

**ADDRESS BY JUSTICE BRIAN ALLEYNE
CHIEF JUSTICE [AG.] OF THE
EASTERN CARIBBEAN SUPREME COURT
DELIVERED AT THE OPENING CEREMONY
WORKSHOP FOR PROSECUTORS
TORTOLA, BRITISH VIRGIN ISLANDS
29TH MARCH 2005.**

Salutations to His Excellency the Governor; the Hon. Chief Minister; the Hon. Attorney-General; the Hon. Deputy Governor, Ms. Dancia Penn Q.C.; the Hon. Mr. Justice Hugh Rawlins, Chairman of the Judicial Education Institute; and Mr. Terrence Williams.

Only last week I was reading in a local newspaper a comment by a former Attorney-General who held court delay to be the reason for the burgeoning crime wave which Saint Lucia is currently suffering. That situation is not unique to St. Lucia. It is a problem which besets us all. When I look out of the window at the Court House in Road Town when the school children are entering their school at the beginning of the school day, I always marvel at the fact that every student goes through a body search of some kind, no doubt because of the prevalence of weapons and violence in the school. It comes as a bit of a shock because I do not expect this in a small and relatively prosperous society like Tortola. It is essentially no different in any of our islands. Crime, especially crimes of violence, and particularly among youth, has become endemic in all our communities. Our reputation as idyllic oases of peace and tranquility in a world dominated by war and violence is fast fading.

A recent editorial in another St. Lucian paper gave expression to the anger of the law-abiding citizens who are asking themselves; 'if the Police (and the justice system) cannot protect us, is it up to us, the private citizen, to protect ourselves and our families?'

Understandable as that sentiment may be, it opens the door for entry onto that slippery slope of vigilante justice that inevitably leads to even greater violence, even the creation of private armies and the total breakdown, eventually, of law and order. There are many examples of this all over the world, in the industrial countries and in developing countries, in large countries and in small. Perhaps many of us have experienced situations in which violent gangs have taken over entire communities, to the point where the Police cannot enter those communities, or if they do, only under heavy armament and for short periods. Those communities have become what we in some parts of the Caribbean call 'Republics', where the forces of law and order have completely lost control and the domination of the communities by the armed and violent criminal gangs is complete.

The current situation in many, if not all of our countries today, is well expressed in a popular hymn. I will not sing it. I cannot sing to save my life. But the words say;

Look around you, can't you see?

Times are troubled, people grieve.

See the violence, feel the hardness,

All my people weep with me.

We cannot, or should not, be defensive about the Attorney-General's charge. We have to accept that, although Court delay is not the only, or even the principal cause for our growing crime rates, we do bear some responsibility. We must examine the nature, extent and causes of court delay. We will probably find, in most of our countries, that the backlogs in criminal cases are surprisingly large, and that delays are significant. In some cases accused persons are awaiting trials for periods exceeding five years, and many of these accused are on remand in prisons for all these years, while others may be out on bail and committing other crimes. Some of those on remand may be innocent and may be acquitted, but what of the many lost years they spent in prison awaiting trial?

We cannot allow ourselves to be overwhelmed by the extent of the backlog, to throw up our hands in despair and accept that the problem is beyond our capacity to resolve. It is a challenge that we must face head on, and now. Ignoring the problem will only exacerbate it. Backlogs cause further delays, and delay results in increased backlogs. We cannot, as custodians of the justice system, allow the rot to continue. If we do, the tree will die and chaos and anarchy will result. We will all be the losers. No-one will be able to live in peace and security in our islands.

What are the causes of Court delay? They are many and varied, and by and large we lack the statistical data that would enable us to be precise in doing a thorough analysis. Nonetheless none of us involved in the system can have any difficulty in pinpointing a number of bottlenecks in the system that undoubtedly contribute to the delays of which we all complain, and which subvert the effective delivery of criminal justice, and thus the safety and security of the citizen, and the visitor, the maintenance of law and order, and the common good.

Undoubtedly, statutory provisions establishing mandatory procedures for the conduct of criminal trials are one element in causing delay in criminal trials. It is legitimate to ask; why is it necessary to duplicate proceedings by having a Preliminary Inquiry and a trial? Does the former process serve any useful purpose? Even if it does, is its value not outweighed by its disadvantages? Are the rights and interests of the victims, the accused and the society better served by whatever benefits are inherent in the P. I. or by the time saved by eliminating that process? Are there alternative processes which can achieve whatever benefits inhere in the P.I. while reducing the time and other resources which the P.I. consumes? Many of our countries have introduced law allowing 'Paper Committal' but this is not mandatory and can be bypassed by a party who may see advantage in delay, or for other reasons.

Our Court Restructuring project has undertaken a Pilot project in Saint Lucia aimed at establishing a Criminal Division of the Supreme Court which would merge the High Court and the District Courts administratively in the exercise of their respective criminal

jurisdictions. This Pilot project includes the introduction of new Criminal Procedure Rules and processes which would eliminate P.I.s and substitute alternative procedures, including case management procedures and rules regarding early and timely disclosure, which would protect the interests of all parties, including accused persons, while achieving significant economies in the use of time and other resources. It is expected that once this Pilot project has been successfully implemented in St. Lucia, and any problems and shortcomings which will inevitably become apparent in the introductory stages have been ironed out, that the new procedures will be rolled out in the other jurisdictions. This is expected to make a significant impact on delay reduction. At the same time steps will have to be devised to reduce or eliminate backlogs.

Of course, court procedures are not the only, or even the main cause of delay. We are all aware of the tremendous delays that are caused by lack of adequate preparation for trial by Attorneys, including prosecutors, laxity or difficulty in obtaining the attendance of witnesses and sometimes of accused persons, the culture of a high level of tolerance for adjournments, and the resultant complacency of prosecutors and defence Attorneys in fulfilling their responsibility to be ready for trial on the dates fixed for trial.

In Civil matters, with the introduction of the Civil Procedure Rules 2000 and the recognition by all concerned that the responsibility for the management of the Court's resources, including judicial time, lies squarely on the Court, the problem of repeated adjournments has all but been eliminated in most High Courts and in the Court of Appeal. It is now recognized that the Court has the prime responsibility for the efficient administration of justice, and that judges are accountable not only for the quality of their judgments, but also for the efficiency of their Courts. With this recognition has come a policy of zero tolerance for adjournments except for very good reasons. There has been a complete change in the culture of our civil litigation, resulting in a remarkable improvement in the pace at which cases are disposed of, without, of course, compromising the quality of justice administered by the Courts. There is no reason why the same paradigm shift cannot occur in the culture of criminal proceedings. All it takes is a fresh approach to discipline on the part of the Bench, members of the Bar practising

in the Criminal Courts, including Prosecutors, and other Court officials, including process servers. That paradigm shift can come if all concerned become aware of, and accept, their responsibility for the due administration of criminal justice, and of the fact that the present atmosphere of lawlessness which characterizes our present day societies is due, in part, to the laxity which we have demonstrated in the past and up to the present in fulfilling our duties.

It is that realization which motivated our Chief Justice, the Rt. Hon. Sir Dennis Byron, to introduce and pursue so vigorously and single-mindedly the Judicial Reform Programme of which the St. Lucia Pilot Project is but one, very important element. It is that realization which has motivated the Judicial Education Institute, a product and an important player in the Judicial Reform Programme, to organize this Workshop for Prosecutors. It is our hope and expectation that the training and dialogue which will occur this week will contribute greatly, not only to a greater understanding and appreciation of the requirements of your work as prosecutors, but also to the change of culture of which I have spoken and will result in a significant positive impact on the delays which are so much an accepted part of today's criminal proceedings.

I wish you all well in the days ahead. I trust you will enjoy the exchanges and will benefit greatly from them. If you take up the challenge, I have no doubt that the countries which you serve will also realize an immediate benefit and that the unacceptable delays which are now taken for granted as par for the course in the administration of criminal justice will soon become a thing of the past. If we achieve that, it will undoubtedly bring us all great satisfaction in our professional practises, as well as being of great service to our societies.

I wish to recognize and applaud the commitment to, and the contribution of the Government of the British Virgin Islands, and in particular the Hon. Attorney-General, and the work of Justice Hugh Rawlins, Chairman of the Judicial Education Institute of the Eastern Caribbean Supreme Court, and Mr. Terrence Williams, in planning and organizing this Workshop. Special appreciation is due to the Government of the British

Virgin Islands and the Virgin Islands Bar for their very significant financial support for the mounting of this Workshop. Also to the various Governments which assisted in financing the participation of members of the Departments of the Director of Public Prosecutions, to members of the faculty of the Workshop for their willingness, and for the effort which they would have had to put in, and to all of you who showed the interest and made the effort to attend. May God bless your work and may you be rewarded in full measure for the effort that you put into this Workshop and into the performance of your public duty hereafter.