

ADDRESS

BY

THE HONOURABLE CHIEF JUSTICE [AG.]

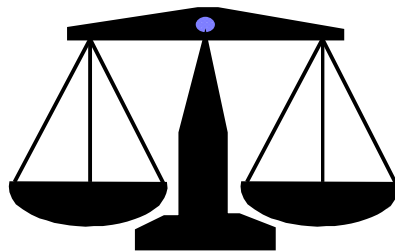
OF

THE EASTERN CARIBBEAN SUPREME COURT

HON. BRIAN ALLEYNE S.C.

TO MARK

THE OPENING OF THE LAW YEAR 2005/2006



TORTOLA

BRITISH VIRGIN ISLANDS

TUESDAY, 20th SEPTEMBER 2005

Protocol List

- € Your Excellency, Mr. Thomas Macan, Governor of the British Virgin Islands
- € Dr. the Hon. Orlando Smith, Chief Minister of the British Virgin Islands
- € Ms. Dancia Penn Q.C., Deputy Governor of the British Virgin Islands; Their Excellencies in the various courts who are sharing in this simulcast
- € Heads of Government of the OECS
- € The Honourable Speaker of the House and other Members of Parliament and of the Executive in the various courts
- € The Honourable Judges of the Eastern Caribbean Supreme Court
- € The Attorney-General, Hon. Cherno Jallow; Hon. Attorneys General of the OECS
- € The Acting Chief Registrar, Registrars and Deputy Registrars of the Eastern Caribbean Supreme Court
- € Chief/Senior Magistrates and Magistrates of the OECS
- € Learned members of the Inner Bar
- € The Presidents of the OECS Bar Association and its constituent Bar Associations
- € All other Members of the Legal fraternity
- € Commissioners of Police and Police Officers
- € Distinguished Guests

€ Citizens of the Eastern Caribbean

€ Ladies and Gentlemen

It gives me great pleasure to deliver what is my inaugural address to mark the opening of a Law Year in our jurisdiction. This is the sixth year that the opening of the Law Year has been marked by simultaneous sittings in each Member State and Territory within our jurisdiction by computerized video link to each courthouse. To date simulcast addresses have been relayed from St. Lucia, the Commonwealth of Dominica, the Federation of St. Kitts and Nevis, Antigua and Barbuda and St. Vincent and the Grenadines. Today, we come to you from Tortola in the British Virgin Islands.

I wish to record our thanks to Cable and Wireless and its related organizations, and the Manager and members of the IT Department at the ECSC Headquarters for facilitating the simulcast of this address throughout our islands.

I also think it appropriate at this time to congratulate the Government of the British Virgin Islands for the steps taken to ensure that today's ceremony and its related events would be of the highest standards. Although we sit today in quite comfortable surroundings, I am aware that plans are underway for the construction of a judicial complex here in the BVI. I would imagine that those facilities are

likely to be a reality on the next occasion that a ceremony like this is held in the BVI.

I divert to express condolences on my own and on the court's behalf to the Dominica Bar and the family and friends of the late distinguished member of our profession, Dame Mary Eugenia Charles, a truly outstanding and remarkable personality of our times.

Reviewing the Year – Changes at the helm

The 2004-2005 Law Year opened in September 2004 with the Hon. Adrian Saunders at the helm of the Eastern Caribbean Supreme Court. Justice Saunders had been appointed as Acting Chief Justice following the departure of Sir Dennis Byron in June of that year to the International Criminal Tribunal for Rwanda, on a 3-year leave of absence.

Just six months after Justice Saunders addressed by simulcast from St. Vincent and the Grenadines, he would himself leave our Court to take up the esteemed position of Judge of the Caribbean Court of Justice, the highest appellate court in our region. I wish once again to congratulate Justice Saunders on his appointment and his recognition as one of the eminent jurists in the region .

I would like to commend both Chief Justice the Rt. Hon. Sir Dennis Byron, and Justice Saunders, on their unwavering commitment to improving the administration of justice in our sub -region.

I make this address as the 3rd Chief Justice of the ECSC in 18 months and I am well aware that because of the exceptional quality of both Sir Dennis and Justice Saunders, I have a hard act to follow. Today, I feel extremely honoured to preside over a Court, which can hold its own with any court in the Commonwealth because of the high judicial standards that it strives to uphold.

The first simulcast address by the Chief Justice was delivered in 2000. At that time when speaking from St. Lucia, Sir Dennis Byron had this to say; “these addresses are intended to review the past year, and to report on projected activities for the ensuing year. It is also to emphasize our intention to render artificial the physical divide that the sea has created between our various Member States and Territories”. This address is an important part of our duty of accountability, as servants of the people of our sub -region. I hope that at the end of my address, you would conclude that what was intended would have been achieved.

Loss of a great man and jurist – Telford Georges

Before I proceed further, I would like for us to acknowledge what has been a monumental loss to the legal world, the passing of the Rt. Hon. Justice Telford Georges, O.C.C. in January of this year.

Telford Georges served the law and the legal profession both regionally and internationally with great distinction and I dare say without compare.

Our Court remembers Justice Georges, among other things, for his service on the Judicial and Legal Services Commission from 1999 until his retirement in December 2003. We join his family and friends in mourning the loss of this great man and eminent jurist.

Review – The Judiciary

As previously mentioned the ECSC lost Justice Adrian Saunders to the CCJ in March of this year. Justice Denys Barrow S.C. filled the vacant position on the Court of Appeal.

In June, with the concurrence of the Heads of Government, the number of Justices of Appeal was increased from 3 to 4 and Justice Hugh Rawlins became the 4th Justice of Appeal with effect from 1st September.

As the Chief Justice's position is presently filled in an acting capacity, there remains a consequential acting vacancy on the Court of Appeal.

At the High Court level, Justice Suzie d'Auvergne retired last October after 14 years of outstanding and dedicated service. She continued to serve as an acting Justice of Appeal until December.

Justice Charmaine Pemberton resigned this March, returning to her native Trinidad and Tobago to take up a judicial appointment. We congratulate her and wish her well.

Justices Gertel Thom and Sandra Mason Q.C. have now filled 2 of the vacant High Court positions. The recruitment process for other vacancies is well advanced and we anticipate that by the end of the Law Year there will be permanent appointments to complete the High Court complement of 16 judges. I think this is an opportune time to recognize the contribution of Justice Murray Shanks, who agreed to serve as an acting High Court Judge, assigned to St. Lucia, at a crucial time.

The year has also seen quite a bit of movement at the High Court level, with a number of new postings and the redeployment of the judicial resources throughout the jurisdiction. Of notable

mention are the assignments in respect of Grenada and Antigua and Barbuda.

The havoc caused to Grenada by Hurricane Ivan severely affected the justice system in that island. The High Court building, the Registry and a substantial number of lawyers' office were severely damaged and consequently, the system came to almost a grinding halt. Having reviewed the situation, it was decided that 2 judges could adequately provide the necessary judicial support during the recovery and rebuilding phase, and the third resident judge has been redeployed to another State.

In the case of Antigua and Barbuda, an analysis suggests that at this time, 2 resident Judges and the resident Master can handle the case-load in that State. Again, the 3rd judicial officer has been deployed to another State, the Federation of St. Kitts and Nevis, where reports show that additional judicial support is required. That judge will reside and sit primarily in Nevis and will also serve Montserrat and Dominica as the workload dictates.

We intend to continue to use the reports generated by JEMS to ensure that all our limited resources are utilised to optimum effect at all times and that a quality justice system is maintained.

A Unified Judiciary

The issue of recognising the Magistracy and integrating the Magistrates more fully into the regional Judicial system is an issue that has engaged the attention of the Court and the Governments for a very long time. A number of important studies have been done, most recently by the late Justice Telford Georges and Mr. Charles Maynard, who presented their Final Report on June 17, 2002. This consultancy was funded by the Canadian International Development Agency (CIDA) under the Judicial and Legal Reform Project, and we are in the process of considering its findings and recommendations. At the last meeting of the Authority of the OECS Heads of Government held in Dominica I was mandated to begin work on preparation of legislation to facilitate efficiency and effective functioning of the Magistrates and District Courts of the OECS. I expect that at the Magistrates' Conference at the end of this week that will be an important issue for discussion. Issues of efficiency, accountability, effectiveness, management and administration, judicial independence, ethical standards, all must come in for consideration. The anomaly whereby some Magistracies and some Magistrates consider themselves accountable to the Executive through the office of the Attorney-General, or on the other hand accountable to no-one, is a matter that must engage our attention and the attention of the Executive. Unquestionably, there is a level at

which the Magistracy is accountable to the Executive in relation to its administrative and financial structure and function, but what of its judicial efficiency and effectiveness, performance, productivity and attitudes. I address this issue generally under the topic JUDICIAL ACCOUNTABILITY.

Hon. Mr. Justice Hugh Small, Supreme Court, Bahamas, at a Legal Education seminar in 2000, quizzically ruminated on the question;

“How are we to hold robed and bewigged authority to account? Members of the judiciary have power to not merely interpret the Constitution and the law, they have power to make decisions that affect the human and property rights of individuals.”

In addressing the issue, and in the context of the fact that the judiciary exercises State Power over individuals and also over other arms of Government, Justice Small asserts; “The judiciary, even more than the Executive and Legislative branches of Government, has the obligation to be fair in the conduct of its duties. It must also maintain the appearance of fairness.” In itself this statement is not remarkable, yet it may strike some among us as startling in its implications.

Justice Small quotes Lord Bingham, the senior Law Lord, who, after firmly declaring the necessity of judicial independence for the fair and proper functioning of democratic government and society as a

whole, by laws justly and fairly administered “by men and women who have no other obligation save to justice itself”, makes the radical statement that judicial independence

“does not mean that judges are licenced to do exactly as they like. Quite the opposite. Because society grants the judges, for the greater good of the public, certain important privileges, it is entitled to, and does, expect of the judges very high standards of propriety, integrity, assiduity and personal conduct.”

The difficulty inherent in the issue of accountability and discipline of an independent judiciary, (and I include the Magistracy) was recognised by Justice Small in quoting the distinguished Australian Jurist Mr. Justice Kirby;

“The danger of a too easy and intrusive system of discipline for judges is that judges will be made constant targets by disgruntled litigants, professional rivals, media editorialists who thirst for simple (and generally more punitive) solutions to every problem, and politicians or others on the make.”

The Courts Order provides for the removal from office of a judge “only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour,” by order of the Judicial and Legal Services Commission if the question of his removal from office has been referred to the Judicial Committee of the Privy Council and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability or misbehaviour, after a tribunal

appointed by the Chief Justice has enquired into and reported to the Chief Justice, with a recommendation.

The power to exercise disciplinary control over Magistrates, including the power to remove them from office, is vested by our Constitutions in the Judicial and Legal Services Commission. It is sometimes apparent that Magistrates consider themselves to be accountable, if accountable at all, to the Attorney-General, and thus to the Executive, of the State by which they are employed and in which they serve. Not only is this wholly contrary to the Constitutions of our States, it is also fundamentally contrary to the basic Constitutional principles of the separation of powers and the independence of the judiciary, of which the Magistrates are a very important part, a fact which is often overlooked. Section 8 of the Constitution of St. Vincent, for example, provides that cases involving persons charged with crime, as well as cases involving the determination of persons' civil rights or obligations, shall be given a fair hearing by an independent and impartial court established by law, and shall be heard within a reasonable time. So judicial officers are accountable, under the Constitution, for the delivery to litigants of a fair hearing, in an independent and impartial manner, within a reasonable time.

Independence, however, does not imply the absence of accountability. The fact that Magistrates are not accountable to the Executive does not, of course mean, that they are not accountable to anyone. The concept of accountability is indeed inseparable from the concept of responsibility, and few would question that the judiciary needs to be responsible for its actions, its efficiency, its impartiality, its competence, its independence, and for maintaining public confidence.

Rev. Dr. Phillip Potter, the distinguished Dominican former General Secretary of the World Council of Churches, in addressing the issue of personal independence in what he termed the present Age of Anxiety, said

“If life lived in freedom is not a personal responsibility it is a pathetic farce.”

Freedom, independence, privilege, carries with it responsibility. Dr. Potter says

“We are not to be passive bearers of our own and others’ anxieties. Rather we take them actively on ourselves in order to be instruments of God’s assault on anxiety.”

In the same manner, judicial independence requires that we take actively on ourselves the responsibility to do justice impartially, effectively, efficiently, and with competence.

The continued existence of the independent judiciary depends on the periodic agreement of the Executive to continue to fund it, and the concurrence of the Legislature, in voting the funds to do so. So we are accountable to the public through the Executive and the Legislature. Our independence demands, not the absence of accountability, but that we take responsibility for the impartiality of our judicial actions, excluding all improper influences; for our competence, for our efficiency and effectiveness; that in rendering our judgments and in conducting our judicial affairs, we are answerable only to the law and to our conscience. Independence does not immunise us from the consequences of prejudice, laziness, incompetence, rudeness, lack of consideration for the interests of those who approach the seat of justice.

The failure to recognise that we, as judicial officers, are accountable, has led to such problems as an excessive tolerance for adjournments, a lack of respect for the Bench on the part of members of the Bar (and Police prosecutors and investigators) who take it for granted that any spurious application for an adjournment will be accommodated; consequential unacceptable delays in the disposal of cases, and

neglect, even refusal, by some judicial officers to respond to requests from the office of the Chief Justice for statistical or other information. Is it that they consider this an invasion of their independence? Are they answerable to no-one? Are they, in light of the hallowed principle of judicial independence, entitled to do just as they wish, regardless of the public interest? A small minority of judicial officers behave as if they are a law unto themselves. The result is that there is among members of the public a growing loss of confidence in the administration of justice. Much public attention in this regard is focused on the Police and the Governments, but we must acknowledge that the judiciary bears its share of responsibility for this situation, and we in the office of the Chief Justice are determined to come to grips with it and to deal with the problem wherever it exists.

To the extent that members of the judiciary fail to recognise their accountability, and to take responsibility for their actions, or for their inactivity or ineffectiveness, to that extent the institution of the judiciary is discredited, suffers loss of public confidence, and ceases to attract, or to deserve, the prestige and privilege which we enjoy. Such loss will not be our loss alone or even primarily, but the loss of the entire society, of all our people, who are entitled to rely on us for the protection of their rights under law in a fair, efficient, effective system for the administration of justice.

I say all this in the context of a statement by Dr. Nihal Jayawickrama, a member of the Sri Lanka Bar, but equally applicable to us in the OECS. He writes¹;

“In the face of growing evidence that public confidence in judicial systems is being undermined, the responsibility to restore it rests primarily with the judiciary. If the judiciary neglects to do so the legislature and the executive will surely and necessarily intervene, and by so doing will irreparably erode the principle of judicial independence upon which the judiciary is founded and by which it is sustained.”

The Heads of Government of the OECS at their last Authority meeting in Dominica mandated me to begin work on preparation of legislation to facilitate efficiency/effective functioning of Magistrates' and District Courts of the OECS. They are losing patience with us, and if we do not begin to effectively regulate ourselves, the danger exists that the Executive and the Legislature may be tempted to do so. Presently the Magistrates Courts and District Courts are directly under the national administrative structures of each individual State and Territory. Much thought has been given and studies done into the regionalisation of the Magistracy. The most recent is the Telford Georges/Charles Maynard Report funded by the OECS and CIDA under the Judicial and Legal Reform Project, and delivered in June 2002. This Report recognises certain Constitutional constraints which

¹ Commonwealth Law Bulletin Vol. 28, No. 2, 2002.

have to be overcome, a process fraught with difficulty, as we have seen in relation to the Caribbean Court of Justice. We are currently giving consideration to the alternatives considered by the Consultants, the most practical, in the short term, seeming to be a recognition of the national status of each Magistracy, with a national Senior or Chief Magistrate, and with the Magistrates accountable through that senior official to the Chief Justice through a unit in the office of the Chief Justice, from where regular visits would be paid to the units with a view to keeping a constant review over the functioning of the Magistracy. We must, of course scrupulously avoid any risk of compromising the judicial independence of the Magistrates. The process of integration may well be advanced by the Court Structures Project which I next address.

Court Structures Project

The Court Structures Project has been the highlight of the ECSC initiatives over the last 12 months. Although you may already have some information on the Project, as it is nevertheless, so important at this stage, I think it would be helpful to give some relevant background information.

In January 2004, the Heads of Government of the OECS endorsed the restructuring plan or court structures project proposed by the Eastern Caribbean Supreme Court (ECSC) to modernize the trial courts by

the administrative merger of the High Court and District/Magistrate Courts. The plan included the creation of 4 specialized court divisions, namely, Criminal, Civil, Family, and Commercial.

The Project proposed that the four Divisions of the Court would be under the control of a Managing Judge who would report directly to the Chief Justice. His administrative team would be headed by a Trial Court Administrator, who would report to the Court Executive Administrator at the ECSC Headquarters. Each Division in turn would be headed by a Presiding Judge, assisted by a Division Manager. Consideration would also be given to recommending that the nomenclature for legally trained judicial officers at the summary level be changed from "Magistrate" to "District Judge". It is the view that this recommendation which was made at the CARICOM conference in January 2003, will serve to enhance the status of these officers in the community and hence improve their effectiveness as a result of a heightened public respect.

It was decided that the project should proceed on a pilot project approach at sites throughout the jurisdiction. It was clear from the outset that the success of the project was dependent on the availability of an adequate and supportive administrative and management structure including: human resources, automation, space and facilities, and coordination.

The Government of St. Lucia volunteered its jurisdiction as the site for the unified trial courts in the Criminal Division, because of its concern that the high level of court backlog and delays in the criminal justice system required immediate and urgent attention.

Because of the constantly increasing levels of commercial activity in that territory, the British Virgin Islands was identified as the pilot site for the Commercial Division. It was appropriate that the ECSC initiatives in that area supported the steps taken by the Government of the British Virgin Islands to provide the efficient and responsive judicial service, required by a high demand and economically crucial sector.

Contribution Arrangement with CIDA

In June 2004, the ECSC entered into a contribution arrangement with the Canadian International Development Agency (CIDA) for the continuation of a Judicial & Legal Reform (JLR) Project focusing on court reform initiatives aimed at improving efficiency in the Magistrates Courts and supporting the Court Structures Project in general. A Project Work Plan was submitted to Member States earlier this year for information purposes. It should be noted that included in the Work Plan is the development of a Strategic Plan for the ECSC, which is now available in draft form.

The Status of the various Divisions is as follows;

Criminal Division

Significant attention has been paid to the Criminal Division over the last 18 months with Saint Lucia being the site where the most work has been performed and where some success has been realised. Retired Justice of Appeal, Albert Redhead, in his capacity as an acting High Court Judge heads the division.

In addition to the Administrative Reforms contemplated by the Court Structures Project, it is suggested that each island will establish a hierarchy for the judiciary with the Magistrates/ District Judges being accountable to a Presiding Judge who in turn would report to a local Managing Judge. The Managing Judge in each island would report to the Chief Justice.

These changes would help with the development of judicial independence and efficiency and it will put in place more structured procedural measures to allow monitoring and evaluation of the performance of the Magistrates by the Chief Justice.

In March 2005 the lead consultant for the court structures project Mr. Robert Lipscher, was invited by the Government of Antigua and Barbuda to assess that Member State's readiness for the pilot project to be replicated in that jurisdiction. A presentation was made to the government of Antigua and Barbuda which is reported to have been embraced with much enthusiasm. The ECSC will work with the

Government of Antigua and Barbuda to implement the recommendations that were made by the Consultant.

The ECSC is working towards replication of the court structure reform programmes and it is anticipated that various aspects will commence implementation in the other Member States by the first quarter of 2006.

Commercial Division

Work started from November 2003 on the establishment of the Commercial Division in the British Virgin Islands. In August 2004, following the completion of the preliminary information-gathering exercise and the presentation of a report by a committee appointed by the Government, a formal proposal was submitted for establishing the Commercial Division of the ECSC in the British Virgin Islands. However, the Court was subsequently advised that the BVI was in the process of appointing a consultant to conduct an independent review so that recommendations on the way forward could be made to the Government. We are awaiting word from the Government of the British Virgin Islands on this matter. I thank the Chief Minister, the Deputy Governor, and Mr. Joseph Archibald Q.C. for sharing their thoughts on the topic at the OECS Law Fair last week, and commend the suggestion made by Mr. Gerald Farara Q.C. to the

Chief Minister that the Bar of the British Virgin Islands be brought directly into the dialogue and the decision-making process on the issue. I wish to assure the Government and people of the British Virgin Islands of the Court's continued support in regard to the implementation of the Commercial Division.

Family Division

In this area there has been some work performed by the Lead Consultant, Mr. Lispcher, and a draft proposal has been developed for the division for consideration of the Chief Justice.

Civil Division

Not too much work has been done on the Civil Division. The establishment of the Civil Procedure Rules 2000 has already introduced a number of measures which will support the changes which would be necessary as work progresses towards the establishment of this Division, and we already have draft Small Claims Rules, which is in itself a major step towards the establishment of this Division. A pilot site has not yet been formally identified, but it is hoped that an implementation plan for the next steps will soon be formulated.

Technology in the Judicial Process

Technology has continued to play a major role in the improvement of the judicial process. Along with our new procedural rules (if after 5

years that remains an apt description) the Judicial Enforcement Management Systems or JEMS is the main case-flow management tool. JEMS has been upgraded in each of the High Court offices and provides easy access to case information in the system. This information is necessary for management purposes and for ensuring that resources are adequately provided and utilized. The reporting functions of the system also allow for review of the court's efficiency by island, by judicial officer, by case type and other categories.

I am pleased to announce that the JEMS has now been introduced at the Magistrates' court level. The software has been installed in every magistrate court office throughout the jurisdiction with the exception of Antigua and Barbuda because of logistical difficulties. The requisite hardware has been provided in the independent States by USAID and CIDA and in the overseas territories by the respective governments. The Court wishes to express its gratitude for the support of the governments and the donor agencies in these important initiatives.

Plans from last year to introduce the jury management, imaging and prosecutors modules of JEMS have not proceeded at the anticipated speed. Some preparatory work has been done in St. Lucia in relation to the jury management software but a full implantation has been delayed to some extent by the need for a revised Jurors' List and this exercise is still to be completed. In addition, with the ongoing

Criminal Division implementation activities, the already limited court office resources are stretched.

We are moving forward with imaging and e-filing and this will be a major focus during the coming months.

We continue to encourage the court offices to optimize the use of all the technological solutions which have been put at their disposal. We have ensured that the relevant training has been done and we know that if used effectively, not only will communication and the quality of information be improved, but savings will be generated because of the cost-effective nature of these technological solutions.

One other major area where a technological solution is now available to improve the judicial process is in the area of court reporting. With the exception of the British Virgin Islands, which is home to the highly regarded B.V.I. Court Reporting Academy, and to a lesser extent the Commonwealth of Dominica, which several years ago had the benefit of 2 trained court reporters, automated court reporting is relatively new to the rest of the jurisdiction. With funding assistance from USAID, the ECSC facilitated the training of court reporters from every State in the Court's jurisdiction. These officers have now returned home and the actual use of the technology in the courtroom is at various stages of readiness. By the end of this Law Year, it is

hoped that court reporting units will be established, improving the efficiency of both the trial and appellate processes.

I wish to commend the government of St. Lucia for taking steps to ensure that a national court reporting unit was established in a relatively short time, thereby allowing the court reporters to optimize their training by putting their skills to use quickly. This can only enhance the work that the certified Court Reporters are immediately able to produce. To date, the Unit has focused on clearing the backlog of appeal transcripts, many of which have been outstanding for more than 3 years and I dare say that 1 and 2 day sittings of the Court of Appeal in St. Lucia will soon be a thing of the past.

Still on the subject of technology, the ECSC website was developed in 2000, with the intention of ensuring our accountability to the public by the provision of accurate and current information. The website has provided access to the Court's judgments, newsletters, hearing lists, and other information on the work of the Court. From the feedback we received the website had become quite a "favourite" for judges, practitioners, litigants and some members of the public. It is a sign of the importance of this medium when we consider the frustration experienced by some persons, and I take the liberty of mentioning retired Justice Ian Mitchell Q.C. in particular, as the website has slowly and completely disintegrated.

I can happily report that following a recently concluded consultancy, our new and improved website will soon be launched. You will be pleased to know that we intend to include a search facility for the judgments database. Our Information Services Manager has been working tirelessly with the consultant to put things in place and only some technical difficulties regarding the posting of the judgments remain to be resolved. A very important new feature of this new website is the Judges' secure electronic discussion forum which will enable quick, secure interactive communication between our Judges on matters of interest. We hope that in time Registrars and Magistrates may develop their own electronic discussion forum to bridge the geographical gaps and to assist them in their work.

I should mention here our Annual Report, which was issued last year, and will be available for this year very shortly. Also the Eastern Caribbean Law Reports, already published for 1996, 1997, 1998, 1999 with further volumes being worked on.

Court Administration

An efficient and effective judiciary must be supported by a technically competent management and administrative system. The development of the court administration component of the Eastern Caribbean Supreme Court has been one of the priorities of our reform process.

During the last year, we have strengthened the department with the recruitment of a Deputy Court Administrator, who has as one of his main functions taken on the management of the OECS/CIDA/JLR court efficiency improvement projects under the OECS/CIDA Agreement.

Administration of the various Magistrates' and District Courts is of continuing concern and is the subject of a separate exercise.

Our IT Department now has the services of a System Administrator, as we continue to introduce new technology and upgrade current technological solutions to improve the judicial process.

In the coming year, we intend to develop our Human Resource management capacity. Presently, our HR Unit has 1 professional officer, who also functions as the Secretary of the Judicial and Legal Services Commission, and 1 clerical officer. This Unit must provide all the HR for all our Judges, and the staff at the ECSC Headquarters as well as give technical support to the Judicial and Legal Services Commission. We consider that it is important we concentrate on this vital area of management at this time. We also need to strengthen our relationship and communication with the separate Judicial and

Legal Services Commissions of the three Dependent Territories which the Chief Justice also chairs.

Mediation

Under the stewardship of our Regional Mediation Coordinator, mediation training has now been completed in all the member States. The Judicial Education Institute has facilitated the Training of Certified Mediators and for those member states who have recently concluded training the Roster of Mediators is being completed to permit cases to be referred to Mediation.

In order to facilitate the mediation sessions, it will be necessary for the member states to provide proper and fully-equipped facilities. The absence of such facilities, and in the case of Grenada the effects of hurricane Ivan, has affected the full implementation of the programme in some States.

Judicial Education

Judicial Education continues to be the foundation of the success of the reform process. It relates not only to the judiciary and judiciary support staff but also to the legal profession, litigants and the general public throughout the jurisdiction.

In August, we re-institutionalized the ECSC Annual Conference of the Judges of the Supreme Court. The Annual Judicial Conference serves as an opportunity for the judges to be exposed to continuing legal education as part of the strategy to ensure the very highest standards of judicial performance, as well as providing an opportunity for judges and Registrars to discuss among themselves in an informal atmosphere issues relating to the court throughout the geographically dispersed jurisdiction of the court. Provision has been made in the Budget to facilitate this activity.

There was a new format for the Annual Judicial Conference this year, with a 2 day Judges-only conference, which had as its theme "the Criminal Trial – New Perspectives from the Bench", a 1 day conference for Judges and Registrars and a 1 day conference for Registrars only.

The JEI is now preparing for the newly instituted annual Magistrates' conference, which will take place here in the British Virgin Islands later this week.

Procedure

It is my intention to formalise the establishment of the Rules Committee required under s.17 of the Supreme Court Order, and to address issues of revisions of the CPR 2000, in consultation with judges and practitioners, without delay.

THE BAR

Just as the public relies on the judiciary for the promotion and protection of their rights, so they rely also on the legal profession. The honorific titles given to our profession carry with them certain definite implications and expectations. The word "Attorney" connotes the concept of *uberrimae fides*, the highest degree of trust, and "Advocate" implies "one who comes to the aid of others, opening out the issues which are at stake".²

I will not on this occasion say much about the damage being done to the reputation of the legal profession by a few delinquent members of that honourable profession, only to say that I am determined to take steps to deal with the many complaints that come to the office of the Chief Justice of serious and in some cases persistent neglect of professional duty by some practitioners, including some very senior practitioners. We cannot escape the reality that any unseemly conduct, any dishonest or discreditable activity by any member of our profession, demeans the entire profession, and by failing to deal with complaints fairly, expeditiously and in a transparent manner, we contribute to the loss of reputation and standing of the entire profession. I welcome the resolution of the Executive Committee of the OECS Bar Association to undertake seriously the profession's

² Phillip Potter, *Life In All Its Fullness*, 1981, page 32.

responsibility to ensure the maintenance of the expected standards, of integrity and professionalism, of accountability, honour and competence, which are expected of us by our clients and the public at large, and which we should demand of ourselves and our colleagues in the profession. There used to be a category of offender in the criminal law known as incorrigible rogues and vagabonds. That term has gone out of common use in the criminal law. Let us not cause it to become a term used in relation to any group or individual in our honourable profession.

APPOINTMENT OF QUEEN'S COUNSEL

Queen's Counsel or, in the case of Dominica Senior Counsel, are the leaders of the profession, recognised as such by the State on their merit as advocates, as judged by the judiciary and the professional community. So said the Lord Chancellor of England, Lord Mackay of Clashfern, in an article in a professional magazine several years ago. The honour is no longer limited to persons practising as advocates, but is conferred on persons who have demonstrated excellence, high integrity, and leadership in all branches of the profession.

There are presently outstanding from a number of States and Territories applications by Attorneys-at-Law to be elevated to the rank of Queen's Counsel or, in the case of Dominica, styled Senior Counsel. There are well established procedures leading to a

recommendation by the Chief Justice for such appointments, involving consultation with the applicant's colleagues at the Bar, the local and regional Associations, judges before whom the Attorney practises, and others.

Taking silk is the pinnacle of the career of a practising Attorney -at-Law, and there are certain criteria which must be met as a pre-condition for a recommendation by the Chief Justice. It must be said, however, that meeting these criteria does not entitle an applicant to favourable consideration. Further, the final decision is made by the Head of State (Governor-General, President or Governor) on the advice of the Head of Government (Prime Minister or Chief Minister) as an Executive act, following the recommendation of the Chief Justice.

The status of Queen's Counsel/Senior Counsel has traditionally been considered a hallmark of quality as an advocate and a leader of the Bar. As mentioned earlier, the honour is no longer conferred exclusively for skill in advocacy, but other important and specialised legal skills are given due consideration. The candidate is expected to be of impeccable character and sound reputation, highly regarded and well respected by his or her colleagues at the Bar and by the Bench, both for his or her professional expertise, integrity, courtesy,

leadership qualities within the profession, helpfulness and accessibility to junior members of the profession.

The settled procedure for consultation involves members of the local and OECS Bar Associations, members of the Bench and such other persons with whom the Chief Justice may choose to consult. The OECS Bar Association has established a committee called the Silk Review Committee for purposes of consultation. An effort is made to maintain a reasonable proportion between the total number of practicing advocates and the number of silk in any State or Territory.

I intend to shortly embark on a round of consultations on the outstanding applications and to make recommendations in due time to the relevant Heads of State.

The Vision

Despite limitations of resources, geographical dispersal, the unique international character of the Court as a Court serving nine separate national jurisdictions and thus the third branch of Government in nine separate States, depending for our resources on the commitment of the Executives and Legislatures of all these States, I am determined to maintain and enhance the quality of judicial service which has been provided by our Court. I believe that the development and sustenance of continuing judicial education, the constant review of procedural rules and judicial and administrative practice, a

commitment to the ethical standards to which we subscribe, and the maintenance of discipline, and fellowship, within the judiciary and the Bar, are essential prerequisites for the realisation of this objective, to which I commit myself and the Court. There are many challenges which we confront and many issues with which we have to constantly grapple. The recent murder of a young prosecuting Attorney in this jurisdiction, and recent threats issued against a judge sitting in Court in another jurisdiction, may be an indication of a new dimension in the administration of justice in our jurisdictions. Maintaining our integrity and independence, and the quality of justice which we are committed to delivering, takes courage and firm resolve. I call on all within the system, Judges, Registrars, Magistrates, Attorneys-at-Law and all support staff, to demonstrate your courage and stiffen your resolve to fulfil the expectations which our citizens have, and are entitled to hold, regarding our service through the judicial arm of the State.

I thank you all, especially my colleagues in the judiciary, the Chief Registrar, Deputy Chief Registrar and staff at the Court's Headquarters, and the Registrars, Deputy Registrars and staff in the constituent Court offices, for your support and participation in this important endeavour, and pray God's blessings on you all.

Thank you.