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Keynote Address

by

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**The Need for Continuing Judicial Education and Training —
The Caribbean Perspective**

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Coming from my own jurisdiction of the Cayman Islands, with a relatively small establishment of three magistrates and three, sometimes four, first instance Judges, the subject of continuing education has so far received only ad hoc attention amidst the pressures and demands of daily judicial life. This has meant participation only in such programmes as can be undertaken by way of technical seminars or conferences in one discrete area of substantive law or practice or another.

Being able over the last two days to focus upon the subject with the benefit of the practical contributions of some of the real pioneers in the field; has elevated the message of continuing education and training for me from the realm of the theoretical to the practical.

There is indeed, not a piece-meal, but a holistic imperative which I think can be defined in these broad terms: it is that our collective responsibility as the Judiciary is to ensure that we are equipped to continue to meet the demands of our societies for the timely and efficient dispensation of justice.

While appropriate emphasis must indeed be placed upon the importance to economic development of an informed, strong and independent judiciary; the imperative is much more immediate than that. The saying that the court room is a microcosm of society is very true and people's lives are on the daily basis affected in the most fundamental and immediate ways by judicial decisions. It is axiomatic therefore, that any consideration of the need for continuing judicial education and training must begin by a consideration of the social context for which it is to be applied.

The Social Context

Though time would not permit us now even a cursory examination of the social context; I think I can at least identify the regional Caribbean social context in general sense about which we might all agree.

Predominantly of African extraction, the peoples of the region embrace every racial and ethnic grouping. as just one example of a newly emerging society, within the Cayman Islands with a population of only 50000, there are now represented some 94 different nationalities.

Indeed the Caribbean history of conquest and settlement , of colonialism and slavery, of indenture ship and immigration, has produced in our region what are perhaps the most multi-racial, ethnic and - cultural societies of the world but with that history and multiplicity have unfortunately also come prejudices, biases and discrimination which, although we like to think are on the decline, remain embedded within the social ethos.

As Judges and steadfast adherents to our judicial oaths of office, while we would not care to admit that like others we are prone to such failings, few among us would seek to deny that the public still perceive many in our ranks in that way.

For instance, can we deny that there is a public perception in some of our more ethnically divided societies, that Judges are sometimes inclined to believe a witness because the witness comes from the same ethnic background as the Judge? or worse, will sometimes find in favour of a party for only that same reason.

And now, fully two generations after the end of imposed colonialism, can we deny the appearances of class bias emanating from some judicial decisions. indeed how do we respond to the publicly expressed criticisms which still echo Plato's refrain that justice in our society remains in the interest of the strong? A poignant example of this was brought home very firmly to me only last week in a conversation I had with a very well educated and informed non-lawyer, who just could not understand how a local regional banker; who has been accused of massive fraud against his depositors, who has had his local assets restrained by order of the court and had taken up residence in palatial style in the united states, had nonetheless been allowed living expenses to the magnitude of 100000USD per month by the variation of its order by the court.

When such an exercise of judicial discretion is juxtaposed with that which is applied in the exercise of sentencing often resulting in what appears to be the ready imprisonment of more vulnerable offenders, the criticism assumes an even more chilling tenor resonating against the historical background.

A challenge for continuing education and training must therefore be to dispel the age-old criticism that the judicial system remains very much a part of the social hierarchy bent on preserving the privileged status quo. For whether or not they are true, we are now aware from the sensitization afforded by these programs that what really matters is the genuine public perception of the judicial processes at work. It is that perception that ultimately determines whether we win and keep that public trust and confidence which is indispensable to any true claim to the fulfilment of our judicial mandate.

Reflect further for a moment on the sense of fear which the ordinary person in some jurisdictions expresses about the prospect of going to court, even if only as a civil litigant or witness, let alone as defendant to a criminal charge. It certainly is not a fear born of respect for the court. It is the result largely of two things: a sense that the court house is a hostile and intimidating place and also, regrettably that it is inhabited by judges who have little understanding of or empathy for the circumstances of the ordinary person.

I seem to recall that it was our brother Justice Moore who said in one of our early exchanges on Monday that the days of the stern, aloof and condescending judge are over. I think he is right, but the challenge remains to get many of our judges to recognise and accept that fact. And in fairness to some steadfast adherents, it also will involve providing them with other ways acceptable to their minds of maintaining the dignity of the court.

These behavioural and attitudinal issues which have been mentioned are but a few examples of the concerns which are sure to arise when we seek better to educate and train ourselves from the perspective of a fuller appreciation of the social context in which we serve.

Arriving at an honest rationalisation and resolution of issues such as these will not be, in the

circumstances of our already overburdened Caribbean Judiciaries, a matter only of personal introspection and soul searching. The hectic demands of judicial life do not allow time for that. It will not be a matter of "physician heal thyself"; where such healing is needed.

It will require equally with the more tractable issues of black letter law, the development of judicial education curricula structured to address such behavioural concerns. It will also require us to develop more effective ways of communicating and relating to members of the public.

The role of Judges: Identifying the areas of need for technical education and training.

After identifying the areas of need for the Caribbean social context the necessary training and sensitisation; the next stage must be to identify what are the technical areas that Judges need to be further educated about. The answer cannot simply be "to be better Judges". When we think about the many and varying aspects of the judicial role in our society we see a truly daunting task. Take, to begin with, the traditional judicial role of dispute resolution in which we are called upon to be competent generalists, the luxury of specialisation seldom being available in our jurisdictions; despite the fact that there may well be a need for it.

A central issue will be how do we set the priorities for continuing education when the duties are so general and all encompassing.

In my own experience I can say that some Caribbean States; notably the Cayman Islands, the Bahamas and within the Organisation of Eastern Caribbean States (OECS) the British Virgin Islands, Antigua and St. Lucia can already point to the need for continuing education in such areas as trusts, corporate insolvency and commercial law because of the type of litigation engendered by the growth of their offshore financial services sectors. The complex and new-fangled area of anti-money laundering also creates special demands upon our generalists Caribbean judiciaries.

In addition to keeping up with the changes which are imposed, it also falls to the judiciary in many of our states to assume the mantle of the law reform advocate—recognising that proposals such as those needed for the modernisation of sentencing; those needed for a more enlightened approach to deal with the risks of domestic violence; for the more effective trial and treatment of drug offenders; may not be discovered and raised at all if not by the judiciary, who are confronted by the need on a daily basis.

This obviously implies the need to expose the judiciary to the comparative thinking and advances taking place in other places.

It also implies the need for research and analytical assistance capability to advise on the

implementation, and to keep under review, the effectiveness of all judicial reforms.

For instance, I am informed that the modernisation of the civil courts system within the O.E.C.S and Trinidad and Tobago, has demonstrated the need for the development of performance criteria which are to be appraised against statistical data, maintained and analysed by statisticians employed within those administrations.

The point is of course that we will need on the ongoing basis, to assess the effectiveness of programs as against the relevant criteria so appropriately captured in Judge Oxner's acronym.- I.C.E.E.- Impartiality, Competency, Efficiency and Effectiveness.

The types of programs which need to be developed for the Caribbean must, because of the general and complex judicial role - pay regard, not only to continuing education, but also to previous deficiencies in legal education and training as well as the imperatives of the contemporary and future global environment. I have already mentioned a few areas, but there still others in respect of which many of today's judicial officers were not trained at all at university but which are now or will be, part of the everyday legal landscape.

For example, Intellectual Property was not a subject on the curricula of Universities for Undergraduates 15 or more years ago. But, with the development of a global creative and cultural economy to which the Caribbean can be an important contributor and the accession of our countries to the T.R.I.P.S. Agreement, it is absolutely crucial that our judicial officers have a clear understanding and appreciation of the content of Intellectual Property, Its legal vehicles and the mechanisms for enforcement of legal rights.

The reported experience is that The World Intellectual Property Organisation (W.I.P.O.) is generous in the provision of training; and we should explore opportunities for training with that Organisation.

Further, as we prepare ourselves for the implementation of The Caribbean single Market and single Market Economy in 2004 and the Free Trade Area of the Americas in 2005, our Judicial Officers will not only require education about these two treaties which will bring about radical changes in regional and international trade but, it seems likely enough, will also need specialised training in the law of international trade as well.

The fact that the revised Treaty of Chaguaramus bringing into being the Single Market and single Economy, will vest the original jurisdiction for the settlement of disputes in the Caribbean Court of Justice; will perhaps be an indication of an immediate need for the training for the judiciary even of that august body.

Indeed the very fact that it will be our final Appellate Court, suggests the need for an examination of just what are the expectations of Judges to be appointed to a final court.

For the first time within our regional judiciary the responsibilities and consequences of finality will have to be confronted and the expression "Judicial Activism" will assume a deeper and more immediate significance throughout the region.

Indeed, given the recent decisions of the Privy Council on the death penalty issue — partially the majority decisions only last week from Trinidad and Tobago, imposing the terrible burden of sentencing declaration upon Judges, Regional Courts and the CCJ in particular, will have to confront the challenge of deciding what cases are suitable for capital punishment and what cases are not — this of course, if there is a continued absence of legislation.

A further area for judicial training must surely be that involving the use of information technology as a tool for research. All our jurisdictions are modernising their systems through the introduction of information technology. However not all our Judicial Officers are exposed to the technology and few are able to call themselves "competent" in its use. This suggests that the use of I.T. should be put on the front burner for all Judicial Officers in the region.

I have already touched, in passing, upon the important matter of the reform of civil procedure which has caught on in the region. The Woolf Reforms are the basis for reforms in Trinidad and Tobago, and Barbados. Here in the OECS, in Jamaica and in a hybrid form in the Cayman Islands, to mention but some States.

The new culture to be fostered by the new rules will require judges to be more directly concerned in the management of cases and to abandon their former merely responsive or passive stance.

There is therefore an urgent need to sensitise and train the Judiciary in the proper application of the new rules. Training should not all be theoretical or classroom oriented. There will be a distinct advantage in intra-regional exchanges, allowing Judges from one jurisdiction to sit with a Judge in another for, say, a week in order to observe the practical operation of the new procedure.

Attachments to the United Kingdom and Canada should not be excluded, but the cost implications are obvious.

Hand-in-hand with case management, must be training in the processes of Alternate Dispute Resolution (ADR).

On the criminal side sentencing is a perennial concern. The modern alternatives which I have already mentioned, will not lend themselves to easy application in the difficult art of sentencing. Regional workshops should therefore be organised on a regular basis and should be aimed as much at Magistrates as much as Judges; given the centrality of the magistracy in the

administration of Criminal Justice Training in the modern alternatives to sentencing; such as community service orders, could have important benefits for our societies in the control in particular of youth offending and, indeed, in the overall control of the prison population.

Maximising Resources

No examination of the present issues would be realistic without consideration of the availability of resources. One must start by acknowledging that money for the administration of justice in the region has traditionally been in short supply; and while we must continue to enlighten our Regional Governments to the importance of the judiciary in fostering economic development, we must also consider ways of maximising our resources.

In order to maximise resources- both human and financial- it seems to be now beyond argument that the pursuit of Judicial Education and training in the Commonwealth Caribbean must be on the regional basis. It was in recognition of this paradigm that last year, at a meeting in Palm Island, hosted by Chief Justice Byron, Regional Chief Justices and Heads of Judiciary in the Commonwealth Caribbean, agreed to develop a strategy for Regional Judicial training and education. We have followed up with the Caricom Secretariat during this year. Chancellor Desiree Bernard of Guyana and Chief Justice Simmons of Barbados have taken on the responsibility for developing a project for funding. Broadly described, the project seeks to secure technical assistance to establish and maintain a Judicial Training Institute to provide continuing legal education and training to the regions' Judicial Officers by:

1. Giving induction training to new appointees to judicial service;
2. Providing refresher courses in various subject areas;
3. Assisting judicial officers in increasing performance levels;
4. Improving the quality of performance so as to reduce mistakes;
5. Examining methods for the more expeditious disposal of cases;
6. Strengthening existing training facilities within the region- no doubt also calling upon them for reciprocal support;
7. Ensuring that judicial personnel are kept abreast of contemporary developments in the law;
8. Promoting best practices in the administration and operation of the justice system;

9. Enhancing the career opportunities of the judiciary.

A small implementation unit consisting of a programme manager and an administrative assistant is envisaged. The Programme Manager will be required to co-ordinate the activities of the project and with Heads of Judiciary, develop programmes for continuing education and training, systems and procedures with a view to keeping costs in check, it is proposed that some of the training will be conducted via the distance education centre of the University of the West Indies or video taped. These methodologies will, of course, be in addition to interactive group sessions.

A budget for the project has been finalised and submitted to USAID for consideration. There is to be a follow-up meeting here in St. Lucia of Heads of Judiciary next month, to further the proposals for funding. The objective is that funding be in place to allow for start-up of the project in 2004.

Conclusion

With the settled acknowledgement of the need, it is now safe to say that even the most conservative and traditionalist of our judges have come to accept the idea of continuing education and training. The Latimer House Guidelines of 19 June 1998, in their exhortation towards a Culture of Judicial Education and organised, systematic training under the control of an adequately funded judicial body, is not only an ideal to which the regional Judiciaries subscribe, it is an objective towards which we are actively working in the Caribbean region.

International financial institutions also- such as we heard from Ms Dakolias- The World Bank; The Inter-American Development Bank and the several other funding partners listed in your programme brochures of this very meeting; have recognised the importance of the justice sector to Gross Domestic Product (GDP) and the inexorable link between justice and development. They have seen the wisdom of committing funds to judicial education and training.

Since December 1999, when there was a meeting of regional Chief Justices and Attorneys-General in Jamaica with officials of the World Bank and IADB and representatives of CJEI (notably Judge Sandra Oxner), it is fair to say that several jurisdictions of the Commonwealth Caribbean have moved swiftly to pursue programmes of continuing judicial education and training.

The Eastern Caribbean Supreme Court has a well—developed and continuous programme; Trinidad and Tobago and Jamaica as well. Barbados started 3 years ago and has published in the report of the Judicial Council for 2002, its programme for the 3-year period 2002-2005 and

the programmes are being actually implemented.

So we have come to St. Lucia at a time when we in the Caribbean can assure our colleagues from the Commonwealth that we are taking the fundamental steps towards understanding the requirements of the social context for continuing judicial education and training; and what its necessary components should be. All this towards the establishment of a regional judicial programme to ensure that our Judicial Officers are not left behind in the

global movement towards repositioning judiciaries to respond to the challenges of the new millennium.

The Distinguished President of the CJEI and our host, Chief Justice, Sir Dennis Byron, has given outstanding leadership in the field to the JUDGES of the Eastern Caribbean Supreme Court. All the other Heads of Judiciary in the region have been influenced and encouraged by his example and we, too, are committed to doing as much as resources will allow to implement programmes at the national levels.

Over the years, Judge Sandra Oxner has been a good friend to us in the Caribbean, and, from her involvement we know that necessary inspiration and support will continue to encourage us to press on.

To you the delegates, I say that your very presence at this meeting, as delegates and, representatives from around the Commonwealth, is a great source of promise and encouragement. It augurs very well indeed for our future collaboration and efforts towards our common mission of the dispensation of justice.

Chief Justice

Anthony Smellie

The Cayman Islands.

3rd December, 2003