

## **SUSTAINING THE JUDICIAL BRANCH OF GOVERNMENT FOR 50 YEARS AFTER INDEPENDENCE – TIPTOEING THROUGH MINEFIELDS**

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### *Introduction*

I think it is fair to say that, within the last few years, the justice system and the judiciary of Barbados have been the subject of intense scrutiny and adverse comment from a variety of disparate sources: members of the general public, the legal profession, newspaper columnists and our highest court, the Caribbean Court of Justice (CCJ). As recently as 12 February 2015, the CCJ in the case ***System Sales Limited v. Brown-Oxley 86 WIR 30***, described the appeal as “another episode in a sad story of delay.” At para.[20] of the judgment, Byron P. noted that the Court had previously expressed disapproval of excessive delay in the resolution of cases in Barbados and, in very condemnatory language, he said:

*“The Court deplores the fact that parties are denied justice in a timely manner, and recalls that this must bring the administration of justice into disrepute and undermines public confidence.”*

The criticisms and concerns are not new but they have become more persistent and more strident. My years in Parliament taught me to expect expressions of concern with and criticisms of the justice system from the many lawyer-politicians in Parliament during debates on the Annual Estimates of Revenue and Expenditure or when Parliament debated measures touching and concerning the administration of justice. This inexhaustive list gives a flavour to the menu of perennial complaints before and after Independence:

- delays and backlog in the civil and criminal justice systems;
- judicial tardiness in rendering decisions;
- poor physical accommodation for both branches of the judiciary;
- the need for an increase in the number of judicial officers and support staff;
- improvement in the machinery for transparency and accountability;
- the method of appointment of judges and recruitment of judges from outside Barbados;
- terms and conditions of judicial service.

Perhaps this quotation from the speech of Sir Harold St. John Q.C., former Prime Minister, in the House of Assembly on 1 April 2003 captures the essence of the complaints and criticisms of the judicial system over the years:

*"There can be no doubt about it now and it is an open secret all over Barbados that there is a level of dissatisfaction in the community in respect of certain areas of the administration of justice in Barbados. This dissatisfaction arises from the experiences of a number of people with the judicial process. Some people get frustrated by the delays, not only the hearing dates but in the process of hearing and, worst of all, in the process of decision-making after the hearing."*

Instead of taking umbrage at the concerns and criticisms, we will do well to heed the principle of tolerance enunciated by Lord Atkin in ***Ambard v Attorney-General for Trinidad and Tobago [1936] AC 322*** at 335:

*"The path of criticism is a public way: the wrong-headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those*

*taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue. She must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men."*

This paper will address the concerns mentioned above and issues which confronted the judiciary since Independence and the responses to them under eight broad themes namely,

- (a) The Judiciary immediately before Independence
- (b) Structure of the Courts after Independence
- (c) Issues Confronting the Judiciary 1966-2016
- (d) Attacking the Systemic Problems – Three New Initiatives
- (e) Current Complaints about the Machinery of Justice and Responses
- (f) Appointment of Additional Judicial Personnel 2003
- (g) Contribution of the Judiciary to Delay
- (h) Issues Specific to the Judiciary since 1966

*(A) THE JUDICIARY IMMEDIATELY BEFORE INDEPENDENCE*

In order properly to contextualise and examine the judiciary in post-Independence Barbados, it is instructive to reflect upon the justice system in the decade immediately before Independence. Historical perspectives are important in an analysis of legal developments. That decade was a period of momentous and fundamental change in Barbados' system of governance. In 1951 the introduction of universal adult suffrage paved the way for the full flowering of our democracy. Thereafter, as a natural progression from the

"Bushe Experiment" of 1946, Ministerial Government was inaugurated on 1 February 1954. Mr. Grantley Adams Q.C. (later the Rt. Excellent Sir Grantley Adams) became the first Premier of Barbados and executive power was transferred to the elected members of the House of Assembly.

In the course of his address to the Legislature on 1 February 1954, the then Governor, Sir Robert Arundell, referred to the doctrine of the separation of powers and the principle of the independence of the judiciary in these words:

*"In accordance with well-proved British traditions, certain aspects of government are removed from ministerial control. First of all, the Judicature remains independent of all political control. The independence of the Bench is a vital principle of the British democratic system."*

He went on to announce that the Attorney-General would "retain complete freedom of action in regard to the control and institution of prosecutions." There was no Director of Public Prosecutions in those days.

#### *Supreme Court of Judicature Bill, 1956*

On 12 June 1956 the judicial branch of Government received the attention of the Barbados Labour Party government. Premier Adams moved the Second Reading of the *Supreme Court of Judicature Bill*. In a valuable contribution to legal history, the Premier outlined the existing structure of the courts. There were nine superior courts of record viz. the Court of Common Pleas, the Court of Chancery, the Court of Ordinary, the Colonial Court of Vice-Admiralty, the Court of Grand Sessions, the Court of Error, the Court of Escheat, the Court of Divorce and Matrimonial Causes and the Assistant Court of Appeal. The aim of the Bill, according to Mr. Adams, was "to abolish anomalies and anachronisms". Its effect was a radical reform and transformation of the

organisation of the higher courts. The Bill created, for the first time, a Supreme Court consisting of a High Court and a Court of Appeal.

For reasons which will become evident later, it is also useful to make brief references to the contribution of Mr. Errol Barrow (later the Rt. Excellent Errol Barrow) to the debate. He observed that the Bill, re-organising the judicial system "was long overdue". And, even then, he suggested that –

*"there would not be much point in re-organising the judicial system of this Island unless you are prepared at one and the same time to provide the judicial officers, in the widest sense of that term, with adequate accommodation in the way of courts and with adequate and competent staff."*

It seems that in 1956 the colonial judicial system, if not in crisis, was giving cause for great concern. Mr. Barrow disclosed that some members of the House and the Law Society "had made a call for an investigation" to be conducted by "someone of the calibre of the Commissioner who was at the time in Trinidad investigating the judicial system and the administration of justice". Mr. Barrow was referring to Sir Albert Napier. You may find it of significance that, among Sir Albert's recommendations for Trinidad and Tobago in 1956 were five more Supreme Court judges, better judicial salaries and pensions and a new Supreme Court building. And he made the poignant observation that "the most striking feature of the courts is the amount of congestion". In contemporary parlance, that is backlog! The matters identified by Sir Albert in respect of Trinidad and Tobago all had resonance for the judiciary of Barbados post-Independence.

*Magistrate's Jurisdiction and Procedure Bill, 1956*

With respect to the magistracy, the House of Assembly debated the *Magistrate's Jurisdiction and Procedure Bill* on 7 August 1956 as companion legislation to the *Supreme Court of Judicature Bill*. The Bill repealed and replaced the *Magistrate's Act 1905*. Premier Adams told the House:

*"At long last we have reached the last lap of putting our judicial organisations on a proper footing. Just as important, if not more so than in the Supreme Court of Judicature Bill, are the changes being made and which affect the jurisdiction and procedure for trials of a summary nature."*

*The Magistrate's Jurisdiction and Procedure Bill* had been drafted by the then Chief Justice of Barbados, Sir Allan Collymore and the Chief Justice of British Honduras (as he then was) Hon. Erskine Ward. An interesting feature of the Barbados magisterial Bench around 1956 was that it was staffed by a number of lawyers from the Commonwealth Caribbean as well as two Barbadian lay magistrates, Messrs. Owen Smith and Aurelius Harper. In his contribution to the debate on the Bill, Mr. Theodore Brancker (later Sir Theodore Brancker) asserted that –

*"We have been very fortunate to get some really able people as Police Magistrates from practitioners all over the Caribbean – St. Lucia, Grenada, St. Vincent, Montserrat.....we seem to have the best."*

Mr. Brancker canvassed the idea of employing efficient note-takers in what were then unfortunately called "Police Magistrates' Courts". At p.259 of the debate, he said in luminous words –

*"To sit down and write down what is said in a court is a tiresome, boring and terrible ordeal for a Magistrate to go through for about 6 hours, which is a day's sitting."*

Two long-lasting consequences of the Bill were the deletion of the word "Police" from the nomenclature of magistrates' courts and the division of the Island into the magisterial districts that have basically survived unchanged for sixty years.

### *Administrative Mechanisms*

Before leaving the discussion of the judicial system of the nineteen fifties, I wish to advert to two important mechanisms which were enacted in 1956 but survived, with some amendment, long after Independence. First, section 41 of what became the *Supreme Court of Judicature Act* created a Judicial Advisory Council comprising the Chief Justice, the Puisne Judges, the Attorney-General, the Solicitor-General, a Magistrate and a member of the legal profession. Its purposes were to consider the operation of the *Supreme Court of Judicature Act* and Rules of Court and "to enquire into and examine any defects which appeared to exist" in the procedure or administration of the law in the Supreme Court or Magistrates' Courts. The Council was mandated to submit an annual report to the Governor.

The second mechanism was the enactment of the *Judicial and Legal Service Commission Act, 1956-34*. This was the predecessor of the Judicial and Legal Service Commission (JLSC) that is now provided for in the Constitution - (s.89). The 1956 JLSC was constituted by the Chief Justice, the Attorney-General, the Chairman of the Public Service Commission and two former judges. It made recommendations to the Governor concerning the appointment of Puisne Judges, the Registrar and Deputy Registrar, Magistrates, the Solicitor General, Assistant to the Attorney-General, Legal Draughtsmen and the Public Trustee. It had no role in relation to the appointment of a Chief Justice.

I suggest that that brief disquisition on the reforms of the nineteen fifties permits the confident assertion that the foundations of our judicial system were well laid in colonial times and provided a solid infrastructure for a newly independent nation. A mechanism for constant review and accountability was established. However, some of the issues that pervade post-Independence discussion on the judicial system were alive and well even before Independence.

*(B) STRUCTURE OF THE COURTS AFTER INDEPENDENCE*

The legislation creating the Supreme Court continued in force after Independence but one weakness of the hierarchy of the courts was that there was no separately constituted Court of Appeal. When I was admitted to practise law in 1970, the Supreme Court was comprised of Sir William Douglas, Chief Justice, and three Puisne Judges, viz. John Hanschell, Denys Williams (later Sir Denys Williams), and Deighton Ward (later Sir Deighton Ward). These judges all sat as High Court and Court of Appeal Judges.

Two of these judges constituted the "Divisional Court" which heard appeals from magistrates. The vast majority of the decisions of this Court were rendered orally following the argument and reserved decisions on points of law were given in a timely manner. Next in the hierarchy of courts was the Court of Appeal, comprising three judges. The High Court judge whose decision was appealed did not sit on the panel. This was clearly not the very best practice and earned the Court of Appeal the derisory appellation "The Scratch Back Court!"

At the apex of the judicial hierarchy was, of course, the Judicial Committee of the Privy Council (the Privy Council). The Privy Council remained as our final appellate court before and after Independence until the year 2005 when Barbados joined the jurisdictions of the CCJ. Although some criminal

appeals went to the Privy Council, civil appeals to the Privy Council were few. Between 1952 and 1982, only one civil appeal went to the Privy Council viz. ***Elias v Sahely (1982) 32 WIR 117***. In light of the constitutional difficulties which other Commonwealth Caribbean countries have in acceding to the appellate jurisdiction of the CCJ, I think it is appropriate to pay tribute to the prescience and good sense of the framers of our Constitution at Lancaster House in 1966. They included, as s.86 of the Constitution, a provision empowering the Government of Barbados to join with any other Commonwealth State in establishing an appellate court to hear and determine appeals from any court in Barbados.

“The Scratch Back Court of Appeal” persisted until 1990 when the Constitution was amended to provide for a separate Court of Appeal constituted “by not less than three Judges sitting together” – s.85(1).

*(C) ISSUES CONFRONTING THE JUDICIARY 1966-2016*

*(i) Inspiring Confidence in the Judicial System*

I believe that the greatest challenge which confronted the judiciary in 1966 was the need to establish and maintain public confidence in the administration of justice. 1966 was a year of great political controversy that focused principally on whether Barbados should proceed to Independence unilaterally or as part of a larger grouping of Commonwealth Caribbean States. There was societal instability and uncertainty, even fear, about the future of Barbados. Notwithstanding the inspirational words of the National Anthem, many Barbadians had “doubts and fears” about the country’s ability to succeed as an independent nation. Self-doubt and a lack of self-confidence were legacies of the colonial condition. Some Barbadians emigrated to far away countries such as Australia and New Zealand. In such a milieu, it was absolutely vital that

institutions, such as the judiciary, be and be seen to be competent, stable, integritous, efficient and effective. As an independent people, we owed it to ourselves and the world at large to ensure that we successfully organised and managed our democratic system of governance, including the judicial branch, after severance from the suzerainty of the colonial power. Thus, the judiciary required firm and decisive leadership to uphold the rule of law, protect human rights, establish the highest standards and build confidence.

*Sir William Douglas CJ*

Sir William Douglas provided that leadership to the office of Chief Justice. In 1965 he was working in the Judicial and Legal Service of Jamaica. He was a friend of Mr. Errol Barrow ever since their undergraduate days at the London School of Economics and Political Science (LSE) in the late nineteen forties. Sir William set the highest standards of personal and professional discipline and brought dignity and stature to the office. He was in his Chambers by 8.00 a.m. and started his court promptly at 9.30 a.m. And woe betide Counsel who were late. If you were not present to enter an appearance when your case was called, Sir William would toss the file to his clerk, with a judicial scowl, and bellow the order, "Taken off the list!" Sir William's stern mien and insistence upon discipline led "Johnnie Cheltenham" (later Sir Richard Cheltenham) to re-christen him "The Headmaster".

Many young Counsel (including me) suffered the slings and arrows of an irate or impatient Chief Justice. Lord David Pannick's book "*Judges*" and Professor Gary Slapper's two books "*Weird Cases*" and "*More Weird Cases*" contain many hilarious stories of judges all over the world. I cannot resist recounting to you this anecdote in which I was personally involved. It concerned the notorious "Boy in the Pit" murder – ***R. v. Edey & Blanche***. Sir William was a fast judge. So too was Denys Williams. But whereas the trial of ***Edey &***

**Blanche** took Denys Williams a week, Sir William completed the re-trial in one day! He harried me and Ezra Alleyne all day. But as I have always believed, "rushed law is bad law". In the course of his summation, Sir William made several errors of law and he was easily overturned on appeal – **R. v. Edey & Blanche 22 WIR 21**. About the same time, the Court of Appeal also overturned him in **R. v. Gloumeau 22 WIR 28**. After those two reversals and certain events in 1973 when the Bar Council passed a resolution condemning his treatment of junior attorneys-at-law, Sir William became less abrasive.

The responsibilities of a Chief Justice go far beyond rendering decisions. As head of the entire judicial system, a Chief Justice carries a heavy administrative burden, for which he/she receives no specific training in management or the operations of the bureaucracy. Indeed, in 1974 Prime Minister Errol Barrow emphasised the administrative aspect of a Chief Justice's functions in the House of Assembly at p.3799 of Hansard:

*"The next person to be appointed Chief Justice will have to be looked at according to his ability as an administrator."*

(ii) *The Impact of Indigenous Legal Education and Training*

I think that one of the most significant challenges that faced the judicial system shortly after Independence was the inauguration of the Faculty of Law at Cave Hill in October 1970. This was, of course, followed by the graduation of the first class of attorneys-at-law under the aegis of the Council of Legal Education in 1975. In 1971 Sir William Douglas was appointed as the first Chairman of the Council. From 1970 access to free tertiary education in law became easier and it was foreseeable that there would be a steady increase in the number of attorneys-at-law. The comparative statistics over the last 50 years tell their own tale of that increase. I have taken the figures at ten year

intervals from 1973 to 2013 to exemplify the exponential growth in the numbers at the Bar.

**TABLE 1**  
**NUMBER OF ATTORNEYS-AT-LAW ON THE ROLL**

<b>YEAR</b>	<b>MEN</b>	<b>WOMEN</b>	<b>TOTAL ADMITTED TO PRACTISE</b>
1973	183	5	188
1983	284	43	327
1993	384	105	489
2003	485	274	759
2013	631	530	1 161

In 1966 the profession was not fused. There were 44 Barristers in practice, including the sole female, Ms. Yolande Bannister. Of 23 Solicitors on the Roll, one was a woman, viz. Ms. Norma Maynard. Sir William was in office when fusion of the profession occurred on 31 March 1973. By that year, the total number of practitioners was 188 including 5 females, the Misses Yolande Bannister, Billie Miller, Molly Reid, Marie MacCormack and Shirley Bell.

But while the Bar was growing, the Supreme Court Bench was stagnating and justice was being dispensed within the walls of an 18<sup>th</sup> century building. The number of judges remained at 4 and the number of Magistrates stood still at 8. An increase in the number of practitioners brought an increase in litigation. Litigants now had a wider choice of legal representation. At the same time, the Rules of the Supreme Court governing civil litigation, had become obsolescent. Thus, in 1982 Sir William spearheaded the promulgation of new Rules of the Supreme Court drafted by Mrs. Betty Bourne-Hollands, a Barbadian and the first female on the High Court Bench of Trinidad and Tobago, and modelled upon the English Rules then in force.

(iii) *Growth in the Volume of Litigation*

In 1981 the *Community Legal Services Act, Cap.112A*, was enacted to enable the State to provide legal aid to persons in certain criminal cases and Family Law cases (except Divorce). When Sir William retired in 1987, the caseload in the Supreme Court, particularly in civil cases, had mushroomed. The statistical evidence, taken from Reports of the Registrar of the Supreme Court, highlights the dramatic growth in the volume of litigation. In 1987, the number of civil cases filed in the High Court had almost trebled. The Registrar's reports only recorded divorce applications but, over time, another column "Other Family Matters" was added to take account of the mass of applications ancillary to divorce and which were the result of the reforms wrought by the *Family Law Act 1980 (Cap. 214)*. These ancillary applications placed heavy pressure on judges' work in Chambers. If I include divorce applications as aspects of the civil justice system, even omitting "Other Family Matters" for which we have no statistics for more than 25 years post-Independence, the caseload of civil cases generally had risen from 759 in 1967 to at least 1,978 by 1987! And yet, in 20 years, there was an increase of only 1 in the number of judges – from 4 to 5! Virtually the same number of judges was being called upon to deal with almost three times the number of cases as were filed 20 years earlier. A number of extraordinary factors were putting unusual pressure on the system and on the few judges.

**TABLE 2  
CASES FILED IN THE SUPREME COURT**

<b>YEAR</b>	<b>DIVORCES</b>	<b>CIVIL CASES</b>	<b>ASSIZES</b>	<b>CIVIL APPEALS</b>	<b>CRIMINAL APPEALS</b>	<b>MAGISTERIAL APPEALS</b>
<b>1967</b>	113	646	77	14	10	103
<b>1970</b>	155	451	127	2	16	95
<b>1976</b>	181	849	213	3	13	46
<b>1983</b>	328	1 310	98	15	14	55
<b>1987</b>	363	1 615	144	9	45	75
<b>1991</b>	367	1 956	126	31	48	75
<b>1993</b>	274	2 455	171	41	68	46
<b>2001</b>	453	2 706	134	35	58	27
<b>2005</b>	499	2 490	130	40	36	12
<b>2008</b>	485	2 099	251	22	25	13
<b>2009</b>	440	2 104	193	23	12	8
<b>2010</b>	462	1 760	213	17	25	13
<b>2011</b>	452	2 132	224	20	19	24
<b>2012</b>	472	2 273	178	37	26	21
<b>2013</b>	459	2 225	187	19	20	19
<b>2014</b>	443	1 898	245	37	16	23

**TABLE 3  
OTHER FAMILY MATTERS**

<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
252	243	216	243	252	241	235	212	145	115	111	105

When Sir Denys Williams succeeded Sir William, he had the support of four Puisne Judges, Clifford Husbands (later Sir Clifford Husbands), Elliott Belgrave (later Sir Elliott Belgrave), Errol Chase and John Husbands.

*Separate Court of Appeal*

However, some help came with the creation of a separate Court of Appeal in 1990, consisting of Sir Denys as President, and Justices of Appeal Clifford Husbands, Sir Frederick Smith and Hon. George Moe. The new Court of Appeal assumed the jurisdiction of the former Court of Appeal, hearing appeals in civil and criminal matters from the High Court and the magistrates as well as

appeals from various tribunals on points of law. The establishment of the separate Court of Appeal afforded the judges of the High Court more time to hear civil cases in Chambers and at first instance and try criminal cases at the Assizes. It was a very welcome decision of the Government then led by Mr. Erskine Sandiford (later Sir Lloyd Sandiford), a non-lawyer.

*Sir Denys Williams CJ*

Sir Denys was a member of the Committee which drafted the Constitution. His appointment to the Bench in his thirties speaks eloquently to the esteem in which he was held as a lawyer and as a person. He served for 34 years on the Bench and delivered hundreds of decisions and summations. Only once was he overruled viz. by the Privy Council in ***Elias. v. Sahely*** and, invariably, he adjudicated the controversial cases such as ***Gladwyn King v. The Attorney-General (1992) 44 WIR 52, C.O. Williams Construction Co. Ltd. v. Don Blackman and the Attorney-General (1989) 41 WIR 31, Griffith v. Barbados Cricket Association (1989) 41 WIR 48!*** His judgments were written in plain, simple English devoid of verbosity. He did not believe that judgments were legal essays prepared for law journals. He believed that the purpose of a judgment was to provide a decision on the issues that arose during the hearing. One of Sir Denys' lasting legacies is that he sought improved terms and conditions of service for the judiciary and, as I mention later in this paper, the new Supreme Court complex at Whitepark owes much to his crusade for new accommodation for the judiciary.

Amendments to the *Supreme Court of Judicature Act* in 1990 and 1993 made provision for the expansion of the maximum number of judges to 6 in the High Court and 4 Justices of Appeal plus the President in the Court of Appeal. Unfortunately, however, even in 1994, the Supreme Court consisted only of Sir Denys and his three brethren in the Court of Appeal together with

Justices Errol Chase, Elliott Belgrave (later Sir Elliott Belgrave), Frederick Waterman and Frank King in the High Court. The number of judges in the High Court was still not keeping pace with the expanded caseload. As Table 2 shows, civil cases and divorces together totalled 2 729 in 1993.

*(iv) Systemic Problems*

The growth in the volume of litigation began inexorably to affect the pace of litigation. Delay and backlog now began to take root as serious problems adversely affecting access to justice. Attorneys-at-law, especially those who populated the House of Assembly, continued their complaints about various aspects of the machinery of justice as I alluded to at the very beginning of this paper. Many of the criticisms were meritorious. The problems which bedevilled the civil justice system were rooted in the procedural law and may be summarised as follows:

- A backlog of untried cases causing delay in accessing justice;
- The very complex and formalistic Rules of the Supreme Court, which themselves afforded opportunities for delay by exploitation of legitimate procedures;
- Abuse of judicial time mainly through requests for adjournments assisted by a generous judiciary;
- An absence of alternatives to litigation.

These problems were compounded by:

- (i) Inadequate use of technology and court management systems;
- (ii) Antiquated and inappropriate physical accommodation for judicial personnel; and

- (iii) An inadequate number of judicial personnel to handle the burgeoning caseload.

Especially with respect to applications in Chambers, the situation was dire. There were times when in excess of 100 applications were listed for hearing in Chambers in one week.

All of those phenomena militated against ensuring the minimum content of the civil justice system, that is to say, that it should be speedy, affordable, accessible, efficient and effective and responsive and intelligible to its users. Virtually the entire common law world had experienced problems, particularly in respect of civil justice, similar to those I just mentioned. In November 2004, a senior Court of Appeal judge in England, Henry Brooke LJ, delivered a lecture on "*Court Modernisation and the Crisis facing our Civil Courts*". His alarming conclusion was that much still had to be done in England "to save our system of justice in the civil and family courts from falling apart". And on 14 June 2000, Lord Woolf, MR, was moved to describe the state of civil procedure in England as "lamentable".

Sir Denys tried to tackle the problems. On 15 August 1997 he issued two Practice Directions. One dealt with skeleton arguments and oral hearings in the Court of Appeal in order to expedite the procedure. The other provided for an accelerated procedure in respect of civil cases in the High Court, including Motions Days every two months and the issuance of Certificates of Readiness to move cases more swiftly through the system. So far as decisions were concerned, however, he led by example always ensuring that his decisions were given expeditiously. He was a superb judge who, for many years, was the journeyman on "The Scratch Back Court of Appeal". But the irritating problems of delay and backlog continued despite his best efforts. The system contributed

to the problems. We had all been wedded to a culture in civil litigation which allowed the pace of litigation to be controlled by the parties and their lawyers. Radical reform was imperative. The judicial role had to evolve to meet the changing requirements of the society and fulfill the expectations of the public whom the judiciary serves.

England, Australia and Canada had moved towards a judge-driven system by 1999. Countries in this region followed the examples. Trinidad and Tobago, the OECS and Jamaica promulgated new Rules of Court based on the English reforms of 1999. Sir Denys was receptive to reform when I introduced him to Burchett J of Australia whom the Government commissioned to prepare a draft of new Rules of the Supreme Court in 1999/2000 but his health was becoming problematic.

*Additional Space at Coleridge Street*

There was also another serious and seemingly intractable problem that required decisive executive action. Despite Mr. Errol Barrow's call for improved accommodation for the judiciary in 1956, some 24 years after Independence the Supreme Court judges were still accommodated at Coleridge Street in an unsuitable building that was over 250 years old in 1994. In its time, the former Supreme Court building at Coleridge Street, had served such a multiplicity of interests that, in 1832 Henry Nelson Coleridge made the amusing comment that –

*"His Majesty's Council, the General Assembly, the judges, the juries, the debtors and the felons, all live together in the same house."*

But it was not only that aggregation of persons to whom the building at Coleridge Street was domicile. One day in 1975, John Hanschell J was sitting in

Court No.2. Suddenly, there was a loud crash of the ceiling directly above His Bewigged Lordship. A man with a bag of imprisoned pigeons, a large flock of free pigeons, and an avalanche of pigeon droppings came tumbling through the ceiling and landed on the judge's desk and his Clerk's table. In the fog of pigeon droppings, the man escaped with his feathered captives. Court No.2 was out of service for weeks. Hanschell J decided that it was time to retire.

Between 1986 and 1994 under the Democratic Labour Party Government, the interior of the Coleridge Street building was renovated and additional court rooms and Judges' Chambers were constructed to provide separate accommodation for the judges of the new Court of Appeal. This renovation was more in the nature of an expedient than a permanent solution. Spare a thought for the three pioneering judges of the Court of Appeal. Their Chambers had no access to natural light or natural ventilation. The walls bore all the outward and visible signs of dampness. The Chambers were unhealthy. The time had long passed when the judiciary, as the third arm of government, should have been accommodated in a more commodious environment befitting a confident democracy. It was the responsibility of the executive branch of government to provide adequate accommodation for the judiciary. The renovations were a palliative not a solution. In the face of the explosion in the volume of litigation, what was required were more judges in the High Court. The new Court of Appeal was coping well with its caseload but the High Court was becoming overwhelmed. The building at Coleridge Street simply could not accommodate more High Court judges after space was found for the Court of Appeal judges.

*(D) ATTACKING THE SYSTEMIC PROBLEMS – THREE NEW INITIATIVES*

*(i) New Supreme Court Complex*

At least twice during my tenure as Attorney-General (1994-2001) Sir Denys pleaded with the Government to construct a new Supreme Court building. As Attorney-General, I could not ignore the entreaties of the Chief Justice. The Government of the Rt. Hon. Owen Arthur was receptive to ideas for transformation of the justice system. The value of a new Supreme Court, wide-scale use of technology and new Rules of Court was readily acknowledged. I was given responsibility to prepare plans for a new Supreme Court, to negotiate a loan of US\$12.5 million for a Justice Improvement Project to be financed by the IADB and to develop new Rules of the Supreme Court. I retired from political life in August 2000 only when I was sure that the IADB loan had been approved and that financing was in place to build the new Supreme Court for which the Government had had architectural plans drawn. Fortunately, both Sir Denys and I lived long enough to witness the reality of a new Supreme Court Complex, the promulgation of new Rules of the Supreme Court in 2009 and the introduction of contemporary state-of-the-art technology in the judicial system. One of the benefits of the new Supreme Court and the use of contemporary technology is that applications for bail by persons on remand at Dodds are now being heard by video link. Savings in time and expense will accrue from this innovation since it will no longer be necessary to transport prisoners from Dodds to Whitepark Road.

*(ii) New Technology*

In 1998, the judges were provided with computers and, a few years later, the magistrates received theirs. The first set of computer-aided

transcriptionists (CAT reporters) began training for the provision of daily transcripts of proceedings in 1998 and, by October 2000, judges in Assizes were relieved of the tedium of recording the proceedings in their own handwriting. Sir Theodore Brancker's wish had been partially satisfied. We needed (and still need) to have CAT reporters functioning in the magistrates' courts.

The new technology which was provided in the new Supreme Court Complex at Whitepark Road in 2009 could not be introduced in the former Supreme Court building at Coleridge Street where there were spatial and electrical wiring constraints. Indeed, after the judiciary was expanded in 2003, accommodation had to be found for the additional judicial officers in a private sector building on Roebuck Street.

### *Technology and the Judicial System of the Future*

Because of the relentless march of technology and its apparently limitless capabilities, I have hesitated to make predictions about the administration of justice in the next 50 years. Nevertheless, it seems obvious that the administration of justice and the legal profession will become more and more reliant upon the use of IT. Indeed, the new Rules of the Supreme Court express a vision for the use of IT in Part 2 Rule 6.

Part 2.6(3) provides –

*"The court may order that any hearing be conducted in whole or in part by means of a telephone conference call, video conference or any other form of electronic communication."*

And Part 2.6(4) states –

*"The court may give directions to facilitate the conduct of a hearing by the use of any electronic or digital means of communication or storage or retrieval of information, or any other technology it considers appropriate."*

Bearing in mind those possibilities envisaged by the Rules, one can foresee an administration of justice that is transformed through the use of technology, such as I have witnessed in Singapore. Accordingly, it would not be fanciful to envisage the following in the short to medium term:

- a well-equipped and efficient court system in which "E-Filing" of documents is the norm;
- judges using laptops to take notes;
- computer-aided transcriptions of proceedings in all courts;
- interlocutory applications being made by Counsel from their Chambers using "Skype" or "GoToMeeting";
- presentation of certain types of evidence in court non-verbally e.g. by diagram, charts or the like;
- more use being made of written submissions and less reliance on orality.

*(iii) New Rules of Court*

The new Rules foreshadowed that litigation would be less adversarial, less complex, more open and more cooperative. They are written in plain, simple English bereft of jargon and gobbledygook. They aim to make the timescale of litigation shorter and more certain. Most of all, they empower the courts to use alternative dispute resolution (ADR) processes where appropriate,

thereby reducing costs and removing from the lists those cases which can be resolved without a full-blown trial and all that that entails. In 2003 and 2009 judges and magistrates were trained not as mediators but to assist them in identifying the stage at which a case should be sent to mediation. The present Chief Justice, Sir Marston Gibson, has been a sterling advocate of the value of mediation and he has recently issued 2 Practice Directions to usher in court-annexed mediation. I am told that mediation has begun to work. Two judges recently directed the parties in litigation to seek mediation and, last year, a few cases were settled by the process. I should tell you that, although mediation is a process whose use is of comparatively recent origin, some members of the judiciary were using it long before it became the vogue. Belgrave J, Lindsay Worrell J and MacCormack J all practised a form of mediation in Family Law matters – although none of them would have called their techniques, “mediation”. Belgrave J was notorious for indicating to the parties in a maintenance or matrimonial property application, his ideas of the parameters of a settlement. He would send the parties out of his Chambers with the advice that they should return only when they had reached an agreement to be incorporated in an Order.

When I retired as Chief Justice in January 2010, the judicial system boasted a new Supreme Court complex, new Rules of the Supreme Court and contemporary technology to assist in the management of caseflow and caseload. And the complement of Supreme Court judges was 13 including the Chief Justice. Nevertheless, complaints about the machinery of justice have continued and increased. What are these complaints? And what are the reasons for them?

(E) *CURRENT COMPLAINTS ABOUT THE MACHINERY OF JUSTICE AND RESPONSES*

As I conceive them, the main complaints about the machinery of justice seem to revolve around delays and backlog in the civil and criminal justice systems. In the case of ***Frank Gibson v R, 76 WIR 137***, the CCJ reminded us at para.[48] as follows:

*"The public have a profound interest in criminal trials being heard within a reasonable time. Delay creates and increases the backlog of cases clogging and tarnishing the image of the criminal justice system. Further, the more time it takes to bring a case to trial, the more difficult it may be to convict a guilty person."*

And with regard to the constitutional right to a fair trial within a reasonable time, the Court said:

*"By deliberately elevating to the status of a constitutional imperative the right to a fair trial within a reasonable time, a right which already existed at common law, the framers of the Constitution ascribed a significance to this right that too often is under-appreciated, if not misunderstood."*

The Court, however, tried to be balanced in its observations and said at para.[51]:

*"To be fair, inordinate delays are not unique to the State of Barbados. They are prevalent in other Caribbean States as well. But this provides no justification for countenancing delays."*

(a) *The Criminal Justice System*

Starting with the criminal justice system, I wish to emphasise that the so-called criminal justice system essentially embraces a series of stages over some of which the judiciary has no direct control. It covers the stages from report and investigation of a crime, through pre-trial procedures, then the preliminary inquiry and/or trial, the stage of sentencing and even certain post-sentence decisions such as early release from custody. In other words, there are several interlocking and interdependent parts of "the system".

Delays occur after charge, before trial and after trial. Many different players are involved, e.g. the police, the office of the DPP, the courts, the Probation Service. Especially since the mid-1990s, there has been a greater awareness of an accused person's right to pre-trial disclosure. This right is not based on statute but it exists at common law. A very great amount of time is consumed by the police in satisfying the requirements of pre-trial disclosure. Re-organisation and restructuring the Royal Barbados Police Force (RBPF) through increasing the use of civilians in the process and generally building and enhancing the capacity of the RBPF will assist in reducing delay in the pre-trial process. That is a matter for the Executive branch of government and, although I am well aware of the mantra for a leaner public service, nevertheless, if greater efficiency and productivity are to be achieved, money must be invested in human capital and appropriate technology throughout the system otherwise the CCJ will continue to refer to "the sometimes exorbitant periods of pre-trial detention in Barbados". (per Wit JCCJ in ***R. v. Romeo Hall*** 77 WIR 67 at para.[44]).

The judiciary of Barbados was alert to the issue of delays in the criminal justice system and determined to deal with it. At the Judicial Retreat (2007), the Judicial Council brought together all of the players in the criminal justice system to discuss the factors that delayed criminal justice. At the end of

the Retreat, 102 recommendations were made – (see Appendix 1 of the Report of the Judicial Council 2007) which was laid in Parliament.

Changes in the nature of criminal conduct, particularly illegal drugs and transnational organised crime, have spawned an explosion in criminal cases and put unbearable stress and strain on the Magistrates' courts. From time to time, special operations by the RBPF also conduce to an unforeseen build-up of cases in the Magistrates' courts. To give one example, in 2004 the RBPF launched "Operation Road Maintenance". The consequence was that some 33, 000 cases were lodged in the District 'A' Magistrate's Court. That mountain of cases was eventually razed to the ground in comparatively swift order by a committed Magistracy.

I pause to interject that I note with a little satisfaction that the present Government appears to have taken action on three of the recommendations emanating from the 2007 Judicial Retreat, viz. abolition of Preliminary Inquiries, instituting legislation for plea bargaining, and creating a Drug Treatment Court which is showing distinctly promising results. But more needs to be done to improve the efficiency of the criminal justice system. I would respectfully suggest that a broad-based Working Group be established to examine the recommendations of the Judicial Council and make proposals for implementing reforms.

A paradoxical phenomenon that has plagued the criminal justice system in the last 20 years is the diminution in the number of attorneys-at-law practising criminal law despite the overall vast number of attorneys-at-law on the Roll. Quite simply, there are too few practitioners to handle the caseload. Consequently, there is bound to be "over-booking", adjournments, and delay. I have previously adverted to this problem on the admission of new attorneys-at-law to practise and I note that, in October 2016, Sir Marston has also addressed

this particular problem. The problem is not so much systemic as it is attitudinal. I also feel bound to say that the Office of the DPP must be provided with additional legal personnel at the middle management level to assist in the advisory and prosecutorial functions of that office. And the criminal justice system is not well served when senior practitioners in the DPP's office are taken away from their substantive positions and sent to act as Magistrates. It is obvious that, if there are not enough prosecutors to conduct cases before the courts, there will be no work for the judges. Only last year, two judges complained that they were ready to work but had no cases that could be heard. The delay was not on the part of the judges but elsewhere in the system. The argument for introducing case management in the criminal courts seems to me to be unanswerable.

A word about the abolition of Assizes. Before and after Independence, trials of indictable cases were heard four times a year at what were called "the Assizes". In 2006 the system of Assizes allowed for trials on 157 days of the year. When this matter was further analysed by Christopher Blackman J, it was found that abolition of Assizes would result in an additional 50 trial days. It made sense to change the system to one of continuous criminal trials in the High Court. Assizes were therefore abolished in 2006. In 2008, under the new paradigm, for the very first time in its legal history, criminal disposals in the High Court exceeded 140. That year, 235 criminal cases were disposed of. It took forty years after Independence to get rid of a staple of the criminal justice system that was no longer consonant with the requirements of post-Independence Barbados.

(b) *The Civil Justice System*

I turn now to look at some of the ways in which the judiciary tackled the problem of delay in the civil justice system and prepared themselves

for operating the new Rules of Court. Prior to the coming into force of the *Supreme Court (Civil Procedure) Rules, 2008*, the Judicial Council made an attack on the backlog in civil cases in 2004 and 2005, by investigating the status of every civil case filed from the year 1990. A Backlog Reduction Committee was established, a Practice Direction was issued and a few hundred dormant files were taken out of the system with the full knowledge of the attorneys-at-law on record. One of the distortions that pollutes the issue of backlog is the number of files which are registered in the system but, in truth and in fact, the cases are virtually dead. We found that, between 1990 and 2005, there were approximately 3 000 files, still in the system, but bearing only an originating process and an acknowledgement of service or no acknowledgment. Upon analysis, there was the appearance of a backlog of 3 000 cases but in reality those 3 000 files were dead or were far from ready for trial.

The exercises carried out by the staff of the Registration Office and the Backlog Reduction Committee were absolutely necessary for the introduction of the new technology i.e. the Judicial Enforcement Management Software (JEMS) which was introduced in the judicial system at the time of the move from Coleridge Street to Whitepark Road. As a result of the exercises, we were able to determine the true state of backlog on the civil side ten years before. But undoubtedly, annual filings in excess of 2 000 cases will gradually conduce to another build-up of backlog and delay. It is a continuing problem. While positive action was being taken to deal with dead or dormant files clogging the system, the judiciary and the legal profession benefitted from a number of seminars and workshops designed specifically to train and prepare them for the new Rules. The Rules and technology have been in place for about 7 years but there still seems to be a lack of coordination between the Courts and the Registration Office in relation to the setting down of cases for hearing. This is one critical area where, perhaps, foreign expertise should be sought to improve the system and reduce the level of frustration felt by lawyers and litigants alike.

(F) *APPOINTMENT OF ADDITIONAL JUDICIAL PERSONNEL 2003*

I have shown that 1956 and 1990 were key years for the judicial system of Barbados. The year 2003 is of equal significance. Following a call for additional judicial personnel on 1 October 2002, the Owen Arthur government responded three weeks later (22 October 2002). During his budgetary proposals to Parliament, the Prime Minister announced the government's intention to appoint 2 additional magistrates, two additional High Court judges and one Court of Appeal judge. This decision was a clear acknowledgment of the vast increase in the volume of litigation in the respective courts and the pressures being exerted on the system and those who operated it. On 1 April 2003 the House of Assembly debated the *Supreme Court of Judicature (Amendment) Bill*.

*Supreme Court of Judicature (Amendment) Bill, 2003*

In moving the Second Reading of the Bill, the Attorney-General, Hon. Mia Mottley Q.C., said at p.5 of Hansard:

*"It is clear that Barbados continues to be a well-regulated and law-abiding society, primarily as a result of a relatively well-functioning court system, among other things."*

The Attorney-General explained that justification for increases in the magistracy rested upon a number of factors including population shifts, the multiplicity of legislation expanding the jurisdiction of magistrates, the existence of new types of crime, the vast increase in motor vehicles, and the effects of the illegal drug trade. In respect of the High Court, the Attorney-General advised that the increase in the judicial complement of the High Court to 8 judges was necessary owing to the volume of work at that level, including a significant

increase in criminal cases filed for trial at Assizes from a low of 105 in 1981 to a high of over 381 in 1995.

More help was on the way. In 2007, for the first time in its legal history, Barbados saw the appointment of a Master in the Supreme Court to assist with the progress of civil cases through the system. Mr. Keith Roberts Q.C. was the first appointee.

*(G) CONTRIBUTION OF THE JUDICIARY TO DELAY*

*(i) Tardiness in giving decisions*

Thus far, I have examined systemic delay but the question must be asked whether the judges have contributed to delay in civil cases. Respectfully, I have to answer the question in the affirmative. Two aspects of judging have undoubtedly contributed to delay. First, inordinate delay in giving written decisions. In 1974 Prime Minister Errol Barrow complained in the House of Assembly that he had waited for decisions for 7 years and they still were not given after seven years – Hansard, 27 August 1974 p.3788. Implicit in the word “decisions” is a requirement to be decisive. A judge who cannot make up his/her mind is doing a disservice to the judicial system and the litigants. There is a story told that, an American judge quaintly named Henry Friendly, told another quaintly named judge, Learned Hand, that he was having difficulty making up his mind about a case. It is said that Learned Hand thumped a table and said: “Damn it Henry, make up your mind. That’s what they’re paying you to do!” On 1 April 2003, the late Sir Harold St. John Q.C., a fearless and outspoken commentator on the judicial system, said these words in the House of Assembly (Hansard p.23):

*"One must understand that if you are to be a judge, you must not only know the law, be fair, tolerant and a good listener but you must have the capacity to make up your mind. If you do not have those qualities you should be disqualified from being a judge because to make up your mind is an indispensable quality. If you are a ditherer, you should stay away from the profession because it is not for you."*

As I indicated earlier, our judiciary has attracted criticism from the CCJ and members of the public for the inordinate delay in giving decisions. In Barbados ***Rediffusion Service Ltd. v. Asha Michandani (No.1) 69 WIR 35***, de la Bastide P at para.[45] of the judgment of the CCJ, deprecated the fact that the periods for which the High Court and Court of Appeal judgments remained undelivered were in excess of 7 years. In similar vein, Saunders JCCJ criticised the Court of Appeal for taking 5 years to deliver judgment in ***Reid v. Reid 73 WIR 56***. I would also say that a failure to give decisions promptly offends the obligation to be accountable. It is inefficient and it is unfair to the litigants and their legal representatives. Judges must remember that the parties have a *right* to a decision. That is one of the elements of the right to a fair trial. When we take into account the fact that, since 2005, judicial assistants have been available to provide support services to the judiciary, there really is no compelling reason for judges not to give reserved decisions within 6 months after the end of a trial.

Giving decisions within a reasonable time is a function of time management. Others may indulge in long coffee breaks or small talk and gossip but a judge who is sensitive to his/her professional responsibilities, must use every available moment of time when he/she is not sitting to writing decisions. Vacations for the Barbados judiciary are generous. For the whole of August, the court is on official vacation. In addition, a judge is entitled to a further 42 days'

annual leave. The official court vacation was intended to be a time to catch up on outstanding decisions.

I feel, however, that too many decisions are reserved. More oral decisions should be given. The Divisional Court of the 1960s to 1980s was a great example of rendering oral decisions. I am not persuaded that cases involving only the resolution of facts should be reserved. On 20 October 2016, I read a newspaper report that the Court of Appeal of Trinidad and Tobago had given an oral decision immediately after conclusion of the respective arguments on the validity of the electoral process in certain constituencies in that country. I daresay that that was heavy litigation and yet the decision was prompt.

*(ii) Adjournments*

The second matter which contributed to delay by the judiciary has been a historical generosity in granting adjournments. Adjournments obviously retard the progress of a case and contribute to backlog. The judiciary and the legal profession need to make an attitudinal change and adopt a less liberal approach to the matter of adjournments. Under the old Rules of the Supreme Court, there was a very lackadaisical approach to adjournments by the legal profession because the pace of a case was controlled largely by the parties and their attorneys-at-law. The 2008 Rules require judges to control the pace of litigation.

During my last address to a Special Sitting of the Supreme Court on 5 October 2009, I said *inter alia*:

*"Under the new Rules, cases will progress according to a timetable set by the Master or the Judge for the doing of various activities. This new paradigm ought to result in the speedier dispatch of cases than hitherto. I have impressed*

*upon the judges that, in future, they will be accountable for the speed at which a case progresses."*

*(H) ISSUES SPECIFIC TO THE JUDICIARY SINCE 1966*

In this section of the paper, I wish to address issues that are peculiarly relevant to the judiciary, namely, terms and conditions of service, method of appointment of Supreme Court judges, continuing legal education and training, judicial independence and accountability, women on the Bench, and the Magistracy.

*(i) Terms and Conditions*

A discussion of the terms and conditions of judges requires an appreciation of the office of a judge in a democracy. Lord David Pannick in his book "*Judges*" neatly encapsulates the judicial role and function thus:

*"Judges do not have an easy job. They repeatedly do what the rest of us seek to avoid: make decisions."*

And no less a person than Sir Winston Churchill recognised the peculiar privations of judicial office when he said in 1954:

*"Judges are required to conform to standards of life and conduct far more severe and restricted than those of ordinary people. What would be said of a Lord Chief Justice if he won the Derby?"*

In the Preface to his book, "*The business of Judging*", Lord Bingham, arguably the greatest English judge of the last 50 years, wrote these sage words:

*"Looking at the five or so hours for which a judge sits in court each day, people sometimes imagine that judges have a rather light workload. But this takes no account of the work which a judge has to do before he takes his seat in court, and after the court has risen. Most judges would regard the work they do as important and rewarding, but also as exacting, mind-stretching and time-consuming. There is not much time left over for activities outside the line of duty."*

Lord Bingham did not say it, but judging is very stressful work. It is not generally appreciated, that a judge sitting in a criminal trial has to work until late in the night preparing a summation while others are sleeping. Out-of-court work is a reality of judicial office. (see Henry LJ in ***Amado-Taylor v R [2000] 2 Cr.App.R. 189***).

#### *Constitutional Security of Tenure*

In 1966 the Constitutional arrangements for judges gave security of tenure in that High Court judges can serve to age 65 and the Chief Justice and Justices of Appeal may serve until age 70. Extensions, in the gift of the Prime Minister, are permissible for a further two years beyond those basic ages of retirement – s.84(1) and (1A). There is no compelling reason why there should be a differential in the retiring ages of High Court judges vis-à-vis Court of Appeal judges. Moreover, having regard to my own experience, the right to seek an extension of service from the Prime Minister should be abolished. The Constitution should be amended to remove the Prime Ministerial discretion to extend the basic retiring ages and to provide one standard age of retirement for all judges, say, 72 or 75. The Constitution further buttressed security of tenure by providing that judges may only be removed from office for inability to discharge the functions of office (whether because of infirmity of mind or body) or for misbehaviour - s.84(3). And even then there is an elaborate procedure that must be invoked to remove a judge – s.84. In addition, judicial salaries are

charged on the Consolidated Fund and cannot be altered to the disadvantage of the judge – ss.112 and 112A of the Constitution.

(ii) *Method of Appointment of Judges*

When the Constitution was drafted in 1966, it was agreed and included as s.89 that the Judicial and Legal Service Commission would be responsible for the appointment of Puisne Judges following its predecessor that was established in 1956. But in 1974, proposals to change that method of appointment, and vest the power in the Prime Minister (as is now the law), suddenly brought the judicial system into the glare of public spotlight and controversy. Members of the Clergy, attorneys-at-law, members of civil society and the Opposition Barbados Labour Party were vociferous in their condemnation of the proposed changes to the Constitution. The Opposition marched to Government House and trumpeted repeal of the amendments when they returned to government.

In all the turmoil, Sir William Douglas kept a dignified silence consistent with the highest traditions of judicial office. Debate on the *Constitution (Amendment) Bill 1974* began on 27 August 1974. It was acrimonious, bitter and vitriolic. Without putting too fine a point on it, Prime Minister Barrow lambasted the various critics of the Bill in scathing and, at times, trenchant terms.

The debate runs to 574 pages but I have selected three excerpts from Mr. Barrow's speech which are relevant to issues discussed in this paper and repay quotation. He had very definite views about lawyers. He said:

*"Lawyers perform no useful function in this society at all. They are a burden on the society."*

Then, casting doubt on the suitability of Barbadians for judicial appointment, he looked towards the region and said at p.3790 of Hansard:

*"I would like all judges appointed on a global basis from the Caribbean because we are only going to get an efficient administration of justice if we have the widest constituency to recruit from."*

I merely observe in passing, that as a consequence of the contribution of UWI to legal education since Independence, all of the existing Supreme Court judges in 2016 are Barbadians and UWI educated (except Worrell J). In 1966 three of the four judges were trained at Universities in England viz. Douglas CJ (LSE), Hanschell and Williams (Oxford).

And at p.3791, while expressing indifference to the method of appointment of judges and a greater concern for the manner in which justice was administered, the Prime Minister gave Barbadians this advice:

*"My advice to the people of Barbados is that, if you want justice, stay out of the Law Courts altogether.....The Law Courts are no place for self-respecting people."*

That debate threatened to bring the administration of justice into disrepute. Even Mr. Justice Ward (as he then was) was not spared from the vituperations of the Prime Minister. 1974 has gone down in history as the year in which the post-Independence judiciary suffered its greatest controversy and none of it was of the judiciary's making.

I leave the Constitutional amendments of 1974 with this observation for the sake of accuracy of the historical record. As much as the Barbados Labour Party promised to repeal the amendments, those same

amendments have remained intact during the periods 1976 to 1986 and 1994 to 2008 when that Party formed the government!

*Advertisement of Judicial Posts*

The method of appointing judges since 1966 inevitably raises the issue as to whether judicial posts in Barbados should be advertised as is the current practice in many Commonwealth jurisdictions and also at the CCJ. I do not believe that there can be serious disputation about the desirability of such a practice. But the implementation of a change providing for advertisement will again require Constitutional amendment to determine the appropriate body for dealing with the matter and its various nuances. Presently, under s.89 of the Constitution, three (3) of the five (5) members of the Judicial and Legal Service Commission (JLSC) are appointed by the Governor-General acting on the recommendation of the Prime Minister, after consultation with the Leader of the Opposition. However, having regard to the manner in which the consultative process is carried out, the existing Constitutional provision affords an opportunity for a Prime Minister to control the composition of the JLSC. But, even if the advisory power of appointment is returned to the JLSC, there would be no guarantee of impartiality and transparency in the appointment process so long as the power of appointment of a majority of members of the JLSC remains in the hands of the Prime Minister.

*(iii) Continuing Legal Education and Training*

Consistent with the myth that judges do not make law was the belief that they did not require continuing education and training. It would have been anathema and considered impertinent to suggest such a requirement to judges at the time of Independence. A University education in law does not

adequately equip judges for performing their tasks. Fortunately, owing to the complexity of contemporary society, the emergence of important new legal subjects and the sheer range of law, it is now universally accepted that judges, like so many other high-ranking officials, must be exposed to continuing education and training including training in judgment writing. None of the judges, for 37 years after Independence was so exposed. However, the Supreme Court judges received training in judgment writing in 2003. The benefit of training in judgment writing can be readily seen in the structure of judgments and the high quality of jurisprudence coming out of the Supreme Court in the last 13 years.

In 2003 the Prime Minister and Minister of Finance also accepted a proposal to provide funds in a budget for the Judicial Council to facilitate continuing education and training and all judges have since benefitted from this facility in different ways locally, regionally and internationally. An amount of \$250, 000 was voted by Parliament annually during the period 2003 to 2009, but I am advised, that since the international recession of 2008, the amount in this vote has been reduced. It is my view, however, that in accordance with the Latimer House Guidelines, the judges should be in control of their continuing education and training. And that means that the Executive branch of government should not be able to approve or veto overseas training or attendance at overseas conferences. Seeking the prior approval of Cabinet or the Prime Minister for a judge to attend an overseas conference may be perceived as a fetter on the independence of the judiciary. Moreover, the bureaucracy moves very slowly and since approvals are invariably communicated at the last minute, there is the potentiality to interfere with the smooth functioning of the judiciary. Give the judiciary the funds and let them work out the logistical arrangements in a timely manner.

*(iv) Judicial Independence*

More and more it is being accepted that judges and members of the Executive branch of Government should not sit together to negotiate salaries and terms and conditions of service. Trinidad and Tobago has a separate Commission to determine judges' terms and conditions of service. In the Canadian case, ***Provincial Court Judges' Association of New Brunswick v. New Brunswick Minister of Justice et al [2005] SCJ No.47***, the Supreme Court of Canada laid down a list of general principles about judicial independence. And dealing with financial security as a core characteristic of judicial independence, the Supreme Court pointed out that financial security of the judiciary embraced three ancillary requirements –

- (i) that salaries be changed only by recourse to an independent commission;
- (ii) that the Government and the judiciary must not negotiate salaries;
- (iii) that salaries should not fall below a minimum level.

There is, of course, a close connection between judicial salaries and judicial independence. The Supreme Court warned that spirited negotiations between government and the judiciary had the potential to undermine the public's perception of judicial independence. Commissions were the proper forum for discussing, reviewing and recommending judicial emoluments.

I do not necessarily recommend another Commission but I am of opinion that, under the *Judges Remuneration and Pensions Act*, provision should be made for the establishment of an *ad hoc* Committee to determine judges' emoluments.

In 1969 Parliament passed the *Judges Remuneration and Pensions Act* (now Cap.115A) in the same year that provision was made for pensions for the Prime Minister and parliamentarians. Of course the Act has been amended from time to time but, in my view, the basic formulae for gratuities and pensions are satisfactory. It is with the level of salaries that there can be justifiable complaint. It was my experience that salary negotiations were conducted by public officers who seemed to me to have a desire to tie judicial salaries to those of Permanent Secretaries. The judicial function and the privations and restrictions of office were too little appreciated. The well-known and distinguished Australian judge, Michael Kerby, has said that judicial appointment "is a journey to loneliness".

However, in 1997, in response to a request from Sir Denys Williams, Prime Minister Owen Arthur readily acknowledged the need for improved terms and conditions of service so that, since that year, judges now receive a judicial allowance to compensate for the privations of office as well as a robing allowance at commencement of service and options to purchase the vehicle assigned to them on concessionary terms at the end of service. Mention of the robing allowance reminds me that, on 6 October 2003, the traditional "Red Robes" were replaced by more comfortable and appropriate robes bearing the national colours symbolic of a determination to forge a new image that was more congruent with an independent nation. Judges are no longer attired in robes simulating an out-of-season version of Santa Claus!

(v) *Judicial Accountability*

Judicial independence and judicial accountability are not inconsistent. The judiciary cannot treat itself as ungovernable or elitist. It must be accountable to the other branches of government, to itself and to the people.

The courts exist to serve the public and, to that extent, the people have a legitimate interest in the administration of justice.

There are many ways in which accountability is achieved especially in respect of decisional independence e.g. accountability to higher courts for decisions, conducting trials in open court, having decisions scrutinised by academia and the Press and, above all else, giving reasoned decisions promptly.

But there is a mechanism for judicial accountability that I wish to discuss. I mentioned earlier that Parliament in 1956 established the Judicial Advisory Council. It is now known as the Judicial Council. By s.93(1) of Cap.117A, the Judicial Council has a heavy responsibility. It "shall be responsible for the administration of the courts of Barbados" and shall, *inter alia*, "formulate policy in relation to all matters affecting the performance of the courts."

The Council must meet at least once every quarter and send an annual report to the Attorney-General for tabling in Parliament. This is a statutory mandate of accountability. The Council is comprised of the Chief Justice and all 12 other judges, together with the Solicitor-General, a Magistrate, the Registrar, the Dean of the Faculty of Law, at least 4 attorneys-at-law, and a member of civil society. Plainly, it is an important watchdog body that ought to keep the Executive and the representatives of the people informed about the performance of the judicial system. It is well-placed to monitor caseload and to make proposals for remedying defects and deficiencies in the system.

Yet it seems that the Judicial Council hardly discharged its statutory obligations for 35 years after Independence (1966-2001). No reports exist for that period and no annual budgets seem to have been submitted to the Minister of Finance. It fell into virtual desuetude or, in contemporary vocabulary, someone "dropped the ball!"

I have heard the view, symptomatic of an intellectual emptiness, that suggests that no one reads the Reports of the Judicial Council but that is not a valid reason for failure to carry out statutory duties. It is to my certain knowledge that the Reports are read by parliamentarians. The good news is that Reports have been published for the years 2002 to 2015 (except for 2009 to 2012). They contain a wealth of information about the courts and their performance.

I am bound to say that I have a lurking feeling that, if contemporaneous Reports of those 35 years had been produced, the Executive might have been prompted to do more to alleviate the problems which gradually built up over time and eventually assumed explosive proportions.

*(vi) Women on the Bench*

I have shown in Table I that, whereas in pre-Independence Barbados the legal profession was dominated by men, by the 1980s there was a virtual sea change. Access to free tertiary education in law, the rise of feminist movements internationally and the recommendations of the National Commission on the Status of Women (1978), all seemed to combine to unleash the suppressed talents of women. Accordingly, it was inevitable, from the early 1990s that eventually the Bench would be adorned by the presence of women. It all started during the tenure of Sir Denys Williams.

Marie MacCormack Q.C. was the first woman to be recommended for appointment on the Bench. Prime Minister Erskine Sandiford made the recommendation for her first appointment in 1992. Between 1992 and 2016, eight other women, reflecting the diversity and reality of the larger society, have brought welcome diversity to the Bench.

**TABLE 4**  
**LIST OF FEMALE JUDGES 1966 TO 2016**

<b>NAME</b>	<b>PERIOD OF SERVICE</b>
Madam Justice Marie MacCormack	1995 to 2002
Madam Justice Elneth Kentish	2002 to 2014
Madam Justice Margaret Reifer	2005 to present
Madam Justice Kaye Goodridge	2005 to present
Madam Justice Jacqueline Cornelius	2006 to present
Madam Justice Sonia Richards	2006 to present
Madam Justice Sandra Mason	2008 to present
Madam Justice Maureen Crane-Scott	2008 to 2015
Madam Justice Michelle Weekes	2014 to present
Madam Justice Pamela Beckles	2016 to present

*(vii) The Magistracy*

The magistrates are and have always been the work horses of the judicial system but the slowest recipients of improved working conditions. For example, it was only in the late nineteen nineties that magistrates' courts were air-conditioned and only in the early years of this century that magistrates received computers. I have noted with pleasure that, on 28 October 2016, a pilot project was launched to provide the magistracy with appropriate technology for recording evidence. At long last, Sir Theodore Brancker's wish is being fulfilled!

Moreover, anomalies still persist in the face of repeated calls for administrative and legislative action to redress the anomalies which affect the

efficient functioning of the magistracy. The Chief Magistrate's post should be upgraded. It cannot be fair that, after 5 years' service, other Magistrates find themselves on the same grade as the Chief Magistrate. In reality, the designation 'Chief Magistrate' is of little practical or financial consequence. To make matters worse, the magistracy is the only department in the legal and judicial service, where there is no hierarchical structure or differential grades providing for seniority, say, senior magistrates or a deputy Chief Magistrate, as is the case in other Commonwealth Caribbean jurisdictions. These anomalies were repeatedly drawn to the attention of the Ministry of the Civil Service over a decade ago.

**TABLE 5**  
**TOTAL NUMBER OF CASES FILED IN MAGISTRATES COURTS**  
**(2003-2015)**

<b>YEAR</b>	<b>NUMBER</b>
2003	25 432
2004	50 926
2005	21 715
2006	15 598
2007	29 443
2008	24 614
2012	20 656
2013	24 644
2014	23 527
2015	25 586

### *CONCLUSIONS*

In the last 50 years, Barbados' judiciary has been faced with a multitude of problems, many of them not unique to Barbados. Like minefields secretly laid underground, those problems have quietly been awaiting detonation. Sporadically, some have exploded but have been extinguished without causing irreparable damage. It is my judgment that, despite the apparent intractability of some of those problems, and human resource and

other constraints imposed by the Executive branch of government, the judiciary, as an institution, responded well to guard and uphold the rule of law, to protect the Constitution and our democracy, and to dispense justice fairly. Collectively, the 37 members of the senior judiciary and the magistrates devised multi-dimensional strategies or made interventions to tackle the problems. I have already mentioned many of those strategies or interventions in this paper. But let me give you one final example. In 2002 there were complaints of a backlog of Coroners' Inquests. The Judicial Council found that there was indeed a backlog stretching as far back as 1982. We acted immediately. The *Coroners Act* was amended to give island-wide jurisdiction to a magistrate performing the duties of Coroner. On 29 July 2002, a magistrate was specially assigned to carry out investigations into all unnatural deaths reported to the RBPF prior to 30 June 2001 but not yet investigated. By 31 December 2003, the "Special Coroners Court" had completed in excess of 200 of 279 outstanding matters and, by 31 December 2004, the backlog was completely cleared.

We all recognise the vital importance of the judicial system to the social and economic development of Barbados. Amidst the problems and the issues, it should be a matter of the greatest pride in the year of the 50<sup>th</sup> anniversary of Independence that Barbados has been fortunate to have had committed and distinguished men and women who have served as judicial officers and who have not been tainted either by allegations or proof of corruption. And we were so determined to ensure the continuation of this tradition of incorruptibility that the Judicial Council published a "*Guide to Judicial Conduct*" in April 2006 for the benefit of existing and aspiring judicial officers and the general public.

*The Registration Office*

But the judiciary, after Independence, could hardly have carried out its mission without the immeasurable support of the Registration Office and the legal profession. The Registration Office has been aptly described as “the lynchpin” of the administration of the court system but it, too, has been the beneficiary of excellent leadership in the last 50 years. I pay tribute here to Mr. Colin Rocheford and the ladies who succeeded him as Registrar of the Supreme Court viz. Marie MacCormack Q.C., Shirley Bell Q.C., Sandra Mason Q.C., Maureen Crane-Scott Q.C., Marva Clarke Q.C., and Mrs. Barbara Cooke-Alleyne.

### *The Legal Profession*

With respect to the legal profession, we all know that lawyers have played an outstanding and pivotal role in the political, social and economic development of Barbados before and after Independence. But, as legal practitioners, their roles have transcended appearing for clients in litigation and acting in non-contentious matters. In the period 1966 to 2016, they contributed handsomely to upholding the rule of law and the pursuit of justice.

Admittedly, the legal profession may also have contributed to some of the problems of which I spoke but, upon a rounded, objective analysis, it has to be conceded that the legal profession has been a bulwark of the judicial system in the last 50 years. They have been generally resourceful, industrious, long suffering, and respectful. I can think of no lawyer who was cited for contempt of court and I can think of many who, by their ideas and suggestions, actively assisted the judiciary in grappling with the problems that confronted the judicial system. It would be invidious to enumerate a list of the many outstanding and distinguished lawyers who appeared in the courts locally and regionally. So, I merely content myself by saluting the legal profession in tribute

to its support of the judicial system and its contribution to the dispensation of justice in this Island.

*Need for Substantial Expenditure on the Judicial System*

However well we may have done in sustaining the judicial system since Independence, much more still needs to be done before we can take pride in a system that is truly efficient. To attain that objective will require substantial expenditure on the system. In small and developing jurisdictions, the Executive branch of government must retain responsibility for providing the judicial system with adequate resources. The Minister of Finance will respond that he has a limited budget born of the very nature and extent of the island's resources and he must carefully and strategically spread those resources among other competing departments of government.

The impact of the global recession and financial crisis that hit the world economy in 2008 together with the continuing fiscal and economic challenges locally that have been a feature of life in Barbados for the last 8 years, have not only affected all sections of society but also have affected the judicial system and the legal profession. In particular, practitioners of non-contentious business such as mortgages and conveyancing, have seen a tremendous decline in that type of work while, at the same time, registration fees to practise have increased. To coin a phrase, the judicial system has been obliged to "dispense justice in a period of austerity". In September 2015 the Commonwealth Magistrates' and Judges' Association (CJMJA) published a resolution in which the Association noted, with concern, the continuing lack of adequate resources provided to the courts in many Commonwealth countries. At the same time, the CMJA drew attention to the Commonwealth (Latimer House) Principles on the Three Branches of Government which state that adequate resources must be provided for the judicial system to operate optimally.

Whereas I readily acknowledge the very real problem of inadequate resources, I also wish to draw attention to the findings of the IMF/World Bank and the IADB in 1999, that the justice sector contributes approximately 25% to GDP. There will always be tension between the judicial branch and the Executive branch because of their different roles. When new phenomena threatened the efficiency and effectiveness of the judicial system in the last 50 years, what was required was the timely supply of resources, human and financial, to meet the demands being experienced. That was a function of the Executive branch of government. Whether the judicial system is able to meet public expectations depends not only upon the judiciary but also upon the Executive and the Legislative branches of government providing the judiciary with the support required.

It was in recognition of the need for revenue to assist the Executive branch in discharging its responsibilities, that the Judicial Council in 2002 asked the Registration Office to examine the level of fees chargeable for the variety of services rendered by that department. The report of the Registration Office revealed that, with only very modest increases in fees, revenue increase of approximately \$2.3 million could be realised. Why was that exercise necessary? Because there had been no increase in fees since 1982 and between 1982 and 2002, the administrative costs of providing services had risen by 200%. It is now 2016 and, 34 years since 1982, there still has not been an increase in user fees to assist in operating the judicial system despite the fact that the Ministry of Finance approved the increases in fees and had enabling legislation drafted.

For far too long, the judicial branch has been treated as a poor relation of the other two branches. In the old days, we would say "treated like an outside child!" In an article published in the Commonwealth Law Bulletin (December 2007), I wrote that the three arms of government are not equal:

*"They are not perceived to be equal. Frequently, they are not treated as equal. The judicial arm ranks a poor third."*

I stand by that observation.

One is heartened by and grateful for the assistance being given by friendly governments towards the modernization of the judicial system. But it is my understanding that the sum of CAN\$20million provided by the JURIST Project is to be shared among all Commonwealth Caribbean jurisdictions. The money is not for Barbados alone and the Executive branch of the Barbados government will still be under a continuing obligation to contribute its own resources towards the overall upgrade of the justice sector. Accordingly, I make an appeal to the Executive branch to treat the judicial system for the next 5 years as a discrete project deserving of special and differential treatment to which substantial resources will be committed.

For the last 50 years, the judiciary and the magistracy of Barbados have assumed and discharged the heavy responsibility that rested upon them, with courage, industry and a commitment to doing justice. In doing so, they have made an outstanding contribution to the development of our society. For that, our nation has much to be grateful for. We should all take comfort in the knowledge that our judicial officers have not been the butt of the kind of wanton and scandalous attacks from the press and members of society as was witnessed in England recently. On 4 November 2016, Lord Thomas LCJ and two of his brethren were maligned by the press and sundry citizens simply because they ruled that, as a matter of pure law, the approval of the British Parliament had to be obtained before triggering Article 50 of the Treaty of Lisbon to begin the process for Brexit.

**TAB LE 6**  
**JUDGES WHO SERVED SINCE 1966**

<b>NAME OF JUDGE</b>	<b>PERIOD OF SERVICE</b>
Sir William Douglas, KCMG (Chief Justice)	1965-1986
Hon. John Hanschell CMG	1957-1975
Sir Denys Williams KCMG, GCM (Chief Justice)	1967-1986 (J) 1987-2001
Sir Deighton Ward KCMG (later Governor-General)	1963-1976
Sir Clifford Husbands GCMG, KA (later Governor-General)	1976-1991 (J) 1991-1996 (JA)
Hon. Lindsay Worrell GCM	1976-1987 (J)
Hon. Colin Rocheford GCM	1986-1988 (J)
Sir Elliott Belgrave GCMG, KA, CHB (later Governor-General)	1987-1996 (J)
Hon. John Husbands QC	1987-1991 (J)
Hon. Errol Chase CHB	1988-1996 (J) 1996-2003 (JA)
Hon. Frank King GCM	1991-1997 (J)
Sir Frederick Smith KA	1991-1996 (JA)
Hon. George Moe CHB	1991-2001 (JA)
Hon. Frederick Waterman CHB	1991-2000 (J) 2000-2010 (JA)
Hon. Marie MacCormack QC	1995-2002 (J)
Hon. Garvey Husbands QC	1996-2003 (J)
Hon. Colin Williams QC	1996-2007 (JA)
Hon. Carlisle Payne QC	1996-2003 (J)
Hon. Sherman Moore CHB	1997-2005 (J) 2005-2015 (JA)
Hon. Lionel Greenidge QC	1997-2006 (J)

Hon. LeRoy Inniss QC	2001-2006 (J)
Sir David Simmons KA, BCH (Chief Justice)	2002-2010
Hon. Elneth Kentish QC	2002-2014 (J)
Hon. Christopher Blackman GCM	2003-2008 (J)
Hon. John Connell CHB	2005-2008 (JA)
Hon. William Chandler	2005 to present (J)
Hon. Margaret Reifer	2005 to present (J)
<b>NAME OF JUDGE</b>	<b>PERIOD OF SERVICE</b>
Hon. Kaye Goodridge	2005-2012 (J) 2012 to present (JA)
Hon. Randall Worrell	2005 to present (J)
Hon. Jacqueline Cornelius	2006 to present (J)
Hon. Sonia Richards	2006 to present (J)
Hon. Maureen Crane-Scott	2008 to 2015 (J)
Hon. Sandra Mason	2008 to present (JA)
Hon. Andrew Burgess	2010 to present (JA)
Sir Marston Gibson (Chief Justice)	2011 to present
Hon. Olson Alleyne	2014 to present (J)
Hon. Michelle Weekes	2014 to present (J)
Hon. Pamela Beckles	2016 to present (J)