Holmes wrote:

*The man who wants a jury has a bad case - as an old Australian Judge said to me last year. I think there is a growing disbelief in the jury as an instrument for the discovery of truth. The use of it is to let a little popular prejudice into the administration of the law - (in violation of their oath).*²⁵

The words of Justice Holmes disclose another criticism of the jury trial (one not always viewed as a criticism), which is that grounded as it is on an adversarial system of justice, it favours the rights of the accused and does not facilitate the discovery of what may actually have happened. Indeed, in proposing the abolition of jury trial, one British MP asserted that it was intended to modernise the justice system to rebalance in favour of victims and witnesses while still protecting the rights of the defendants.²⁶

Trial by Google and Twitter: Twentieth Century Challenges to Jury Trials

In the inaugural Distinguished Jurist Lecture delivered two years ago, Sir Shridath Ramphal quite aptly called this period of our history “*an age of rapid and often bewildering transition*”. Each day, we encounter seemingly endless technological inventions and improvements aimed at making our lives just a bit more easier, information and ideas just a bit more accessible, communication just a little bit more convenient. The rapid rate at which technology has evolved has catalysed a corresponding continuous evolution in societal norms and behaviour. Ultimately, the world as we know it today is very different from the world as it was when Magna Carta was signed, for the world in which trial by jury was created to serve was

*“... a world lit only by fire. Books were rarer than unicorns and the average person was [uneducated and] lived and died within a few miles of his birthplace without ever having learnt anything of the world outside.”*²⁷

25 Mark De Wolfe-Howe (ed.), *Holmes-Pollock Letters: The Correspondence of Mr. Justice Holmes and Sir Frederick Pollock 1874-1932* (Massachusetts: Harvard University Press, 1941) Available at: <http://www.commonlaw.com/HP.html>

26 “Straw presses on with jury plans” BBC News January 21, 2000. Available at: http://news.bbc.co.uk/2/hi/uk_news/politics/612716.stm

27 “A Jury of One” by Feisal Naqvi, 3Quarks Daily November 22, 2010. Available at: <http://www.3quarksdaily.com/3quarksdaily/2010/11/a-.html>

Our world is now alight not only with electricity, but primary education, which has become universal in this region, and secondary and tertiary education extensive to varying degrees. Media in the form of newspapers, magazines, television and radio have pervaded almost every home (*Today, even the poorest of the poor... have access...*²⁸) and have, by adopting the form of a smart phone, burrowed into our pockets and purses. Just before I came on to the stage to speak to you this evening, I received news updates of the political situation in Egypt where there has just been a popular coup. I can with my mobile phone access online the judgments of the Eastern Caribbean Supreme Court. And if I need any advice, my colleagues in New York and South Africa are but an email, a BB message or a Whatsapp! message away, all of which I can send and receive utilising my Blackberry Torch or, in the case of emails, using my Samsung Galaxy tablet from which I am presently reading.

The tentacles of technology threaten to transform what we regard as trial by jury into “trial by Google”, a term I respectfully borrow from a speech given by the English Attorney-General, the Rt Hon Dominic Grieve, QC, MP, in a lecture delivered at the University of Kent earlier this year.²⁹ Trial by Google or twitter or tumblr or facebook or Wikipedia, to say nothing of Youtube, encapsulates the influence that the internet may have on jurors who either inadvertently encounter material or deliberately attempt to research the case on which they sit. It has the potential to become a serious problem that challenges our conception of a fair trial. The dangers that our criminal justice systems are likely to face have already been scented, albeit in other jurisdictions.

The Queen v Barry Medlock was one of many criminal trials that took place in England just two years ago, in 2011. It was one of few criminal trials that occurred by jury that year.³⁰ Yet Medlock is a trial that distinguishes itself. And it does so for all the wrong reasons.

Medlock was charged, along with two co-defendants, with causing grievous bodily harm. One of the jurors in his trial at the Luton County Court was a former university lecturer in Psychology, 34 year-old Theodora Dallas. Perhaps because she was intent on taking her civic duty seriously or perhaps because

28 Ibid.

29 See Dominic Grieve, QC, Trial by Google? Juries, social media and the internet. February 6, 2013 Available at: <https://www.gov.uk/government/speeches/trial-by-google-juries-social-media-and-the-internet>

30 See “Supreme Court Rejects Juror Contempt Case” Solicitors Journal, January 30, 2012. Available at: <http://www.solicitorsjournal.com/node/9143> and also “Juror jailed over online research”, Guardian Newspaper, January 23, 2012 Available at: <http://www.guardian.co.uk/law/2012/jan/23/juror-contempt-court-online-research>



she was simply distracted when the judge gave his directions, Ms Dallas, despite repeated warnings from the Court, decided to research certain terms she heard being used on her own. In the comfort of her home, she called up the modern day wise man to which we all turn – Google – and typed in “*grievous bodily harm*”. Had she restrained herself to searching that term alone, her fate may have been different. But, alas, she did not. To this search term, she added another – *Luton* – the name of the area in which the trial was occurring. The combined terms brought up a newspaper article in which it was revealed that Barry Medlock, the defendant the allegation against whom she was to judge, had been previously charged with rape, but had been acquitted of this charge. This was information that had no bearing on the trial and was rightly not disclosed. This is information that we are all aware may be prejudicial to the accused. Those of us in the business of conducting trials as judges or advocates know of this by the sobriquet “similar fact evidence” (or as New Yorkers call it, “evidence of prior bad acts”), most of which is, as a general rule, inadmissible.

It is possible that even armed with this information, no consequence may have been faced by Ms Dallas for, after all, how would the Court or anyone else become aware of her independent research conducted as it was in the sanctity of her own home? But the information was just too juicy and this university lecturer simply could not keep it to herself. Thus, during the course of deliberations, Ms Dallas shared her findings with her fellow jurors, one of whom mentioned the internet research to the usher and the usher, in turn, told the Court.

The trial ground to a halt. A mistrial was declared and the jury was discharged. The Attorney-General immediately instituted contempt proceedings against Ms Dallas. Ms Dallas apologised; she had not, she claimed, understood that she “*could make no search on the Internet*” and simply “*never thought [her actions] would cause such disruption*”. The Court was not satisfied with her explanation or apology. The judge had been careful to warn Ms Dallas and her fellow jurors, not once but repeatedly, not to use the internet to research anything relating to the case. Her fellow jurors had fully understood their responsibility while a university lecturer had not. The Lord Chief Justice found that she had also understood the instructions but had deliberately disobeyed them and in so doing acted “*directly contrary to her oath as a juror*”. In sentencing her, he warned that:

“Misuse of the internet by a juror is always a most serious irregularity and an effective custodial sentence is virtually inevitable.”

For her misplaced eagerness, Ms Dallas was sentenced to six months in prison for contempt. Her application seeking leave to appeal was refused. Because of the extensive publicity that the incident received, she was also suspended from, and ultimately resigned, her university job. Her story should be taken as a warning to other jurors appearing before the Court and to judges as to what to expect.

Juror misconduct of the type in which Ms Dallas engaged makes a mockery of the rules of evidence and taints the evidence on which the jury chooses to rely when arriving at a verdict. I wish I could report that what happened in the *Queen v Barry Medlock* was an anomaly. It is not. Instead, it is but one of a number of cases occurring within the last five years where the use of an internet search engine or social media platform by a juror has either led to the removal of a juror, halted a jury trial in the midst of proceedings or caused a conviction to be set aside.

A case in which a conviction had to be set aside was that of Jamaican Reggae artiste Buju Banton who had been charged with and convicted in the US Federal District Court in Florida of carrying an illegal firearm as well as a number of drug-related charges. After a juror revealed in a newspaper interview that she had conducted independent research concerning the case relating to the gun charge, Banton's defence attorney appealed his convictions.³¹ The judge set aside the verdict relating to the gun charge only. The juror conducting the research was also charged with contempt.

In 2010, a jury in the Benton County Circuit Court of Arkansas found Erikson Dimas-Martinez guilty of aggravated burglary and capital murder for the fatal and deliberate shooting of 17 year-old Derrick Jefferson in 2006.³² In clear view of two witnesses who had testified in Court, Jefferson had been shot once in the head after being robbed of \$30 and his coat and cap.³³ Dimas-Martinez was sentenced to life imprisonment for the aggravated burglary, and to death for the capital murder. He appealed his conviction and alleged on appeal, *inter alia*, that the Court had erred in refusing to dismiss jurors who had disregarded its instructions by sleeping and tweeting during the proceedings, and in failing to

31 See Patty Ryan "Buju Banton gun conviction set aside, juror may face contempt charge" Tampa Bay Times June 26, 2013. Available at: <http://www.tampabay.com/news/courts/criminal/judge-tosses-buju-banton-gun-conviction-wants-contempt-charge-against-juror/2128693>

32 "Death Penalty Overturned because of sleeping, tweeting jurors" Crime in the Suites, Jan 25, 2012. Available at: <http://crimeinthesuites.com/death-penalty-overturned-because-of-sleeping-tweeting-jurors/>

33 "Derrick Johnson (17) was shot to death after two men robbed him of \$30" May 02, 2008. Available at: [http://www.mydeathspace.com/article/2008/05/02/Derrick_Jefferson_\(17\)_was_shot_to_death_after_two_men_robbed_him_of_\\$30](http://www.mydeathspace.com/article/2008/05/02/Derrick_Jefferson_(17)_was_shot_to_death_after_two_men_robbed_him_of_$30)



declare a mistrial.³⁴ This error on the part of the Court had, according to counsel for Dimas-Martinez, cost him a fair trial. The Arkansas Court of Appeal agreed and a new trial was granted.³⁵ While their decision cannot be faulted, one can only imagine the emotional turmoil endured by the family of the victim and the witnesses to the crime, who had to endure a trial for a second time due to no fault of either themselves or the attorneys involved.

Lest I ignore Facebook, which these days cannot simply be ignored, jurors have also misused Facebook and Twitter to the detriment of the right to a fair trial. In a multi-million pound drug trial that occurred in August, 2010, a British juror not only friended on Facebook a defendant with whom she allegedly felt a certain empathy, but proceeded to have online discussions with the defendant about the charge against her.³⁶ The juror's action caused the complex ten-week trial that was on its third attempt and involved multiple charges and multiple defendants and that was nearing its conclusion to be abruptly aborted.³⁷ Both the juror and defendant in question were found guilty of contempt, with the juror being sentenced to eight months in prison. Another Facebook user posted details about the trial in which she was acting as juror so as to hold a poll of her friends simply because she was not sure which way to vote during oncoming deliberations. Yet another juror, this time in a case in Michigan in 2010, changed her publicly viewable Facebook status to "*Gonna be fun to tell the defendant they're guilty P.*"³⁸ And she had done so before the defence even started its case.³⁹ The status caught the eye of the defendant's son and the juror was unsurprisingly not only removed from the jury for disregarding her oath to hear the other side but fined for contempt.⁴⁰

34 Erikson Dimas-Martinez v State of Arkansas, Opinion of Donald Corbin, Associate Judge, Delivered December 8, 2011. Available at: <http://opinions.aoc.arkansas.gov/WebLink8/0/doc/252414/Electronic.aspx>. See also <http://www.nlrg.com/blogs/jury-research/bid/72541/What-Is-It-About-Don-t-Twitter-You-Do-Not-Understand>

35 Suzi Parker, "Arkansas death row inmate gets new trial because of twitter". Reuters December 8, 2011. Available at: <http://www.reuters.com/article/2011/12/08/us-crime-twitter-arkansas-idUSTRE7B72C220111208>

36 Victoria Ward "Juror faces jail over Facebook contempt case " The Telegraph June 14, 2011. Available at: <http://www.telegraph.co.uk/technology/facebook/8575334/Juror-faces-jail-over-Facebook-contempt-case.html>

37 "Facebook juror jailed for eight months" The Guardian June 16, 2011. Available at: <http://www.guardian.co.uk/uk/2011/jun/16/facebook-juror-jailed-for-eight-months>

38 Martha Neil "Oops Juror calls Defendant guilty on facebook" ABA Journal Available at: http://www.abajournal.com/news/article/oops._juror_calls_defendant_guilty_on_facebook_though_verdict_isnt_in

39 Ed White, "Judge punishes Michigan juror for facebook post" Seattle Times September 2, 2010. Available at: http://seattletimes.com/html/nationworld/2012785464_apusfacebookjuror.html

40 Ibid.

Although such behaviour has not yet been reported in our jurisdictions, with the increasing access of our citizens to the internet and the tantalising services it offers, these cases foreshadow what is soon likely to come. Such behaviour by jurors, which is often contrary to the clear and specific instructions of the judge, is worrying. It can only lead to the wastage of governmental resources and precious judicial time, while exacerbating systemic delays that already exist. It also seriously threatens the right to a fair trial.

There is another, perhaps less evident, risk posed by technological innovation that does not bode well for jury trials of the future, should they continue in the same manner in which they do today. In part, I suspect, because of technological innovations, we have now a large and growing body of citizens with ever shortening attention spans who find it difficult to sit down and listen.

Alternatives to Jury Trials and Emerging Trends

It cannot be disputed that trial by jury in the form practiced by our nations is marred by challenges. Criticisms of the process are not unmerited and cannot and should not be disregarded. The question that must necessarily be asked, however, is: what alternatives to this system exist?

To answer that question, we need not look too far. Trial by a group of your peers who, supervised and directed by a judge, decide on issues of fact, is not the most common method of determining the guilt of an accused. In South and East Asia, Africa and much of continental Europe jurisdictions, it does not exist, at least not as we know it in the Caribbean.

In many of these countries, however, lay participation in the judicial system is guaranteed by having lay assessors or judges. This system originated from the inquisitorial system of trial common to civil law jurisdictions. Indeed, because of the original Spanish colonisation of Trinidad, criminal courts initially consisted of two lay assessors and a judge, until the English system of trial was introduced.⁴¹

Deosaran notes that the reasons advanced for the abandonment of trial by jury in some Commonwealth countries, particularly in Africa, have been “bias, personal involvement and corruption of jurors.”⁴² The precise manner by which the system of lay assessors operates varies substantially from jurisdiction to

41 Shaheed Hosein, *The History and Contemporary Role of the Jury with particular reference to Trinidad and Tobago* (UWI Law Library, Unpublished Thesis, 1973) p. 5.

42 Deosaran, *op. cit.*, at 19.



jurisdiction. However, the primary advantage of the system is that it provides the community or lay participation in trials that provides credibility to verdicts imposed for serious offences and yet at the same time minimises or eliminates some of the disadvantages associated with jury trials. The assessors may be trained and carefully selected. Deosaran notes that “assessors were considered useful especially in newly-independent states which contained a substantial number of expatriate judges whose knowledge of the local culture was considered minimal.” However, he again cites former Chief Justice Justice Telford Georges for the proposition that such assessors were usually experienced in the law, and while the lay assessors could legally outvote the judge on issues of fact, Georges had noted that such conflicts were rare.⁴³

The other advantages are that the assessors are employed and paid for their service. Their decision may carry equal weight to that of the judge/s who sit with them or it may be advisory only. And by using assessors and judges together, the risk of bias that follows from having a single judge is reduced, in addition to which the judge is able to share the burden of decision-making. Justice Georges, defending the system of assessors, pointed out:

*“Jury trial may not be the cornerstone of the administration of criminal justice but those principles of shared decision-making and public participation certainly are.”*⁴⁴

It is possible that some countries within our region may well move away from jury trials. Jury trial in Turks & Caicos was suspended, together with the country’s Constitution, by Great Britain in August 2009 in order to restore good governance and sound financial management after a commission of inquiry concluded that the country was suffering from systematic corruption.⁴⁵ Elections were held earlier this year and a new government installed, but a proposed Bill, to which the Bar Council strongly objects, is now contemplated, which proposes to allow criminal trials to be conducted by a single judge only.⁴⁶

43 Deosaran, *op. cit.*, at 21

44 The Hon. Justice Telford Georges, “Is the jury trial an essential cornerstone of justice?” Second International Commercial Crime Symposium organized under the auspices of the Commonwealth Secretariat’s Commercial Crime Unit and the ICC-International Maritime Bureau and the Centre for Commercial Law Studies, Queen Mary College, University of London

45 “Britain imposes direct rule on Turks and Caicos isles” *CNN August 15, 2009*. Available at: <http://edition.cnn.com/2009/WORLD/europe/08/15/turk.caicos.uk/>

46 Sara Knight, “Bar Council ‘strongly and entirely opposed’ to trial without a jury bill”, *Turks and Caicos Sun July 9, 2013*. Available at: <http://tcisun.server301.com/index.php?p=story&id=1315>

The introduction of bench trials was recommended by Sir Robin Auld because of the small pool of jurors from which to select a jury.⁴⁷

Additionally, in February of last year, Belize had its first non-jury trial. The case was high-profile in nature, involving the attempted murder of respected Belizean Queens Counsel, Rodwell Williams; it was the case of the Crown v Ricky Valencia and Akeem Thurton.⁴⁸ Guyana-born Chief Justice of Belize, Kenneth A. Benjamin, presided over the case, in which he was to be the judge of both law and fact.

During the course of the trial, one of the defendants, Ricky Valencia, was shot dead.⁴⁹ The other defendant was sentenced on 29th March, 2012 to 15 years in prison.⁵⁰ The family of the accused believed that neither the sentence nor trial was fair, because the defendant not only had no jury to judge him properly, but because he was unrepresented.⁵¹

Conclusion

The criminal justice system of the Commonwealth Caribbean operates sluggishly in many parts, constrained by delays at all stages. Many of the problems facing it do not lie and are not caused by the jury system, but by limited resources, administrative inefficiency and at times also corruption. While it may be tempting and politically lucrative to call for its abolition, removal of trial by jury will not act as a panacea that will cure all ills of the judicial system, and it is necessary to restrain ourselves from regarding it as such. It must be recalled that a jury trial is not the most common method of determining guilt or innocence; it is only used for a small portion of all cases. After all, the vast majority of criminal cases are heard by magistrates who sit without juries. But even there, the hearing of such cases before magistrates is not always without its own set of problems.

One fact, however, is clear. The jury should not be maintained out of sentimental value or nostalgia, or because this is what we are used to, or because this is what other countries are doing and so we should do so too. There are

47 Gemma Handy, "Right to jury trial likely to be axed," *Turks and Caicos Weekly News Online* July 9, 2013. Available at: <http://tcweeklynews.com/right-to-jury-trial-likely-to-be-axed-p2014-1.htm>

48 "Rodwell Williams alleged shooter will be the first to be tried without a jury" *7News Belize* February 6, 2012 Available at: <http://www.7newsbelize.com/sstory.php?nid=21682>

49 "Accused in High Profile Crimes, Ricky Valencia, Murdered", *Channel 5 Belize* February 23, 2012. Available at: <http://edition.channel5belize.com/archives/67366>

50 "Sentencing for Man Who Shot Rodwell Williams" *7News Belize* March 30, 2012 Available at: <http://www.7newsbelize.com/sstory.php?nid=22118>

51 *Ibid*



countries in the world, such as Holland, which have never had a jury system, and whose justice systems have not collapsed for lack of a jury. But trial by jury should also not be abolished for equally nebulous or sentimental reasons. It should remain only if we, as individual societies in the Caribbean, consider it necessary and worthwhile to have the innocence or guilt of a person charged with serious crimes determined in this manner. To have guilt determined in this manner does not come without certain benefits to the judicial system and the society at large.

There is, however, much to be said for limiting the jury, at least in the present form, in certain jurisdictions where complaints and results show that it quite simply is not working, as in Jamaica where some statistics on the operation of the jury system in that country have been made available. Ultimately, a sound and lasting decision as to how the delivery of justice can be improved in our countries, and whether the delivery of criminal justice demands the abolition of trial by jury can only be made where more studies and information are first made available. We quite simply need another in-depth sociological and economic study of the type conducted in the 1980s by Professor Deosaran, which would also take into account the impact on the jury system of modern technology, particularly the social media.

Whether or not jury trials are maintained or abolished, given the particular threats to the impartiality of juries attendant in small societies such as our own, it would be advisable for each jurisdiction to permit bench trials in specific circumstances, such as, for example, where it is shown that there is a reasonable and palpable risk of jury tampering or interference.

On a final note, it must never be forgotten that our legal system is man-made; no system we select will be infallible. A choice has to be made by the people of a nation as represented by its Parliament, after consultation with all appropriate parties and civil society at large, as to the most appropriate method for each particular society.

I do thank you all for your attendance and your attention, but, mainly, for your patience.

THE HONOURABLE SIR MARSTON GIBSON, K.A.

Chief Justice of Barbados

Vote of Thanks



MS MARISSA ROBERTSON
REGISTRAR OF THE SUPREME COURT OF TRINIDAD AND TOBAGO

*T*he evening comes to a close!

When invited to give a vote of thanks, it is the norm for the person so appointed to say that the task is an easy or a simple one.

However, the truth is that gratitude and expressions of gratitude are never simple. In fact, I once heard someone liken ingratitude to an infraction against human sensibilities and that the ungracious act warranted the most serious methods of correction.

So, whether my underlying motive is to eschew falling afoul of human sensitivities and sensibilities and, thereby, be subject to correction or whether, on the other hand, it is just out of good manners, I am particularly conscious that my task this evening is not a simple one.

For, how can it be simple when our speaker, The Honourable Chief Justice of Barbados, Sir Marston Gibson, the embodiment of the distinction that we aspire to in our distinguish lecture series, spoke so eloquently on a topic that is seminal to the administration of the criminal justice system?



It is evident that the material was carefully researched and you expended much time and energy in the preparation of this masterpiece. We thank you for the opportunity to hear and assimilate this presentation.

How can my task this evening be called simple, when we were all welcomed into a space so transformed that one could hardly believe that this space is used for events as sober and formal as special sittings of the court? For this, we thank the decorator Frances Pollonais-La Foucade and the staff of Metamorphosis.

I was about to mention our internal team, but good manners dictate that I complete the recognition of the guests before attention is drawn to the host.

In accordance with good manners, I would like to thank the pannist, Mr. Darryl Reid, for his musical renditions.

Our sincere thanks to the staff of the Judiciary, including Mr. De Sormeaux and his team from the Building and Plant Unit, Mr. Maderia and his team of Protocol Staff, and Ms Gittens and her team from the Court Protocol and Information Unit.

To the Board of the Judicial Education Institute and to its Judicial Educator, Mr. Kent Jardine, as you continue to strive for excellence in what has become the annual Distinguished Lecture Series, just one comment; certainly this evening is one of the proverbial tides that raises all of the boats.

Distinguished ladies and gentlemen I look forward to the pleasure of your company at future events of this kind and I do bid you a very good evening.

MARISSA ROBERTSON

Registrar of the Supreme Court of Trinidad and Tobago

Photographs





DISTINGUISHED JURIST LECTURE 2013





Panel Discussion
Convocation Hall
Friday 12th July 2013



Moderator

Madame Justice Alice Yorke-Soo Hon JA

Panellists

The Honourable Mr. Justice Jacob Wit
Professor Dr. Ramesh Deosaran
Her Worship Ms Nalini Singh
The Honourable Chief Justice of Trinidad and Tobago
Mr. Justice Ivor Archie, O.R.T.T.
The Honourable Chief Justice of Barbados Sir Marston Gibson, K.A.



Panel Discussion



MR. JONES P. MADEIRA
DIRECTOR, COURT PROTOCOL AND INFORMATION UNIT

Welcome

The Honourable The Chief Justice of Trinidad and Tobago, Mr. Justice Ivor Archie; President of the Senate, The Honourable Timothy Hamel Smith; The Honourable Chief Justice of Barbados and our 2013 Distinguished Jurist, Sir Marston Gibson; our moderator, Justice of Appeal The Honourable Madame Justice Alice Yorke Soo Hon; Justices of Appeal and Judges of the Supreme Court of Trinidad and Tobago; Judges of the Caribbean Court of Justice; members of our panel this afternoon, and they will be introduced to you later on; members of the legal fraternity; law students; distinguished Ladies and Gentlemen, all, welcome to “the continuation.” I say the continuation because we had Chapter 1 last night, the Lecture and this is the final chapter, Chapter 2, which will take the form of a panel discussion after the very edifying lecture by the Honourable Chief Justice of Barbados last night.

It is my pleasure now to introduce the Chairman of the Board of Directors of the Trinidad and Tobago Judicial Education Institute, The Honourable Mr. Justice Peter Jamadar, Justice of Appeal.



THE HONOURABLE MR. JUSTICE PETER JAMADAR JA

General Introduction

As Chairman of the TTJEL, I just want to say a few things. First of all, I want to say welcome, on behalf of the TTJEL, to our President, The Honourable Chief Justice and our Board. It is with great pride and honour that we have been able to continue hosting and I think celebrating, the Distinguished Jurist Lecture series. This is our third lecture and we have, on each occasion, dealt with topics of legal but, maybe more importantly, social, political and regional importance. This year is no different; our topic is: “The Relevance of the Jury System in the English-Speaking Caribbean”.

There are just a few things that I would like to add before I pass you over to Justice of Appeal Yorke Soo Hon, who is our moderator for the afternoon. I want to ask you to indulge me a little bit. This morning, Sir Marston and I were on a morning TV show, and the hostess pressed us for straightforward answers: “Yes, Sir Marston, should we abolish the jury system or not?” And, try as she did, we declined to respond. So when we went off air, she said to us: “Well, you judges are quite smooth, no matter how I tried, you declined to answer.”

We declined for a purpose. We declined because we are convinced, and I think this is true not just of the two of us, but of the Institute and, I believe, of the Judiciary at this time, that no decision should be made without proper research,



without proper analysis, without meaningful dialogue and without sufficient discussion. The Institute is committed to that process, hence our lecture and this panel discussion.

We are also committed to educating the public about the issue. That is why we were on the television this morning, and that is why the lecture will be published in two newspapers in the coming week and will be televised in the days ahead.

So allow me the indulgence of a poem. It was written in 1895 and it is called “The Calf Path.” If you find it a little bit long, don’t fall asleep, please. I hope it sets the tone for our discussions this afternoon.

The Calf Path

“One day, through the primeval wood,
A calf walked home, as good calves should;
But made a trail all bent askew.
A crooked trail, as all calves do.

Since then three hundred years have fled,
And, I infer, the calf is dead.
But still he left behind his trail,
And thereby hangs my moral tale.

The trail was taken up next day
By a lone dog that passed that way;
And then a wise bell-wether sheep
Pursued the trail o’er vale and steep.
And drew the flock behind him, too.
As good bell-wethers always do.

And from that day, o’er hill and glade,
Through those old woods a path was made,
And many men wound in and out, (I dare say women also.)
And dodged and turned and bent about,
And uttered words of righteous wrath.

Because ‘twas such a crooked path;
But still they followed do not laugh
The first migrations of that calf,

And through this winding wood way stalked
Because he wobbled when he walked.

The forest path became a lane,
That bent, and turned, and turned again.
This crooked lane became a road.
Where many a poor horse with his load
Toiled on beneath the burning sun,
And travelled some three miles in one.
And thus a century and a half
They trod the footsteps of that calf.

The years passed on in swiftness fleet,
The road became a village street.
And this, before men were aware,
A city's crowded thoroughfare,
And soon the central street was this
Of a renowned metropolis;
And men two centuries and a half
Trod in the footsteps of that calf.

Each day a hundred thousand rout
Followed this zigzag calf about,
And o'er his crooked journey went
The traffic of a continent.

A hundred thousand men were led
By one calf near three centuries dead.
They follow still his crooked way,
And lose one hundred years a day,
For thus such reverence is lent
To well established precedent.”

My friends, today we are talking about the relevance of the jury system. We have followed it, last night we heard, since the time of the early Islamists. Long before Magna Carta we have followed this path. Is it a straight path or a crooked path? For those who heard last night's lecture, the historical context may suggest it was not as straight as we may think it to be today. I don't want to say more than



to invite you to be open minded, hence the reading of the poem. Let us not be too wedded to precedent.

Sometimes we genuflect so much to precedent and lack sufficient irreverence that we are prisoners; we follow the path, the 'calf-path' written about so long ago. With these provocative thoughts, I ask you to sit back and enjoy. There will be a time for conversation when you will get a chance to ask some questions. Without more ado, I am going to pass you on to a member of our Board, Madame Justice Yorke Soo Hon, Justice of Appeal, as she is our moderator for the afternoon.



THE HONOURABLE MADAME JUSTICE ALICE YORKE-SOO HON JA

Moderator's Introduction

Last evening, our distinguished speaker, Sir Marston Gibson, very ably traced the beginnings of the jury trial and brought us up to date with the modern day challenges. He discussed the impact of expanded education, technology and the availability of information via the internet and social media on jury trials, and warned of the dangers which our criminal justice systems are likely to face.

Sir Marston described the behaviour of the modern juror as worrying and a waste of governmental resources and precious judicial time, all the while exacerbating systematic delays that already exist as well as seriously threatening the right to a fair trial. He also outlined the attractions of this type of trial as of symbolic value, as it represents a citizen's accountability not to the State or to the judge, but to his fellow citizens, adding that the greatest strength of the jury lies in the involvement of ordinary citizens.

He further highlighted the many criticisms of this mode of trial, among them being the high economic costs, the time factor, the inefficiency of the system made evident by the many mistrials, and the concern that the most serious charges are determined by a body that is not required to give reasons for its decision. He concluded by advising that each jurisdiction should permit bench trials to be instituted in specific cases, for example, where there is a risk of tampering or jury interference.

As we dig deeper into the discussion this afternoon, it might perhaps be very helpful for us to take a quick global survey. As I do so, I am very mindful of the caution administered by our distinguished speaker when he said that we ought not to maintain or remove jury trials simply because this is what others are doing. However, such a survey may assist in determining the relevance of jury trials in the English-speaking Caribbean, where social and economic trends are quickly catching up with the rest of the world. About twenty two Commonwealth countries have abolished jury trials.

In South Africa, primarily due to racial tension, jury trials were abolished in civil trials since 1927 and in 1969 for criminal trials. The well known Olympian athlete, Oscar Pistorius, who allegedly killed his girlfriend, Reeva, will have his fate decided by a judge only.

India saw it fit to abolish jury trials since 1960, citing as one of the main concerns pre trial prejudice by way of media and public influence. Singapore followed in 1969.

In some territories such as Canada, juries are used for only serious offences such as murder or treason. England and Wales have reserved the right to trial by jury for serious cases.

The move to retain juries for only serious cases has not solved the inherent difficulties. In 2010, the Ministry of Justice in the United Kingdom commissioned research into jury behaviour, and it was found that one third of the jurors failed to correctly identify the issues in a trial. In 1993, a man who was convicted for murder in Sussex, England, had his conviction and sentence set aside as it was afterwards discovered that four jurors had consulted an Ouija board.

In the recent well publicised case of Vicky Pryce, involving the ex wife of a former British cabinet minister, the judge discharged the jury after receiving a series of questions from them which, he said, revealed and I quote, “absolutely fundamental deficits in understanding.”



In 2011, the Jury Amendment Act came into force in Belize, which provided for non jury trials in certain criminal cases and which made it mandatory that a person charged for murder be tried by a judge sitting without a jury.

Russia abolished jury trials for terrorism and treason in 2008. However, China, South Korea and Japan are moving in the opposite direction by introducing trial by jury in an attempt to increase the impartiality and the independence of their legal systems.

In Trinidad and Tobago, the discussion to abolish jury trials has begun. The Honourable Attorney General, Senator Anand Ramlogan, is reported to have said that his proposal is to abolish jury trials for violent and 'blood' crimes. This, he said, would ensure that hurdles in criminal cases, such as hung juries and jury tampering, would be things of the past. His proposal met with immediate opposition from certain quarters, which cited several reasons for the maintenance of jury trials. Among them were the removal of the people's participation in the administration of criminal justice and judges who live in ivory towers and who are far removed from the realities of police brutality and conspiracies, issues that the common man is better equipped to resolve.

As we continue the conversation this afternoon, the hope is that we will be able to explore in a greater depth the value of jury trials in the English-speaking Caribbean in light of all the information at hand, taking into account our respective Caribbean identities, our cultures and norms, our small communities and, of course, our growing cynicism.



THE HONOURABLE CHIEF JUSTICE
MR. JUSTICE IVOR ARCHIE O.R.T.T.

Moderator's introduction of
The Honourable Chief Justice Mr. Justice Ivor Archie O.R.T.T.

To assist us in this task, we have this afternoon a well balanced panel of speakers whose contributions will surely help to enlighten our path and to guide us in the right direction. And so we will begin, Ladies and Gentlemen, with our first presenter, none other than our own Chief Justice, Mr. Justice Ivor Archie, whose credentials, I am sure, we are all very familiar with. But honour must be given to whom honour is due and so, permit me a short space in your time span to highlight a few of his very outstanding achievements.

Mr. Justice Ivor Archie became the eighth Chief Justice of the Republic of Trinidad and Tobago on the 24th January, 2008, at age 47. He holds the distinction of being the youngest person ever to be appointed to this office. Popularly described as "a Tobago boy," Mr. Justice Ivor Archie attained his first qualifications in Mechanical Engineering, and this was followed by his pursuit of his Law qualifications, firstly at the University of Southampton in the United Kingdom and then at the Hugh Wooding Law School. In 1986, he was admitted to the Bar.



The Honourable Chief Justice has spent a significant part of his legal career in the service of the Government of the Cayman Islands in the northern Caribbean, first as a Crown Counsel and Senior Crown Counsel and then as Solicitor General. In 1998, he was appointed to the High Court Bench of Trinidad and Tobago, and then to the Court of Appeal in 2004.

The Honourable Chief Justice is the President of the Trinidad and Tobago Judicial Education Institute and a fellow of the Commonwealth Judicial Education Institute. He has a wealth of experience in jury trials and is well positioned to bring information and wisdom to our discussion.

Ladies and Gentlemen, I present to you our first speaker, The Honourable Chief Justice of Trinidad and Tobago, Mr. Justice Ivor Archie.

The Honourable Chief Justice Mr. Justice Ivor Archie, O.R.T.T.

If what I say this afternoon appears to be slightly provocative, it is my intention not to berate you with my point of view but, definitely, I do want to provoke some debate on an issue that, in my view, if we leave it unaddressed, will slowly stifle our criminal justice system.

For the time being it is a debate that is mostly philosophical, because there is a lack of empirical data. For a profession that pretends to rely so much on evidence, we have taken a peculiar approach to juries, as if they were sacrosanct. In fact, the House of Lords has expressed the view that we shouldn't inquire into the actual facts of what goes on in the jury room when juries are deliberating because, get this, it might "undermine public confidence in the administration of justice." That's what they said. How right they are!

As we have seen from some of the examples cited last evening and from my own anecdotal experience and that of many of my colleagues, with whom I have discussed this matter, when somebody has actually talked about what went on in the jury room, the news has not generally been very encouraging. How can we have confidence in something when we do not know how it works? The more basic point is this: When we make statements like, "Well, the jury system is a fundamental pillar of a democratic society," both logic and experience belie that assertion. Logic, because usually when we speak about democratic institutions or processes, there are two characteristics that we assume: transparency and accountability; neither of which is applicable to what a jury actually does; and experience, because we all know and can point to very civilised and democratic

countries where human rights and the rule of law are respected to have no jury trials. So there it is; jury trial is neither a necessary nor a sufficient condition for just and fair trials.

Justice Jamadar's poem, I think, put very eloquently the point that we have a touching faith in juries, perhaps because, as a profession, we are so constrained by precedent and tradition that we assume that antiquity or longevity equates with value. We assemble nine or twelve persons selected specifically for the ignorance of the particular matter at hand, we bombard them with evidence that has taken the lawyers weeks or months to prepare or assimilate, and then we send them away, after giving them instructions once on complex concepts and rules, and expect them in a couple of hours to come up with what we call "a true verdict."

What is critical here is that nobody actually knows if they have understood the instructions or, assuming that they did understand them, if they followed them, because they are never asked to justify their reasoning.

And the appellate process is a little bit strange because, unlike civil appeals, we never examine their decision; we pick apart what the judge told them and then speculate as to whether they may have been misled.

Let's be totally honest, if we had to design an ideal system from scratch, we would never do it that way, would we? And this brings us to the examination of what it is that we are really trying to achieve in the first place by the trial process. Is it really a search for truth? Or is it a gladiatorial contest in which the more skilful and better equipped side is more likely to win?

One would presume, we would presume, that it is premised on some notion of justice. Is justice only about freeing the innocent? Or is it also about ensuring that the guilty are convicted? And who are the stakeholders in this product or process that we call justice? Is it just the accused? What about the victim? What about the wider society?

And while I am on the subject of "wider society," let me deal right away with the notion that juries are somehow more democratic because they allow the people to participate in the process. One of the ironies that I have observed and anybody who has done jury exemptions would have also, is that while everybody wants people participation, they (the jurors themselves) want other people to participate. Most people in Trinidad and Tobago would avoid jury service if they could. And what is worse, and this is very serious in the current climate affair, we



have had to abort trials in this jurisdiction because jurors have told the Court that they want justice to be done but someone else has to do it because they have no confidence in the ability of the Court or the police to protect them from notorious defendants. Are we developing a category of persons in this society who are, for all practical purposes, untriable under our current system?

So to return to a hypothetical ideal criminal justice system, it must, I would submit, have at least two characteristics once we are clear on what it is that we are trying to achieve: there must be some measurable performance standards and there must be a credible review process that actually addresses those parameters. That's the function of an appellate process as well as the sort of statistical information gathering and analysis that we are now trying to engage in. That's one of the reasons we have a Judicial Education Institute. That is the reason that there are internationally accepted best practices and performance standards for training of judicial officers. It is only through such a systematic lens that we can truly assess the performance of our justice system.

I would like to share briefly with you, in a few minutes, the framework that we have adopted, and to invite us in our discussions to adopt or at least keep in mind as a contextual framework those principles for the purposes of this afternoon's discussion. The general areas of training in which we try to ensure that are covered every year in our training programmes are represented by a four letter acronym, ICEE, and they represent impartiality, competence, effectiveness and efficiency. And so, let us take a look at each in turn briefly and compare how judges stack up against juries, at least on the face of it.

Impartiality: At its most basic level, this is the elimination of bias. It is part of our programme; every judicial officer receives training and sensitisation on a regular basis on the identification and overcoming of bias. Some people call it "Social Context Education" or "Impartiality Training." Whatever the name, its premise is that no one is entirely free of biases or prejudice that arise from our beliefs, from our socialisation, from our education, from our personal experience. But, at least, through education and training the conscious self monitoring will reduce its impact on the actual decision making process.

Jurors in our system, by contrast, are never interrogated about their beliefs or prejudices. In fact, at times, successful defense strategies may depend on exploiting those prejudices.

And what of the increasing body of experience, some of which was referred to yesterday evening, that via Google and social media, jurors are being influenced by extraneous matters, a factor that we absolutely cannot control? Fining people for contempt is not going to change that behaviour, it is merely going to drive it underground. They won't tell you that they have been doing their own research.

Competence: Knowledge and understanding of the relevant areas of the law and competence at fact finding, both of these are self explanatory but trainable skills. It is also self evident that jurors, unlike judges and magistrates, receive no such training. And given, let us face it again, the declining levels of functional literacy and the low threshold for qualification (basically, once you are not in jail), jurors cannot be assumed to process or acquire any significant competence on the basis of a single summation. And the more complex the matter, the less likely it is to be so. And we have had experience of this, not just here but in other jurisdictions as well.

Who can forget the famous **Guinness** trial in the UK that, after it had wound on for the better part of two years, was simply abandoned because it had just gotten too big and too complex? And are we really being fair to jurors when we pull them off the street and ask them to adjudicate on certain complex matters?

Effectiveness is a slightly more elusive notion involving ideas of fairness, the achievement of what society might, in general, view as fairness and justice as expressed, among other things, by the correct application of the applicable legal principles. The only comment I will make at this stage about effectiveness, is that at least judges and magistrates have to explain their decision so that they can be reviewed and critiqued, and so that there is some level of transparency. This is not so for jurors.

What about efficiency? We all agree that justice delayed is justice denied. Relevant evidence must be before the court on a timely basis, trials must move efficiently. But how much time and resources are spent on matters that are not directly related to the decision making process?

Management of juries is a very time consuming and expensive exercise. And efficiency applies not just to individual cases, but to juries and the system as a whole. So much of our time is spent in *voir dire*s, so we have to recite evidence twice. The pragmatics of jury management means that trials are lengthened by the presence of juries.



Now, whether that's a good thing or a bad thing, we could debate; it's just a fact. Just the traipsing in and out when legal submissions have to be made adds a considerable length to a trial, as any of us with experience of criminal trial knows; not to mention the millions of dollars, and it is millions, that we spend each year on sequestrations to try to address one of the concerns that is very real in this jurisdiction, which is jury tampering. All of this comes at a cost.

And while we are on the subject of sequestrations, let me just mention that some of the anecdotal evidence is that the jurors' minds are on anything but the trial, because we do monitor their communications and we tell them that we monitor their communications. I'll say no more. That's just a snapshot.

The decision whether to abolish or retain juries is not an easy one. Permit me to end with just a few observations and a couple of anecdotes. And the first observation is that any effective system of trials must bear relevance to the current environmental realities which include, among other things, as I have mentioned, declining levels of literacy, lack of enthusiasm for participating in the process, whether by reason of fear or inconvenience, and the uncontrollable access to alternative sources of information by way of electronic means.

The second observation is that, by and of itself, from the participation in the adjudicative process, while it may ground some assumption of confidence that justice is being done, it can give no assurance of that. The advancement of justice and the protection of human rights is not simply about populism. In fact, history has shown that those advances have been made in large measure by Courts who were courageous enough to go against the tide of public opinion!

The third observation, by way of balance, is that accuracy in decision-making, which is only one aspect of performance, will attract public trust and confidence. One, I do not, by way of my previous observations, mean to minimise in any way, as we weigh the advantages, or otherwise, of excluding participation by persons other than professional judges in the trial process.

And, lastly, and I think it's obvious but it needs to be said, although in an ideal society one can put no price on justice, everything at the end of the day is subject to a cost benefit analysis.

Now to my anecdotes and, at the end of each, I will ask you, "Was that justice?"

When I was quite a bit younger – I prosecuted for over ten years – when I was a bit young and, I suspect, a little better looking, I did a trial in which I wasn't

really convinced of the evidence but, anyhow, I was pleasantly surprised that the jury returned a “guilty” verdict because I thought he was guilty; but you know, it was one of those trials where you felt it could go either way.

About two weeks later, a lady who went to the same church as me, who is a hairdresser, said to me, “I have a tease for you, boy.” She said, “Well, you know I had a lady in here yesterday and she was the foreman on your jury, you know, a couple weeks ago.” And she said to me, “I don’t know anything about the evidence, but, you ‘see’ Archie, anything he wants.” It could have gone the other way, of course. Was that justice?

The second one was a trial that I did along with a junior, in which the deceased was a fairly notorious person in the community. And so, I ought to have taken the hint when visiting the locus with the investigating officer, because remarks were being dropped like “good riddance to bad rubbish,” and all that sort of thing; but, anyhow, we did our best and in about ten minutes the jury returned with an acquittal, and so we licked our wounds.

And two weeks later, co counsel in the matter was having a beer at a hotel and the foreman of the jury came up to him and said, “You remember me?” And he said, “Yeah.” He said, “Yes, I was the foreman on your jury.” He said, “Don’t worry, you know, you and Mr. Archie, you all did a great job, you know, but you see that deceased, I wanted to kill that SOB so long.” So, as far as he was concerned, somebody had done society a favour. Now, some people will argue that, maybe that was justice, because this deceased had shot a policeman, hadn’t killed him but he had shot a policeman; he was a bad egg. But was that justice?

The third one is about a case in Tobago, it was a rape case, where somebody told me, “Well, we are not sure if he did this one but we know he is a rapist.”

And the last one was even more serious, and I think this is a problem in small societies in particular; and we can’t pretend that people don’t talk and that people don’t have preconceived notions about what has happened. This was when I was in the Cayman Islands. We had a particularly gruesome murder and people were actually ringing up the office to find out how they could get on the jury “to deal with him.”

I say all of this to say that if we know that these things happen, is it enough to just draw a curtain across the door of the jury room and refuse to look in because we are afraid of what we might see? And so the whole issue of public



participation in the adjudicative process needs to be seriously debated on the basis of accurate information. And to the extent that there are defects, then let us at least make an attempt, an informed attempt, to address them.

I am not here to say that the solution is that juries must be abolished. I don't know that the prejudice of an assessor is any better or any worse than that of a juror drawn at random from the population, but those are things that we have to deal with and those are things that we have to confront if we are to create a truly just and effective system of criminal justice.

I thank you very much for your attention.



THE HONOURABLE MR. JUSTICE JACOB WIT
JUDGE OF THE CARIBBEAN COURT OF JUSTICE

Moderator's introduction of
The Honourable Mr. Justice Jacob Wit

Our next speaker is going to give us a completely different perspective. Judge Jacob Wit began his legal ascent in 1971 when he started work as a Law Clerk. He quickly moved on to become Deputy Prosecutor and later an Attorney at Law with a law firm in Rotterdam. In 1985, Her Majesty, Queen Beatrix of the Netherlands, appointed him as Judge of the Rotterdam District Court, and in 1986 he was appointed Judge of the Joint Court of the Netherland Antilles.

Judge Wit held a variety of positions within the Joint Court of Justice and, from 1986 to 2005, presided over and sat in the Court of Appeal, handling a variety of criminal cases involving serious crimes such as government corruption, international fraud and money laundering. From 2001 to 2005, he served as Senior Judge and Acting President of the Court.

In November 2000, he was appointed President of the Constitutional Court of St. Maarten, a part time function; and on 1st June, 2006, Judge Jacob Wit took the office of Judge in the Caribbean Court of Justice.

Ladies and Gentlemen, it is a great honour to present to you our next presenter, Justice Jacob Wit of the Caribbean Court of Justice.



The Honourable Mr. Justice Jacob Wit

Yesterday I heard the lecture of Sir Marston. I also heard the arguments of the Honourable Chief Justice. And I think that I could say all the arguments they gave are such that I could rest my case here and now, because I think all the arguments go against the use of a jury. But, on the other hand, they still seem to cling to a crooked path created by a calf some few hundred years ago. So maybe I, who never walked that path, should then try and go through it.

Now, there is a story, it's probably a myth, as are so many other aspects surrounding the jury system. The story is about a trial somewhere in the Midwest of the United States, and there was overwhelming evidence that the accused had committed the murder he was accused of. To the astonishment of almost everyone, the jury returned a verdict of not guilty. The judge was dumbfounded and frustrated. Angrily, he asked the foreman what could possibly be the excuse for acquitting this defendant. The foreman of the jury stood up and said, "Insanity, Your Honour." So the judge looked at him and said, "All twelve of you?"

I think this little story, untrue as it may be, takes us right into the subject we are dealing with this afternoon. As you know or may know, I am a Dutchman, having received my legal training in the Netherlands. I began my initial career in the Rotterdam District Court. Since 1986, I have been a Judge in the Caribbean, nineteen years of which I spent on the Benches of the Dutch Caribbean countries that have legal systems very similar to that of the mother country; and it is also very similar to the legal system of Suriname, which is a full member of Caricom. Now, none of these countries ever had a jury system and, being a judge for almost thirty years, I am very thankful for that.

Eight years ago I came to Trinidad and Tobago to assume my duty as a Judge of the Caribbean Court of Justice. When I arrived, I knew, of course, about the jury system. And I must confess that at that time I was able to see some positive elements in the jury system, which I sometimes unsuccessfully sought to convey to my former colleagues in Curaçao.

Now, having lived in Trinidad for the last eight years and seeing how the jury system works, or actually doesn't work, I feel very often like Alice, not the moderator, but Alice in Wonderland. I find myself asking, how on earth can people put up with a criminal justice system that is, if I may throw in my name, at its wit's end and that is totally unworkable and unsustainable? And how, for Heaven's sake, is it possible that there are still people in this country and other countries in the Commonwealth

Caribbean who are willing to defend an undefensible system? But, as I have learned, it is possible and it happens.

When the Trinidad and Tobago Government, some months ago, announced a plan to abolish trial by jury for twenty six specific serious crimes, replacing it with a trial by judge alone or a Bench trial, several attorneys reacted as if stung by a wasp. The arguments used were, in my view, amazing. One argument was: "Jury trials are considered to be part and parcel of a democratic society. The notion that it is necessary to remove trial by jury is not in keeping with the philosophy and principles of a liberal democracy."

I had to read that a few times before I could believe my eyes. If there is one liberal democracy that I know, it is the Netherlands. Many people in the world would even say it's too liberal. But it never had a jury system and, moreover, practically no Dutchman ever wanted it. The same is true for the citizens of the Caribbean countries like Aruba, Curaçao, St. Maarten, Suriname. Suriname, by the way, has forty political parties. Talking about democracy?

Anyway, I, therefore, have to refute the submission that democracy requires a system of trial by jury or that it will fall apart if such a system is abolished. It definitely does not. Maybe it could be said that trial by jury would offer some kind of antidote in a society that is not democratic. But that doesn't mean, I am trying to be logical, it doesn't mean that we should promote jury trials. What should be promoted is democracy and the rule of law, both of which, by the way, are enshrined in all the constitutions of the Commonwealth Caribbean, including the constitution of this country.

Interestingly, although there are still quite a few people who believe otherwise, most of these constitutions, with a few exceptions, for example, Bahamas, do not require trials by jury. What the constitutions require is far more fundamental than a jury trial, it is a fair and public hearing within a reasonable time before an independent and impartial court established by law.

This is also the position in Trinidad and Tobago although, amazingly, your constitution does not require, at least not with so many words, that the trial should be held within a reasonable time. I think you will notice that there is talk about this.

Another argument was about judges, and I quote: "Judges are always accused of living in ivory towers, may not know of the realities of police brutality and police conspiracies, which are issues that often arise in many criminal cases. The common



man,” that’s how the argument goes, “is more aware of these issues and better equipped to resolve issues surrounding the credibility of police officers.”

So when I read this, I thought, really? Is the fact that one is accused of living in an ivory tower already sufficient to conclude that one may not know and, therefore, probably does not know of certain realities?

During my almost thirty years on the Bench, I have done nothing else than trials without a jury, mostly sitting alone, and I have, with regularity, found evidence of police brutality and acted upon it. Nobody ever accused me of naivety; at best I was accused of a lack of it. The fact that one does not live in Laventille or Carenage or anywhere else, doesn’t mean that one cannot understand the realities of everyday life.

Most of the judges I know have not been born with a golden spoon in their mouths and they live pretty ordinary lives. Before they were elevated to the Bench, most of them have worked in the trenches of the Magistrates’ Courts and they have defended and prosecuted all kinds of people. They might have been magistrates at some time and, as such, have dealt with thousands of cases and hundreds of police officers.

These judges, who are not supposed to know the realities of police brutality, do have to deal with important civil, constitutional and administrative cases, all without the assistance of the ordinary man. One wonders how they manage to fulfil that immense task if they are really that naive. I think I am clear, I don’t buy the argument, if it is one.

In the same vein it was argued that, and I quote: “Judges may have difficulties in determining issues that arise out of the reasonable man test, which is often raised in many criminal trials that has traditionally been resolved by ordinary citizens.”

I found this one quite interesting, especially because the test, I thought, is invented by judges and not by ordinary citizens. Does it mean that judges cannot answer their own test? And who says that the reasonable man is or has to be an ordinary man? Again, the test is also applied in many civil cases where the judges have to do that all by themselves without anybody complaining about it. Why these double standards?

It’s also been said that, and I quote again: “A judge hearing a case may be exposed to an incriminating confessional statement that, on the law, he may rule inadmissible but, having heard the statement in the evidence, may have a residual effect that may taint his findings of the rest of the admissible evidence.”

To this, I can only say that many times I have been in a position where I had to exclude evidence on the basis of inadmissibility, not only because the statement was forced out of the defendant, but also because the evidence was obtained, very good evidence though, but it was obtained in violation of the law. And especially in the latter case, it's often very clear that the defendant was guilty, but that the residual evidence was insufficient to sustain a conviction. A professional judge, in contra distinction to an ordinary citizen, has no great difficulty with such a situation, and will acquit though the heavens fall.

May I add, as an aside, the following remark. I am always struck and puzzled by the submission that it is absolutely essential to let twelve or nine untrained people, who know practically nothing about the law, decide whether or not a defendant has committed the crime he or she is accused of, and that this momentous task cannot be left to well trained and experienced judges. And this, in a country where I heard people say, "The new President of the Republic must be an experienced lawyer, preferably a judge," and so it happened, a judge became President. And, interestingly, he was praised, and rightly so, for his humility and his down to earthness, not at all a man living in an ivory tower. And I know, even at this point, it's not much of an ivory tower!

I also heard people say that the Chairman of the Integrity Commission should be a lawyer or preferably a judge because it's too important a function to leave that to a lay person. Yet when it comes to deciding whether A robbed B, or C raped D, judges are not good enough. Chairman of the Integrity Commission, okay; President of the Republic, all right; deciding whether A must pay a hundred million dollars to B, fine; but not whether B robbed A; that goes too far.

I heard a colleague once say, but I think he wouldn't say it anymore, that he found that juries were not that bad, most of the times he agreed with them. But if that is the standard of quality, then the next question is: Why would you at all bother with a jury if the yardstick is that they agree with you? If the judge can assess the evidence, why would he need the assistance of a jury?

If it is that the juries are such wise persons and very capable of understanding the evidence, why then do we keep away from them a lot of information that might be useful, but that we consider of such a nature that they cannot handle it?

The difference between the Common Law trial on one hand and the Civil and International Law Trial on the other is quite clear when it comes to evidence. In the latter systems, practically all evidence is admissible because professional judges are



supposed to know, and they do know, how to distinguish properly between relevant and irrelevant evidence.

Then, there was also another argument that, and I quote again: “Judges will have difficulties determining the guilt of an accused who is a public figure or from a certain political background.” I find that very interesting.

Now, I haven’t seen any politician here or in the English-speaking Caribbean, who has been prosecuted and convicted and sentenced. But in Suriname, there are several ministers sentenced, sent to jail for years by a judge alone, without the help of a jury.

I, personally, sentenced, I sent to jail the leader of a political party, and I did it alone. Unfortunately, a week later, the Court of Appeal, one day before the elections, let him go, and he won. In the week after, there was a cartoon in the newspapers, a queue of political leaders trying to get into my court to get locked up. But, anyway, I could go on like this, but I have time constraints, so I want to say one little thing, maybe a few little things about what was said by Sir Marston yesterday.

It struck me that he spoke of the jury and he gave, actually, it was a definition from Blacks Dictionary: “A body of ordinary men entrusted with the duty of inquiring into matters of fact in a particular trial in order to return a verdict solely based on the evidence that had been properly admitted before them.” And I was struck by the word “inquiring,” because that is one of the problems. It’s not just a weakness of your system, if I may be so bold to say that, that you have a jury, but you also have an adversarial system.

Now, in the inquisitorial system, which sounds worse than it is, the idea of a trial is, it’s an inquest, we are trying to find out what happened and, therefore, the judge has an active role. But, in the Common Law, the trial has become a contest, not a beauty contest, but a contest who has the smartest lawyer or the best paid; and that is wrong. Because I think in trials, criminal trials, the question is: Did he or she do it? And there are other answers to be given to other questions, but that is the basic question, what is the truth? What happened?

Isn’t that the reason why we have criminal trials? We don’t have criminal trials to show off our skills. It’s nice if you can do that, but it’s not the idea of a trial, as far as I can say. And so that creates a kind of a deficit, a truth deficit, as Professor Langbein called it. And I am not going to elaborate on that too much because that brings us outside the scope of the jury.

There is one thing I wanted to say about some of the countries in the Caribbean who have abolished, to a certain extent, the jury trial like Belize; you have Cayman Islands; Jamaica, with the Gun Court where there is no jury, actually, the trial is in camera, it's not even public.

Of course, you had several other courts outside the Caribbean but let me focus on Belize and the Cayman Islands. And what strikes me is that the logic somehow is getting lost. For example, in Belize, it's only the murder trials that are without a jury. So, if you are, I suppose, a robber, you get a jury; but if you are a murderer or at least accused of it, you don't get a jury. I always thought that juries were for the most serious cases, but apparently they are not.

The Gun Court, another anomaly, because if one rapes a woman with a knife, you go before the jury; if you do it with a gun, you don't get a jury. And that poses the question, you know, really, shouldn't we look at this from a more fundamental point of view, not a haphazard approach, but, shouldn't there be a fundamental discussion about whether you really need the jury? And if you think you need it, why and under what circumstances and how to organise that?

The only nice thing I have heard about the jury is that participation of lay persons in the criminal justice system will enhance the trust and public confidence in the system. I thought about that and I really wondered if that is so. Because I think trust and public confidence will be more enhanced if we don't have enormous backlogs in cases; if people are tried within a reasonable time, not after eight years in custody.

Where I come from, in Curaçao, St. Maarten, anyone who is arrested and is in custody, according to the law, has to be tried within three months after the arrest. That is what I call "within a reasonable time." Now that is, and there are many other aspects that are far more important for the trust and confidence in the system. Actually, if I was in that jury and I heard a case that is lingering for such a long time, I don't think it would enhance my trust and confidence.

Anyway, you were already told that my perspective would be somewhat different, and this is my perspective.

Thank you very much.



PROFESSOR DR. RAMESH DEOSARAN

Moderator's introduction of Professor Dr. Ramesh Deosaran

Thank you, Judge Wit, for your very interesting slant. You have left us with a lot to think about. And I really wondered whether, the late Lord Devlin must, perhaps, be turning in his grave, because it was he who said that trial by jury is the lamp that shows that freedom lives.

We move on now to our next speaker, Professor Dr. Ramesh Deosaran, who holds an impressive string of qualifications, culminating with a doctorate and his expertise in the area of Criminology. While serving at the University of the West Indies, he developed the Bachelor of Science Major Degree in Psychology and the Graduate Programme in Criminology and Criminal Justice.

Professor Ramesh Deosaran is the founder of both the ANSA McAl Psychological Research Centre and the Centre for Criminology and Criminal Justice at the University of the West Indies, St. Augustine Campus.

Recently, he has been actively involved in the formulation of a programme in Criminology and Public Safety at the University of Trinidad and Tobago where he has founded the Institute for Criminology and Public Safety.

He served as a consultant to several regional and international organisations, including the National Crime Commission of St. Lucia, the Association of Caribbean Commissioners of Police, the Caricom Task Force on Crime and Security and the United Nations Office for Drug Control and Crime Prevention on matters of Crime Prevention and Management.

Professor Deosaran is an active Researcher and Policy Analyst in the field of crime prevention and management; school violence; juvenile delinquency; poverty; penal and police reform; governance and civil society. He has authored fifteen books and over three hundred journals and related reports to date in these and related areas. He is the Founding Editor of the 15 year old Journal, The Caribbean Journal of Criminology and Public Safety, and his publications include a book entitled Trial by Jury, the Social and Psychological Dynamics, and he has authored other articles on Trial by Jury published in the British Journal of Criminology.

Ladies and Gentlemen, please welcome to the podium Professor Ramesh Deosaran.

Professor Dr. Ramesh Deosaran

The jury system—and you should ask somebody who faces a jury for a very serious charge—is a life and death matter. It is a very serious institution in this country, and I am always intrigued when I hear people say things like, ‘it’s the lamp that shows that freedom lives’. In fact, one of these days we will have to examine not only the jury system, but the criminal justice system itself and, moreso, the whole concept of the practice of what we call democracy, given what we see in certain democracies.

The challenge for jury reform is not to initiate such reform by mere executive or judicial pronouncement; inflammatory controversy must be avoided. The legal profession, the Judiciary and the general public, would be better served with a set of reform recommendations properly generated from an evidence based, well researched platform, and reform is now necessary if the requirement for fair and just trials must be upheld.

The multi sectoral review team that I propose for this exercise should have among its terms of reference the following:

- to review the management, qualifications and procedures for selecting jurors as stated in the Amended Jury Act [1922] and
- to make recommendations.

We speak a lot about the purpose of the jury, but we don’t speak about the management of the jury system. I have heard so many complaints about people



who come as jurors and have to return day after day—it really distresses them as well as their employers. So the management of the jury system, if we have to keep it in any amended form, is also a matter that would need consideration.

The other term of reference would be to reform the number of jurors on a jury, whether it should be twelve or nine or, as in some jurisdictions, six (for the Zimmerman case, for example, they have a jury of six and they are all women. But that’s another conversation—the relationship between gender and certain crimes, especially in an atmosphere of insecurity).

We need to review the structure, function and scope of the jury and make recommendations. We must also consider ways and means whereby jurors must be protected or, I should say, saved from themselves, from bribery, subversion or undue prejudice.

Now, in spite of the range of social, psychological and political challenges of trial by jury, some of which Justice Wit has pronounced quite eloquently and which I will not repeat, there are two major reasons for choosing jury reform rather than jury abolishment in the Caribbean. One, the population would be suspicious of the Government’s motive; and, two, trial by jury has not completely lost all its virtues. The jury system is still relevant, but in dire need of repair and reform.

In examining where to go, we have to remind ourselves of what were the early conditions of the jury system. Tyranny by the monarchy, the divine right of kings, oppression of poor persons, trial without due process: all those elements converged to create rebellion by the masses. The jury system evolved in many different ways and conditions—against political tyranny, against dictatorship and, when the Magna Carta came in, with increased rights for the accused. Those were the elements that inspired the further evolution of trial by jury.

I need to justify my presence here as a social scientist. Social science is a very inquisitive science, it searches for meaning, causes, and tries to formulate predictions through statistical analysis. That is what I tried to do in the book *“Trial by Jury, Social and Psychological Dynamics”*. In fact, I sat through a trial, which we called in the book the ‘Regis Trial’. A police inspector allegedly had slugged a citizen due to a traffic altercation and the citizen died. I looked at what the lawyers did, I looked at what the Prosecution did, and I don’t want to describe the abilities on either side but, really, the Defence Counsel was extremely skilful in courting the jurors by how he posed, how he assumed that the person who had died had been provocative.

Now all those elements are very important apart from and beyond what the judge's instructions are, and that is one of the challenges facing a jury system. Social science squeezes its way into that arena, which is shrouded in secrecy and highly immunised, to see how best we can, through simulated trials, find out how a jury behaves. I don't think much of the picture is rosy because if, in the first instance, you want to have a representative group from the community, we have to first define and understand what "the community" really is.

The community is not a homogenous entity. This multi-ethnic country is a very noisy, contentious community, and many times one group is set against another for different reasons. The tension level is sometimes quite high and sometimes it subsides, but the challenge is, if you bring people from such an arena into a jury system, especially through the voir dices, how do you cleanse that panel? How do you sanitise the jurors from the prejudices they have? How would you believe what they tell you when you question their credibility?

Social science and social psychology knows the serious difficulty in unearthing prejudice in people's minds, in trying to detect bias. And we are astounded when judges pronounce on not only bias, but go further to talk about apparent bias.

We are also very interested when judges talk about "the ordinary reasonable person in the community." How can you take on and identify with such a person, sitting on the Bench? There must be definitions in order to have things moving forward—that gives you an idea where the social scientists sit. I will quote what a prominent researcher put forward this alliance between social science and the law:

"This social science–law collaboration is to bring together into a working partnership the lawyer and the social scientist. The hope was to marry the research skills and fresh perspectives of the one with the socially significant problems of the other and, in the end, to produce a scholarship and literature for both."

Today, there are new conditions that require such a partnership. What are the new conditions in a country like Trinidad and Tobago and also across the Caribbean? First of all, we have a free press, a robust press, but you also have untamed social media, and we are heading into "electronic anarchy", much of it uncensored. So this is one example of a different condition.

The other condition is that you have a separation of powers that exists from what we call the Westminster System, which never existed in the early days of the jury system. You have constitutionally protected judges on an appeal system that never



existed when the jury system began to evolve and became practice. Conditions have changed so much that the original requirements and pressures for trial by jury, as justifiable as they were in those times, no longer exist with the exactness as they did in times gone by.

The other challenge I see as a social scientist comes back to the point of “the community”. As it has been stated, jury trial is a trial by peers. What is “the community”? This community from which we draw jurors is severely fragmented and moreso at certain times and facing certain situations, and what seems to aggravate the fragmentation in passionate ways is our ethnic diversity. You want to draw your pool of jurors from there, which is all right if you have the formula and the methodology to cleanse them of all the perceived prejudices they would have brought into the courtroom. But if you cleanse the panel too much, would they still represent the community from which they are drawn? So what you are thinking about is a particular community with certain fixed criteria that would suit the purpose of a fair trial.

But have we done that before the trial starts apart from the voir dire? It means you cannot cast the net and hope that you catch the good fish or that, after some screening, you would be assured, if even ritualistically, you have the best fish possible. It doesn't work that way, and it really can't work that way. That is a difficulty that we do face.

The next question is, who are your “peers”—one of the fundamental pillars and justification for having a jury? “Peer” is strictly described as, and I quote the dictionary, “a person who is equal in ability, standing, age, rank or value to another.”

So when you put your panel there, and the accused sits, what is the extent to which we should be satisfied that those are his or her peers? What should the word “peer” mean in the jury sense? If Zimmerman faces a jury of six women, are those his peers? Does it produce what Chief Justice Archie hinted at, some provocation in revisiting this issue of trial by jury? Do we have to come up with a definition, maybe through legislation, to the issue, who your peers are? From a social scientist's point of view, it is not reasonable to leave the word “peer” hanging there which, in practice, becomes so different in its application in the jury system.

In the year 2013, the quest for transparency, accountability and scrutiny has become important. Sometimes you wonder if it has become too important, but that is the era in which we live. Judges, people on the Integrity Commission and on the

Police Service Commission – you have to watch everything you say, who you speak to, what you do.

Some of my friends asked me to come to an All Fours match in a nightclub in Central. I like All Fours but I didn't go, because I don't know which cell phone camera will be around when I 'hang a jack', and you show these fellas with the bottle in the middle; next thing, Deosaran should resign!

This is a new age in which we live, one of scrutiny, transparency and accountability. Somebody told me, I think it was the Chairman of the Law Reform Commission, Mr. Harripaul, that when you accept public office, you have to be prepared for certain things you never expected. I didn't expect all of this to happen to me in trying to serve the public. I thought it was serving the public, but it is much more than that. It's not to discourage you from serving the public, I encourage you; but I just want you to be very careful what you wish for.

Since the very early years jury deliberations are secret; there is nothing transparent about a jury deliberation. But, at the same time, and I don't want to take away all the romanticism from the jury. Maybe its strength is that it doesn't have to account to anybody for its verdict; it is beyond ordinary scrutiny, which gives jurors the courage and the fearlessness to come up with a verdict that meets the justice that the community expects in particular cases, even where the law couldn't sufficiently be applied or where the judge, constrained by precedent and his own legislative and procedural framework, could not provide. A jury can go beyond the law in order to serve justice! An interesting philosophy, I should say. As a jurisprudential position it is very interesting. And one that could be very attractive in any deliberations about reforming trial by jury, especially in the Caribbean and more particularly, in this multi ethnic, politically contentious country, Trinidad and Tobago.

The theme of the discussion, as forwarded by the Judicial Institute and by Justice Peter Jamadar and Mr. Jardine, is very timely: *The Continuing Relevance of Trial by Jury in the English-Speaking Caribbean*. I always enjoy listening to Justice Wit because he proposed an alternative system for us. He finds that juries are too miserable and too redundant and expensive, but he provided an alternative. And I think it's good for thinking as we move into the reform process across the Caribbean. About 25 years ago there were high profile trials in Dominica, Grenada, Jamaica, Guyana, Bermuda and Trinidad and Tobago, where there were serious deficits in the jury trial, where the jurors made serious errors, where it was very clear that they had brought about unfair verdicts, and the judges noted it. So there are examples



where jurors, in very critical cases, life and death matters or where jail terms are involved, do not seem to be performing what you call “impartial and fair trials.”

Around that same time there were many questionable trials happening in Trinidad. Perhaps that was the season for bad trials, when Chief Justice Hyatali was presiding. There were three trials where the foreman of the jury didn't know the difference between “unanimous” and “majority”. Some of you may remember that case? But having made the announcement in open court, the difficulty the judge and the court faced was, how to review the trial? What to do? In the other two trials, similar mistakes of literacy were made. So there are problems.

Now, you would say, well, there are problems in anything, Judges make mistakes, too. So what do we do? As I said, it needs reform, it needs repair, at least in the first instance. Because if you interfere with it too harshly and severely now, the public reaction and the political implications would be very severe unless you produce an evidence based platform.

I ask myself sometimes, if a case involves marijuana, and you have a juror who has certain appreciation for marijuana smoking, how would you know that? And to what extent would that interfere with his or her decision? Suppose it involves matters of abortion or, you know, matters that you would find difficult to unearth in a juror's mind, how would you know? Shakespeare made a point: “There 's no art to find the mind's construction in the face.” (Macbeth, Act 1, Scene 4)

How many times have you said things you really don't believe? How many times have you fooled people? I am not speaking about your spouses, necessarily, I am speaking about in life.

Justice Wit is right—one of the most effective ways to attract public confidence would be to deal with the case backlog issue. I know you are dealing with it, Chief Justice, I know you are working hard at it. But eight or ten years after an incident, it will take magic for witnesses to remember some things. And, of course, the Defence lawyers make, as you say, ‘mas’ with that memory lapse: “What colour it was? Blue? How you sure it was blue? Do you wear glasses?” And jurors listen to that; that kind of thing influences them.

Given the difficulty that researchers have in entering the jury room, we conduct what you call “simulated trials.” Dr. Aeneas Wills was the judge, and we did simulated trials to find out how jurors would behave. That's the closest that we could come. But jurors are very fascinating. There is a set of simulated trials we use which we called in the end, ‘The Pretty Woman Syndrome.’ The Chief Justice of Barbados

was explaining one or two similar examples for me. He said that jurors dislike pretty women who commit fraud, and that was demonstrated by us time and time again.

As I conclude, I want to pose for the researchers who would undertake this exercise, twelve questions to ask, because before you collect any results, you have to know what questions to ask. So permit me, please:

1. What is the extent of State oppression against citizens today to merit having the jury as protection?
2. What is the extent of arbitrary justice and unfair court trials today?
3. In this small multi racial country, to what extent could the condition of community representation or peers of the accused be safely satisfied?
4. To what extent is a jury's verdict consistent with the evidence in court?
5. What is the level of public confidence in trial by jury?
6. Would a verdict from a jury carry a higher public value than a verdict by a judge alone?
7. To what extent does the jury system contribute to increased costs and delays of court trials?
8. To what extent are potential jurors able and willing to serve as jurors?

You have a system so highly celebrated by the public, but about 50 per cent of the people who are asked to come to serve as jurors have all kinds of excuses and are very unwilling to serve. Ask Justice Mark Mohammed about that, he was the DPP and he deals with exemptions and knows firsthand what I am talking about.

9. To what extent are lawyers and judges satisfied with the jury system as it now operates?

About twenty years ago we asked the legal profession, and about 80 per cent of the lawyers, and including ten judges, said they were not satisfied at all; 60 per cent of them said they were very unsatisfied.

10. In the small societies of the Commonwealth Caribbean, how vulnerable are jurors to bribes and other forms of subversion, and so on?
11. Without the jury system, could the higher courts provide ample safeguards against mistakes of facts and law and other trial errors in the lower court?



12. What is the extent to which lawyers are able to unduly manipulate and evoke the emotions and prejudices of jurors during a trial?

Ladies and gentlemen, it was a pleasure speaking to you, and I thank you very much for your kind attention and presence.



HER WORSHIP MS NALINI SINGH

Moderator's introduction of
Her Worship Ms Nalini Singh

Thank you, Dr. Deosaran, for bringing to us "The Social and Psychological Dynamics of Trial by Jury."

We move on now to our next presenter, Magistrate Nalini Singh. She obtained a Bachelor of Arts Degree in History and, in 1997, a Bachelor of Laws Degree, both from the University of the West Indies, St. Augustine Campus. She subsequently obtained the Legal Education Certificate from the Hugh Wooding Law School in 1999, and was admitted to practice at the Bar in that very year.

In January 2000, Ms Singh became a Prosecutor at the Office of the Director of Public Prosecutions, and left as a Senior State Counsel in 2008 to take up an appointment as Magistrate, which she currently holds.

Additionally, Ms Singh lectured Business Law and Company Law at the University of the West Indies, and currently lectures Criminal Law at the University of Trinidad and Tobago.

She is an Associate Tutor for Trial Advocacy and Criminal Practice and Procedure at the Hugh Wooding Law School. Ms Singh recently completed a thesis entitled "In Defence of the Prosecution", and I have great pleasure in presenting her to you this afternoon.



Her Worship Ms Nalini Singh

Ladies and Gentlemen, our jury system can only be considered relevant to the extent that jurors try cases based on evidence. So the logical question is: “Do they?”

There have been cases in the past which clearly illustrate that jurors have misunderstood the entire point of their job. In the 2013 Vicky Pryce trial, after the trial judge had delivered what he must have thought was a carefully crafted, well balanced and comprehensive summing up to the jury, they asked him this question:

“Can a juror come to a verdict based on a reason that was not presented in court and has no facts or evidence to support it?”

It seemed as though they were asking: “Is it okay if we just guess?”

But most extraordinary was the 1995 murder case to which Justice Soo Hon alluded that is the case of *R v. Young*. In this case, when the time had come for the jurors to retire to consider their verdict, instead of deciding the case on the evidence, they decided to contact the deceased person through an Ouija board to get, what I can only guess would be, spiritual assistance on the verdict that they were to arrive at.

Now, these cases are from England. So what about our jurors, are they relevant to our criminal justice system? Do they try cases on the evidence? My answer is, yes. And I am able to say this with conviction because the results of my jury study show that jurors, in this country, return verdicts that are based on evidentiary variables; not irrelevant, extralegal variables, such as the negative perception of the police or even personal juror characteristics. This is how it all started:

Just under ten years ago, I remember sitting in this very room, it was the opening of the 2003 to 2004 Law Term. The then Chief Justice of Trinidad and Tobago, the Honourable Mr. Justice Satnarine Sharma, made this statement: “There is no doubt that guilty persons have been acquitted in the past because of the inexperience of counsel for the State. It is perhaps a sad fact that this will continue in the future.”

This statement motivated me to examine whether jurors were really being influenced by irrelevant, extra legal variables, such as the appearance of years of experience of an attorney rather than the quality and quantity of evidence placed before them. So against this backdrop, I sent out a 43 item questionnaire to 1019 jurors, who sat in 107 trials, which culminated in verdicts of guilty and not guilty in this building over the September 2007 to July 2011 period. And this is what I found.

Firstly, the appearance of years of experience of State counsel does not predict trial outcome. On the other hand, it was found that the years call of the Defence

attorney was a predictor variable. So the more experienced a Defence attorney appeared to be, the more likely it was that he would get a “not guilty” verdict. So our jurors felt that Defence counsel was very experienced 54 per cent of the times, whereas Prosecuting attorneys appeared to be experienced only 37 per cent of the times. And in this context, of the cases which the respondents to my questionnaire presided over, they returned verdicts of “not guilty” 65 per cent of the times, whereas verdicts of “guilty” were returned a mere 35 per cent of the times.

The second finding of significance was that the negative perception of the police is not a predictor variable of “not guilty” verdicts. 88 per cent of our jurors believed that police used excessive force at times. And just over 54 per cent of the jurors, that’s just over half, stated that if they were arrested for a crime that they did not commit, they were convinced that the police would do everything in their power to ensure that they were convicted.

Additionally, 45 per cent of the jurors agreed that police officers were more likely to tell lies in court than any other witness. But these findings, notwithstanding, 60 per cent of the jurors said that they would not automatically ignore the testimony of police officers. So it is understandable why this variable was not a predictor of trial outcome.

With respect to personal juror characteristics, I found this variable, as well, did not predict “not guilty” verdicts. 81 per cent of the jurors supported the death penalty. So they had strong views on punishment, but this factor did not decrease the chances of a jury returning a “not guilty” verdict.

Furthermore, jurors were as diverse as possible in terms of their race; the level of education they attained; the types of jobs they held; their marital status; their religious persuasion and gender. And the important point is that none of these extra evidentiary variables had the capacity to predict trial outcome.

So if these extra evidentiary variables, that is, years call of counsel, negative perception of the police and personal juror characteristics did not predict trial outcome, then, what are the factors which did? I have found that evidentiary based variables predict the verdicts that are handed down by our jurors.

One, is the skill of counsel. I am sure you will agree that the amount of evidence that is placed before a jury is directly dependent on the skill of the attorney to elicit that evidence. Prosecutors were perceived as less skilled than Defence attorneys and, as such, I found that the skill of the prosecutor was the third most powerful



predictor of trial outcome, because that would be what was critical in tilting the scales one way or the other. And this is understandable when one considers that Defence attorneys were perceived as better able to present their case in a clear and persuasive manner; get important information from witnesses for the benefit of jurors; conduct a cross examination which was capable of weakening or destroying the opponent's case; and better at presenting a closing address that was more helpful at clarifying the issues in the case.

The cross tabulation result showed that these advocacy skills were associated more often with a successful trial outcome for the Defence.

The strength of the evidence was found to be the second most significant independent variable in terms of predictive ability. So this was the variable that was second in order, which dictated what type of verdict the jurors arrived at. And what I also found was that the logistic regression result showed that the jurors' understanding of judicial directions was single handedly the most powerful predictor of trial outcome in the model used in my study. To my mind, this is an evidence based variable because judicial directions guide the jurors on how they should assess the evidence presented to them. So, in conditions where the jurors felt that the trial judge's directions were clear and they understood it, they return more "guilty" verdicts.

But despite these strong empirical findings, which show that jurors returned verdicts on evidentiary based variables and not extralegal variables, there are issues that must be addressed. And so I pause here to highlight this one finding: Frequency distribution result showed that 77 per cent of the jurors reported that they understood the judge's directions that were given to them. But 82 per cent of the jurors thought that to find an accused guilty beyond reasonable doubt, meant that the Prosecution had to satisfy them of guilt to the extent that they were sure, that is 100 per cent certain. So, in other words, the Prosecution had to make them 100 per cent certain of guilt. This is what 82 per cent of our jurors thought that "beyond reasonable doubt" meant.

This shows two things: One, is that our jurors, do not know that they don't know the meaning of the term, "beyond reasonable doubt." Secondly, they are holding the State to an unrealistically high standard of proof.

The responsibility for simplifying judicial directions, I submit, rests squarely on the shoulders of trial judges and the Judiciary, and the climate is certainly one that is entirely accommodating to this move.

In the Privy Council case of *Benedetto v. R* (2003) 62 WIR 63, Lord Hope adopted the observation made by Justice of Appeal Singh, to the effect: “Juries need to be spoken to in a language and style that they will understand.” The call for simplicity is clear and perhaps this is the place to start to improve our jury system and, in so doing, guarantee its continued relevance.

Alexis de Tocqueville felt that: “The jury should be regarded as a free school which is always open and in which each juror learns his rights and is given practical lessons in the law.” So let us teach the jurors what we require of them rather than drastically overhauling or gradually eroding the jury system, let us “sum down the summings up”.

Measures that could be adopted to improve juror comprehension, I submit, are:

One, visually depict judicial directions. Two, put measures in place so we capture more educated jurors. As it is, the majority of jurors have a secondary school level of education and no more. Three, allow jurors to ask questions of witnesses during the trial rather than force them to rely on evidence that the advocates elicit. This is already allowed in the United States. Four, provide the jury with written copies of judicial directions so that there is no need for sole reliance on oral directions. Five, allow jurors to take notes of the evidence during the course of the trial so that they are not forced to judge the case on their unaided recall of evidence which may have been presented to them, in some instances weeks or month before deliberation: Six, give detailed pre trial and interim directions, maybe along the lines of those in the Canadian Judicial Council’s publication, titled “Preliminary, Mid trial and Final Instructions.” This way, jurors are continuously reminded of their role throughout the trial rather than just at the beginning and the end of the trial.

Our task now should be to implement reforms that are designed to preserve and enhance our jury system. And this is where the interface of social sciences and the law could prove beneficial.

At last year’s Jurist lecture, hosted by the TJJEI, His Lordship Mr. Justice Adrian Saunders of the Caribbean Court of Justice called for: “A continuing dialogue to take place between our social scientists on the one hand and judges on the other.” It was as if His Lordship was echoing the sentiments expressed by the Honourable Mr. Justice Ivor Archie in his address to the graduating class of the Norman Manley Law School in 2010 when he said: “Judging is not an abstract exercise and ought never to be divorced from its societal context.”



Now, I am grateful to the Honourable Chief Justice, Mr. Justice Ivor Archie, and the Honourable Justice of Appeal Mr. Justice Peter Jamadar and my M.Phil Supervisor, Professor Dr. Deosaran for facilitating this measure of insight into how our jurors deliberate, and for allowing me to part the curtain in the jury room. Hopefully, this inter disciplinary involvement can serve as an impetus for exciting reforms of our criminal courts so they could be more grounded in the society that they were established to serve.

My reason for being here is quite simple: It is to ask you to consider what empirical evidence, not anecdotes, but empirical evidence exists. To consider what that is telling us about our jurors, and do what we can to ensure that our jury system is firmly anchored in place and continues to be relevant to our system of justice so that in years to come our children can inherit a justice system that truly shows that freedom lives. The place I feel you will be best positioned to appreciate the force of this point is, of course, in the criminal court.

So the next time a verdict is about to be handed down in any of the courts upstairs, I am going to ask you to walk into that court, you are going to see the trial judge, the police officers, the attorneys, the accused, in place. Then the door from the jury room will open and the jurors will file into that court, one behind the other. The matter will be called, the appearances will be announced, and the accused will be told to stand and, at that point, there will be a deafening silence in the court. The next thing that will happen is that the Judicial Support Officer will ask the Foreman this question:

“Mr. Foreman, have you and all the Members of the Jury arrived at a verdict in this case upon which you all agree in respect of the accused? What is your verdict?”

All eyes will be on the jurors at this point. And that is the image I want to leave with you, the image of nine or twelve gatekeepers or guardians positioned between the accused and the entire machinery of State; nine or twelve gatekeepers or guardians sitting shoulder to shoulder to judge one of their peers based on evidence.

I have found that the men and women who have served this country as jurors, range from the unemployed, the construction worker, right up to engineers, managers, bankers. I have also found that the men and women who have served this country as jurors, return verdicts which can be predicted by and are strongly correlated to evidence based variables. So they do, I submit, what we require them to do. And this, to my mind, is cogent, compelling and tangible proof of their relevance. And surely, Ladies and Gentlemen, that must be worth fighting for. Thank you.



SIR MARSTON GIBSON, K.A.
CHIEF JUSTICE OF BARBADOS

Moderator's introduction of
The Honourable Sir Marston Gibson, K.A.

Our final presenter, Chief Justice of Barbados, Sir Marston Gibson, was introduced in detail by Madame Justice Jones last evening. And so permit me, Sir Marston, to only highlight a few aspects of your achievements.

The Honourable Mr. Justice Marston Gibson assumed office as the 13th Chief Justice of Barbados on 1st September, 2011. He pursued his legal studies, firstly, at the Cave Hill Campus of the University of the West Indies, and was later awarded the Rhodes Scholarship and obtained a Bachelor of Civil Law Degree at the Oxford University in 1979. He completed his legal education at the Hugh Wooding Law School in Trinidad.

Chief Justice Gibson lectured both at the University of the West Indies in St. Augustine, as well as Cave Hill Campus, in a variety of subjects including criminal law.

He moved to the United States in 1987 and there he was admitted to practice law in the State of New York. He practiced law there for 22 years, ultimately attaining the position of Principal Appellate Court Attorney. In 1992 he was appointed a Judicial Referee in the Surrogates Court, New York County. He served in that court until 1998, when he was transferred to the Supreme Court of New York, Nassau County, where he heard civil cases and was assigned to the Supreme Court, Matrimonial Centre, until 2008.



He remained in that appointment until he went home to Barbados in September of 2011, and assumed the position of Chief Justice of the Island of Barbados.

He brings to this panel a background of over 32 years of teaching and working in the Judiciary. On November 30, 2012, Chief Justice Gibson was conferred the honour of Knight of St. Andrews with the title Sir Marston Gibson.

Ladies and Gentlemen, I present to you Sir Marston Gibson.

The Honourable Sir Marston Gibson, K.A., Chief Justice of Barbados

I have vacillated over the question of what is the relevance of jury trials. My first recollection of having dealt with this topic was when I was an appellate court attorney at the Appellate Division, Second Judicial Department in Brooklyn, and I worked at that court between 1989 and 1992. I remember the case that was assigned to me was a case concerning whether or not the prosecutor had exercised her peremptory challenges in a fashion which essentially shaped not only the complexion but the gender of the jury, and whether that was a violation of a rule which had been laid down by the United States Supreme Court in a case called *Batson v Arizona*.

What *Batson* had said was that if you used your challenges to essentially shape the jury, what you were doing is infringing the defendant's rights to a fair trial. Because, essentially, he was not getting a jury of his peers; he was not getting a jury of anything other than the jury that you wanted to try him, and he had every right to appeal. My job was to read the transcript of the jury selection process and to advise a panel of four judges what I thought. I remember being struck by one of the comments, which was made by the prosecutor, when she was reviewing the qualifications of an engineer. This was very relevant to Chief Justice Archie, who is first, an engineer before he became a lawyer. And this is a quote that stuck with me for a period in excess of 20 years. She said:

“He is too numerate, he understands numbers and he will therefore hold us to a higher standard than proof beyond reasonable doubt, and so I do not want him on my jury.”

I remember being furious. A long time ago, a friend of mine, after an argument with me, called me an intellectual snob. I suppose that what I am about to tell you, will confirm to some extent what my friend accused me of, because I went

to a fellow appellate court attorney, and I said, “Read that” and he read it. I said: “What she is telling us is that she prefers Wanda the waitress and Bruce the bus driver over a person who has a PhD in engineering.” In other words, if you are too sensible and too intelligent, we don’t want you on our jury.

It caused me to form a very negative view of the jury system in the sense that you are bringing people who are not necessarily trained people and you are putting them in front of witnesses or putting witnesses in front of them in, for example, a complex Sherman Act trial, which deals with whether or not a company is manipulating a dominant position in the market; or you are asking them to look at the question whether or not somebody is guilty of insider trading. I don’t understand all the intricacies of insider trading, and I think I have some understanding of the law.

So my problem was, how do we deal with a jury system that is predicated on the idea that the best juror is one who knows absolutely nothing about the subject and is going to leave completely filled with the knowledge, like manna from heaven? I was not convinced.

What convinced me that the jury has some relevance was the idea of democracy, because I thought that the jury system democratized the decision making process in the courts in the same way that voting democratizes the decision making process in the political sphere.

But then I ask myself, do we want jurors who only make decisions every five years, or only when a leader decides that it is time to call an election? And so the idea of democracy, as the undergirding concept and the undergirding justification for a jury system, started to pale in significance.

What I have asked myself, maybe for the last ten years, is two questions. One, do we need the jury system? If we need it, and we have proven that we do need it, then the second question we must ask ourselves is, do we need it in the form in which it exists? Because, the form in which it exists is not working.

I am assuming that we are not going to go the length of the suggestion made by Justice Wit, who has made it clear that there are democratic systems in operation in the world where there has never been a jury system, and we haven’t heard Amnesty International running around saying that “justice is dead in Holland because there is no jury.” So, obviously, a jury is not a *sine qua non*; it’s not a necessary pre condition to the existence of justice.



I am assuming that we are still minded to follow or feel bound by the requirements of tradition; but I am always worried about tradition. A long time ago a friend of mine, Pat Browie, who was doing a Doctorate in Oxford, said to me: “Tradition without truth is but seniority of error.” And I have always remembered that. Therefore, if we want to hew to tradition and maintain a jury system because of tradition, do we want it in the traditional form?

We don’t know where the traditions have come from. The tradition that a juror walks into a court knowing nothing, and walks out knowing everything, was not where the original jury system in ancient Greece came from. It was not the system of the *lafif* which existed in Islamic countries in North Africa and Sicily, and it didn’t exist when the original jury system was formed before Magna Carta when you had oath helpers, because the whole idea was, you pick people from the community precisely because they knew the person, precisely because they knew of the facts. So pre trial publicity was not something to be avoided; you expected pre trial publicity.

And so the question then becomes, since those traditions have been shown to be exploded and not to exist, really, do we want the jury system in the form in which we have it now?

The jury system is no longer what it was originally conceived to be. I must apologise to Professor Deosaran for asking him to write a second edition, which he just handed to me; though it doesn’t stop me from asking him to write a third edition. As I said to him when we were upstairs in the Common Room, I would like to see an edition that takes into account the effect of social media because, if you can give a jury instructions, one must at least be sure that they have followed them.

But I am positive that the cases that I mentioned to you last night, particularly the case of the *R v. Barry Medlock*, were the tip of the iceberg, and we all know what icebergs look like when they are floating in water. It means that those persons who did not follow the instructions and were not caught, were the ones who went underground and did not confess that they had gone on Google or that they had sent a friend a BBM, and said, “Could you tell me what’s the definition of robbery because I didn’t understand what the judge said?”

What I propose is that we do two things. We look, first, at the system that existed in Africa, where there is a formal jury system where they utilise assessors, if you feel that strongly that you need community participation. It does not have

to be persons drawn from the community who know nothing. You actually are going to use assessors who know something about the law and are trained enough to be dispassionate and know how to disabuse themselves of a lot of the prejudices that we all have. And don't think that because judges have LLB's, et cetera, they don't have prejudices; we all have prejudices, but we are trained to operate in a system where we can put those prejudices aside and base our decisions on the record.

The second thing I want to advocate and I want to join Professor Deosaran and Her Worship Magistrate Nalini Singh in this, is that we need research. We cannot propose any kind of reform of the jury system, whether it is with a view to abolition, whether it is with a view to simply changing the form in which it operates, without research. And our problem is that we have a bad habit of blundering, of wandering into things without being informed at the level that we need to be informed at. And my view is that this is where the marriage of the social scientist and the lawyer is best served.

A long time ago, Professor Roscoe Pound, who was a Dean of the Harvard Law School, who was very well known for his book *The Sociology of Law*, said, "Ultimately, the reason for law is to resolve disputes," and this was the quote that has always stuck with me, "with a minimum of friction and waste." Right now we are not doing that with our jury system. To the extent that we are not doing it, it means that, sociologically, we have no basis for operating the system that we have.

With that, Ladies and Gentlemen, it just remains for me, again, to thank the Trinidad and Tobago JEI for inviting me. When I got the call from Justice Peter Jamadar, who was in that first group I taught here at St. Augustine in 1979, I said to him, "I have got quite a few views on the jury system," and I accepted the challenge with alacrity. I am thankful for the opportunity that the TTJEI has given me, and I want to thank the Chief Justice of Trinidad and Tobago for inviting me to be a part of your deliberations.

I will certainly pledge my willing assistance, and not necessarily as lecturer, but even to come down and to assist in any of your training exercises to the extent that you think that I have something to offer.

I thank you all.



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