

"Improving Efficiency and Integrity in the Administration of Justice in Times of Economic Adversity"

# **Address By:**

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DBE, Chief Justice
to mark The Opening Of The Law Year 2012 – 2013

#### INTRODUCTION

Good Morning. I would like to welcome you all warmly to this opening of the Law Year 2012-2013 which is being carried live via simulcast to the neighboring Member States and Territories of the Eastern Caribbean Supreme Court. I am honored; and I thank you sincerely for your presence. This being my first address since assuming the office of Acting Chief Justice, I would like to publicly thank the Honorable Heads of Government for the opportunity to serve the Court and the region as Acting Chief Justice. It is indeed an honor and a privilege to serve our region in this capacity and I pledge my commitment to continue the good work, started by all my predecessors, towards the administration and advancement of justice for the citizenry of the OECS and the wider Caribbean.

## Retirement of Sir Hugh A. Rawlins

Before commencing this address, I must take the opportunity to publicly express my gratitude to Sir Hugh A. Rawlins for his unrelenting service to the Eastern Caribbean Supreme Court. He unstintingly gave dedicated service, and now joins the rank of the many great Chief Justices who have served the Court as remarkable jurists and inspiring mentors. Sir Hugh placed his indelible mark on our jurisprudence through his erudite judgments and formidable leadership which guided us over the past four years.

Sir Hugh, the Eastern Caribbean Supreme Court will continue to be grateful for your sterling contributions to the advancement of justice; and Lady Rawlins, we thank you for lending him to us. We wish God's continued favor upon your lives. May the Lord lift up His countenance on you and give you peace.

#### Ladies and Gentlemen,

We are currently living in extremely difficult economic times, where sustainability demands that businesses responsibly manage limited resources and still remain productive. It is no different for us in the judiciary. The impact of the economic downturn is being felt in all our Member States and Territories and no less so on the judiciary.

The case load of our courts has continued to increase steadily, which in turn has led to increasesd administrative costs in the face of shrinking budgets and decreased contributions. However the Judiciary of the Eastern Caribbean Supreme Court, although faced with resultant challenges, one of which is the absence of the optimum quota of judges will continue to maintain its efficiency with the available resources. I wish to emphasize that the quality of justice will not be compromised, not even in these harsh and difficult economic times. With that commitment, the Judiciary has embarked on several initiatives to help improve efficiency in the face of the worldwide economic adversity which has impacted our Member States and Territories.

This brings me to the theme of my presentation today, "Improving Efficiency and Integrity in the Administration of Justice in Times of Economic Adversity".

Efficiency and integrity are ingrained in the mission and vision statements of the Eastern Caribbean Supreme Court, "To serve its Member States by providing access to a system of justice that is accountable and independent ... in a prompt, fair, efficient and effective manner". Inherent in "access to justice" is the "... guarantee that each citizen is able to acquire the necessary knowledge, understanding, awareness and ability to exercise [his/her right to justice] through formal as well as informal institutions ..."

Public education/community outreach is a crucial factor as we seek to facilitate this knowledge, understanding and awareness. Additionally in our bid to maintain accountability and transparency, information about the Court should always be accessible and pertinent so that those whom we serve can better understand the workings of our Court. The Court's website has proven to be a very practical and economical tool to make information available to all persons who wish to access it. Over the years, we have continually sought to maintain a site that is easily navigable, with timely updates to provide the requisite information. Our Court's website www.eccourts.org provides access to judgments delivered in all of our nine (9) Member States and Territories, both at the High Court and the Court of Appeal. This facilitates equity in access to information; those of us who are interpreting the law in the higher courts are being supplied with up to date copies of unreported judgments relevant to the points we are deciding; and at the same time they are also available to persons throughout the Member States and Territories, and this does not mean only lawyers.

The Website also provides relevant court forms, the Civil Procedure Rules 2000 and its recent amendments, Practice Directions, sittings of the various courts and digests of all matters heard by the Court of Appeal as it sits in its itinerant role in the Member States and Territories. Detailed accounts of our Court's initiatives and departmental reports are documented in the annual reports, and these are also available on the Website. I implore you to visit and keep informed about your court.

As the judiciary seeks to promote efficiency and integrity and maintain the trust and confidence of the people of our region, the Eastern Caribbean Supreme Court is committed to initiating, supporting and participating in programmes designed to enhance the public's understanding of the law and the judicial system - the role and functions of the Court and the way judges rule according to the law; thus keeping the community informed and confident in a system that eschews inequity and embraces equal access to all.

As a result we are proposing in the coming year to commence an outreach programme to promote court transparency (Open Court). It is intended that this initiative include educational

programmes for schools, media, and counsel, using forums such as television features, radio interviews, newspaper articles, judges' discussions, town hall meetings and conferences. It is also proposed to have bulletins, as is necessary, published on our website; all in an effort to continue improving access to justice and maintaining confidence in the judiciary.

I will now provide you with brief updates on the Court's achievements, particularly its reform initiatives projected in the address of the previous year; and apprise you of the plans for this new law year; plans which demonstrate our commitment to continue to improve access to justice in a cost effective manner given the difficult financial times which we are all presently facing. As mentioned earlier more comprehensive accounts are outlined in our Annual report, which I invite you to peruse at your leisure.

A free society exists only when governed by the rule of law and judicial efficiency and integrity are essential elements of the rule of law. It is anticipated that as I outline some of what we have achieved during the last year and the plans that we have made to continue, you will be convinced of our commitment to service and the provision of a system of justice that is free and fair; a system of justice propelled by efficiency and integrity.

#### **ACHIEVEMENTS**

Much has been said over the last law year, about the Court Structures Project, the Halls of Justice Project and the Integration of the Magistracy Project.

## **Halls of Justice Project**

At the close of the 2011 calendar year the Final Report on the Feasibility Study for the Halls of Justice Project was completed.

In the coming year we intend to move into the next phase of the project which is the preparation of final designs to include mechanical and electrical drawings and the tendering stage for construction. The Court will take into consideration the interest shown regionally and internationally for the involvement of private-sector-led initiatives in funding this project at both the national and regional level. However careful analysis will be done on the proposed terms offered to the Governments by those entities. The Court has presented these proposals to the Heads of OECS Governments for their approval and is now ready to progress into the next stage. Much of the work to date has been funded via a grant from the Caribbean Development Bank for which we are very grateful and efforts are continuing to identify as much donor funding as possible for the next phases of the project.

## **Integration of the Magistracy**

Over the past year the Court's main focus has been the procurement of funds for the completion of the main programme of events leading to the greater integration of the magistracy into the judiciary. I am pleased to announce that a Practice Note entitled "Magistrate Style and Title and Dress in Court" was issued by my predecessor Sir Hugh Rawlins. The purpose of the Practice Note is to change the form of address of Magistrates with the intention of promoting uniformity in the ECSC in the Style and Title of Magistrates and to permit Magistrates to wear robes when presiding in court and at other official functions. The Practice Note which came into effect on 1st September 2012 provides that Magistrates should now be addressed as "Your Honour" instead of "Your Worship" and that Magistrates may be robed on the bench. This, though seemingly a small step, is indeed momentous as it is one step closer to the full integration of the magistracy.

## **Salaries of Magistrates**

A comparative study was conducted on salaries and emoluments of magistrates across the nine Member States and Territories as a precursor to efforts which will be aimed at the harmonization and standardization of salaries and remuneration across Member States and Territories. Issues relating to remuneration are extremely important if we are to attract the quality of persons into the judiciary to continue achieving the desired improvement in access to justice. In the coming law year the Court will continue to aggressively pursue this project with the eventual aim of achieving full integration of the magistracy into the judiciary.

#### **Court Structures**

#### 1. Criminal Division

The increase in the volume of criminal matters filed in our courts has propelled the Court to aggressively pursue implementing the specialized Criminal Division in the judiciary with a view to providing a more effective case management system in criminal matters.

The Criminal Division pilot has been successfully implemented in Saint Lucia, and work on

similar pilots continues to progress in other Member States and Territories where all indications show that continued success with implementation is imminent.

Over the last year the Court has focused on evaluation of the Criminal Division in Saint Lucia as part of the strategy to improve the system prior to replication in the other Member States and Territories. Comments and complaints about the new system and its effectiveness were investigated, the results of which will be communicated via the Court's website.

In the meantime, work on the Criminal Division in the other Member States continues, with progress being reported in Grenada and Dominica. New case management procedures have been proposed to coexist with existing laws and practices in those Member States and I am happy to report that these new procedures have been already circulated and discussed with the Magistrates and Judges of Antigua & Barbuda, Dominica, Grenada, the Territory of the Virgin Islands and St. Vincent and the Grenadines, and that these will serve the system well in the management of criminal cases.

In addition, sentencing and bail guideline documents which were adopted from the British Courts were introduced and discussed with the judicial officers of both the High and Magistrates Courts. It is our hope that these guideline documents will enhance the bail and sentencing regime throughout the jurisdiction.

Work on the establishment of Criminal Divisions in other Member States and Territories will continue in this coming law year.

#### 2. Family Division

The Court is ever mindful of the role of sound family structures in the attainment of stability in societies. A special committee was established to make recommendations on the implementation of a Family Division using one administrative space in a manner similar to the Criminal Division. In December 2011, that committee, headed by now retired Justice of Appeal Ola Mae Edwards, submitted its report to the Chief Justice. In this report the committee made a number of recommendations pertaining to the jurisdictional limits of the Magistrates and High Courts in family matters, the development of Family Court Rules to supplement the CPR, where applicable, in the handling of family matters as well as a proposal for a new definition of family matters. The Family Court project which is currently in the pilot stage in Grenada has made limited progress and with the recent completion of a consultancy and the discussion of the consultant's report at a stakeholder's conference held in Grenada on 5th June 2012, we anticipate further progress in the coming year.

Also, in the coming year work will continue with the preparation for the Family Court Pilot in Antigua and Dominica, as UNICEF has finalized the award of a grant for procurement of a consulting draftsperson to complete the process of implementation of the OECS Family Law Model Legislation in these two Member States and to assist the ECSC in the drafting of Family Court Rules.

## **Filing Fees**

Recent developments in the area of law reform have called for a shift towards seeing the Court as a service provider in the dispensation of justice. Consequently, courts both regionally and internationally are reviewing the menu of services provided and are proposing fees and structures that bear some level of relationship to the cost of the services provided. In recent times, even the Judicial Committee of the Privy Council (JCPC) in a most recent communique to members has proposed increases to filing fees and other applications to the JCPC.

While one may be inclined to think that this concept is revolutionary, in the sense that user fees within the context of the administration of justice, could in some circles be seen as restricting access to justice, this approach is consistent with modern methodology in the administration of justice, and bears a direct relationship with cost recovery in an ever increasing litigious society, in a financially challenged economic environment. In fact, all services which were traditionally provided free of charge by governments regionally and internationally, are now attracting small user fees for varying purposes, chief among which is to sensitise the users to the issue of appreciating such services, if a fee, however nominal, is paid. I assure you that in approaching this review, regard for maintaining and enhancing access to justice will remain at the forefront. A recent exercise conducted by our staff at the Courts' Headquarters has revealed that there are significant disparities in the fees being charged across the various Member States and Territories. These issues were discussed at the recently held Legal Affairs Committee Meeting of the Attorneys General and then with the OECS Heads of Government (the Authority) at its 55th inter-sessional meeting held right here in St. Vincent and the Grenadines on 11th June 2012. At this meeting the Authority gave their support to the initiative and mandated that the Court continues to work on finalizing a detailed fee structure to be presented to the Governments for implementation.

We are aware that in many of our jurisdictions the collection of fines and compensation is not as efficient as it should be. As a result, the Court has begun to streamline the administrative procedures for the collection of fines and compensation using the available technology which will greatly assist in this initiative. It is intended that a more aggressive approach is taken in the collection of fines and compensations in order to ensure that court orders are complied with. These initiatives will be implemented with very little expenditure as the necessary infrastructure is already in place.

## **Technology**

The volume of paper being generated and which needs to be stored is a significant problem for the ECSC in all the Member States and Territories, as it is worldwide. This is further compounded by the increase in litigation. The build-up of paper creates serious processing challenges for court personnel and places a significant strain on facilities as courts must constantly search for space to file and store legal documents in buildings which are already bursting at the seams.

This has necessitated the Court embracing the use of modern technology aimed at improving efficiency of our systems. The Eastern Caribbean Supreme Court has for some time now been exploring the implementation of electronic case filing in an effort to increase efficiency in the area of filing of documents and records management. The Court is assiduously working to realize its vision of a paper-on-demand litigation system in an effort to cope with the burgeoning use of paper for court records.

In August this year, Miss Agnes Actie, Deputy Chief Registrar and Mr. Anderson Henry, Systems Administrator presented the idea of piloting an efiling initiative for filing appeals, to the Bar members of the Territory of the Virgin Islands. The Bar welcomed the proposal and is anxious to realize the implementation. The pilot will commence with four (4) firms who volunteered to participate in the initial testing phase of the project. It is expected that the successful introduction of E-filing will eventually help to eliminate, to a large extent, the use of paper in the ECSC, cutting back on the need for physical space to store paper and the manpower to transport physical files not only within the courthouses but across member States and Territories. Once the pilot is successfully completed, all documents will be filed electronically. As is expected, in the initial stages of the pilot project, there will be several logistical issues to be fine-tuned; however I am of the view that this is a tremendous step forward and I am certain that during the upcoming year there will be more to report on in this area

## 1. Case Management Software Upgrade

In our continued effort to meet the challenges in the administration of justice, we will increasingly have to gather and analyze data and information on the workings of the Courts. This will enable us to propose solutions to problems being faced in the system and to measure the effectiveness of solutions which are being implemented. Additionally our judiciary will be enabled to better discharge its role of accountability for the use of public resources.

The ECSC in its mandate to remain current with the electronic age will soon be implementing the latest release of the JEMS case management software which is called Amanda Jems. This new web-based version will enable the Court to host the JEMS application from the Headquarters allowing authorized users access to information via the internet. This will greatly reduce the costs associated with software maintenance.

## 2. Digital Audio Recording

I am pleased to advise that over the last year many of the Member States and Territories have purchased modern digital audio recording software and equipment to automate the recording of court proceedings in a more efficient manner. I am also aware that plans are well advanced in some of the other Member States to purchase similar equipment. I take the opportunity to encourage Member States to continue in this vein in order to have the modern recording equipment available for use in all Courts in their respective Member States, both at the High Court and the Magistrates Courts levels. The benefits of using this technology will result in reducing costs for purchasing supplies, maintaining the equipment, and the physical space required for storage of the traditional analog cassettes. The use will also increase efficiency in recording proceedings and preparing transcripts.

#### 3. Video Conferencing

In today's harsh economic realities, video conferencing is one of the ways that the Court seeks to maintain efficiency in a cost effective manner. The facility which is present in all the Member States and Territories allows, for example, foreign witnesses to give evidence without being physically present in the court room. It has also proven extremely useful in criminal trials for vulnerable witnesses, where they are able to give evidence in a more pleasant environment. Arrangements have been made in many instances for vulnerable witnesses to give evidence from a remote location with the help of video conferencing.

Video conferencing technology is also frequently utilized by the Court of Appeal at its headquarters in Saint Lucia to facilitate the delivery of judgments, and for the hearing of bail applications and urgent appeals. It is expected that there will be more extensive use of this technology by the Court of Appeal in its itinerant role to help reduce travel costs and improve access to justice by hearing matters more promptly once they are ready for trial.

Let me use the opportunity today to specifically thank the British High Commission in Barbados and Saint Lucia, as well as Britain's Foreign Commonwealth Office, for their invaluable support in this area. Over the last year, they provided assistance with the installation of this technology right here in the Member State of St. Vincent & the Grenadines for use in the Family Court in order to allow the testimony to be taken from children victims and vulnerable witnesses. They have also provided funds for the establishment of similar facilities in Dominica and St. Kitts. The Court has also received the necessary funding to support the establishment of a video link to the prison facility in Saint Lucia to reduce the need to transport persons in custody, thereby further reducing costs and security risks.

Information technology is a tool that cannot be ignored in the context of the information age; and it is encouraging to see how its manifold uses have been harnessed to serve the ends of justice in the ECSC. The Court has in the past insisted on enhancing the service which we provide and as a result has spared no effort in our reform initiatives and projects. In the coming year the Court will place even greater emphasis on improving the service which it provides with the use of information technology, engaging at all times in the vigorous pursuit of "... excellence in the timely, effective and efficient access to, and administration of a cohesive, independent and accountable system of justice for the benefit of its Member States and Territories."

#### **Civil Procedure Rules**

In order to ensure that the ends of justice are efficiently met, an extensive revision exercise of CPR 2000 was conducted. The Eastern Caribbean Supreme Court Civil Procedure (Amendment) Rules 2012 came into force on 1st October 2011 in all nine Member States and Territories which the Court serves. Coinciding with the enactment of the amended Rules were new detailed Practice Directions.

Although this revision took place over a considerable period of time, the Court is already actively engaged in continuous scrutiny of the workings of the Rules. Practitioners are again reminded to submit their comments on the Rules and are encouraged to take advantage of this initiative as the Bar and the Court work hand in hand to ensure the greater efficacy of the Rules. Views by members of the public and court staff are also welcome.

#### Professionalization of the Bar

The legal profession is one of service, which ought to be guided by high moral values and principles. The ultimate responsibility for maintaining the standards, practices and procedures which are the critical aspects of the rule of law rests with the judiciary.

In a previous address, Chief Justice Rawlins called for the enactment of Legal Profession Acts (LPA) in Member States and Territories. I am pleased to report that they have all heeded this call with the exception of Dominica, Montserrat and the Territory of Virgin Islands whose LPAs are in their formative stages.

Work continues in Saint Lucia on the preparation of disciplinary rules to supplement the Legal Profession Act. This will provide detailed procedures for disciplinary proceedings in the High Court, and is at an advanced stage. The Saint Lucia Bar Assocation must be commended for its contribution and level of participation throughout the process. The Court hopes that it can commend the disciplinary rules to the other Member States and Territories.

The legal profession in both its branches is an independent profession. It is self-regulating, subject to the court's supervision in the public interest. The court is the ultimate authority for admission as well as for discipline, and statutory rules governing the profession must be approved by the Chief Justice. The importance of the legal profession for the rule of law and our social and economic development does not need any elaboration.

It is said that the practice of law is a noble and learned profession. Accordingly, the public expects lawyers to be professionals of high integrity and competence who can represent them at affordable cost. Apart from his duties to his client, the lawyer owes important duties both to the court and to the profession. These duties are imposed for the proper administration of justice and are enforceable by appropriate legal and disciplinary sanctions. They include the duty not to mislead the court, the duty to avoid unnecessary expense and waste of the Court's time, and to ensure that their clients are well served.

Part of the professionalization of the bar requires practitioners to be properly learned in the law in terms of ethics, practice, traditions and culture. I believe the time has come for the Bar Associations to encourage the re-introduction of mentoring for young lawyers. The current trend where young lawyers practice on their own without the benefit of a senior to provide legal guidance and transfer of valuable customs and practices has contributed to a decline in professionalism at the Bar. The value of mentorship is significant and would assist in maintaining the standards and ethics of the profession.

# **Appointments to the Court**

With the retirement of Sir Hugh Rawlins as Chief Justice and Her Ladyship Justice Ola Mae Edwards, I am pleased to announce the appointments to the Court of Appeal of Justice Louise Blenman and Justice Mario Michel as Justices of Appeal. These two persons have made outstanding contributions thus far to the Court and as I congratulate them on their elevation and welcome them to the Court of Appeal, I hasten to add that I have no doubt that they will bring the same energy and drive expended at the High Court level to the Court of Appeal. I also wish to congratulate Justice Keith Thom and Justice Margaret Mohammed on their appointments as High Court Judges of the Eastern Caribbean Supreme Court with effect from 1st September 2012 and 1st November 2012 respectively.

#### The Conferment of Silk

Some years ago the Court, in an effort to standardize the process of conferment of the rank of Queen's & Senior Counsel, embarked upon an initiative to regularize the procedure and requirements for such conferment. This initiative, which was readily supported by the OECS

Heads of Government, has yielded fruit and I am pleased to report that the first successful candidates under this regime have been announced and are worthy of congratulations. I take this opportunity to thank the members of the Committee for the work done in this process and look forward to the successful working of this process in future appointments.

#### **Tributes and Thanks**

The author G. B. Stern once said, "Silent gratitude isn't much use to anyone"; so I use this opportunity to express sincere appreciation to retired Justice of Appeal, Ola Mae Edwards who demitted office in March 2012. Justice Edwards has given excellent service to our Court and we wish to thank her for this.

Over the past law year a number of retired judges and legal practitioners have assisted the Court in the performance of its duties due to the increased workload of the Court. We place on record special appreciation to retired Justices Albert Redhead, Ephraim Georges, Monica Joseph, and Lyle St. Paul; Geoffrey Bell, retired Commercial Judge from the Supreme Court of Bermuda; Lionel Jones, retired Judge of the Supreme Court of Trinidad and Tobago; Wesley Alexander James, retired Judge of the Supreme Court of Jamaica; and Geoffrey Wilfred Jaques, retired Chief Bankruptcy Registrar of the High Court of England. We also thank legal practitioners Messrs. Tyrone Chong, QC; Paul Webster, QC; Gerard Farara, QC; John Benjamin; Sir Clare Roberts; Kelvin John; Septimus Rhudd; Gerhard H. A. Wallbank; Thomas Astaphan; and Cynthia Combie–Martyr.

#### **Bereavements**

The Court mourned the passing of two prominent jurists who contributed to the region's jurisprudence.

The Hon. Justice Albert N. J. Matthew, died on Thursday, 24th May 2012, in his seventy-eighth (78th) year, after a short period of illness. Justice Matthew, who was born on the island of Dominica, served as a High Court Judge from 1986 – 1997 and was assigned to the islands of Antigua and Barbuda, Dominica, St. Kitts and Nevis, Saint Lucia and St. Vincent and the Grenadines with special assignment in Montserrat and Anguilla. He was elevated to the Court of Appeal in 1997 and retired from active service in August 2001. Even after retirement Justice Matthew willingly assisted the Court in a number of acting positions both in the High Court of Justice in Dominica.

We also mourned the death of retired judge, Justice Odel Oscar Adams who passed away on Monday 7th November 2011. Justice Adams was first appointed to the bench of the ECSC to

serve as a judge in Dominica. During his tenure with the Court he also served in St. Vincent & The Grenadines between 1998 and 2001 and acted as a Justice of Appeal on occasions. To the family and friends of Justice Albert Matthew and Justice Odel Adams we offer our sincerest condolences and thank you for allowing these extraordinary men to share their lives and wealth of experience with the Court.

#### Conclusion

As I conclude this address to you from the High Court of Justice in the lovely island of Saint Vincent & The Grenadines, I thank LIME for the provision of the telecommunication lines allowing for the live simulcast, Media Zone from Saint Lucia for broadcasting this telecast on local radio and television stations as well as through the OECS Newslink throughout the region, and the staff of the Court's IT Department for their dedication throughout the years in making this broadcast possible.

I wish to recognize the hard work and efforts of the many persons who throughout the past law year have enabled the Court to function at the standard that our people have come to expect. To the Judges of the Court of Appeal and the High Court, Masters, Magistrates, Registrars, and the staff of the Court's Headquarters, the High Courts and Magistrates Courts of the Member States and Territories, I extend sincere gratitude for your commitment and dedication to the task of maintaining efficiency and integrity in administering justice in times of economic adversity. I am aware of the personal sacrifices you and your families make every day, and I thank you. To all those persons who have spared no effort in ensuring that today's proceedings were conducted smoothly and with the usual professionalism which is expected, be assured that your hard work has not gone unnoticed. Special appreciation is extended to the resident judges, masters, registrars and staff of the Court offices of all our Member States and Territories for organizing the various events to mark today's ceremonial opening of the Law Year. To the Commissioners of Police and Police Officers throughout the Member States and Territories, I thank you for your dedicated service to the Court and look forward to your continued commitment in this New Year.

I am grateful to the Honorable Attorneys General, Presidents of the Bar Associations, Directors of Public Prosecution, , and all other government departments and agencies for their unwavering support to the judiciary.

I thank the Authority of the Heads of Government of the OECS who have continued to support the Court throughout the years in spite of the global economic hardship which has not spared our Member States and Territories, and we look forward to your continued support. Finally, I wish to thank everyone present here today in the High Court of Justice in St. Vincent & the Grenadines; and everyone else, wherever you may be, for taking time off from your very busy schedule to attend or listen as we celebrate the opening of this new law year 2012-2013.

My prayer for us all is that God will continue to guide our Court as we fulfill our mandate as well as that of our nations as we strive for excellence. May He grant us the "... courage to change the things that we can ..."and the wisdom to produce efficiently in spite of the things that we cannot change.

# I thank you.