

GRAND COURT OPENING SPEECH 1998

Good Morning and welcome to you all. Once again, and for the last time, I accede to the motion which has been submitted by you, Mr. Attorney, and supported in generous terms which I appreciate greatly.

I think that this is the time to look both at the past and at the future.

Twenty years or more ago I had a special professional interest in intellectual property and I have been pointed again in that direction by Dr. Christopher Rose, who lives on North Side and is here today, in relation to the work which judges are likely to encounter in the age of the Internet and other electronic wonders. Here are some extracts from a paper which he sent me.

“The old notions derived from days gone by when contracts were entered into by merchants and consumers whose shops and homes all bordered from the village green will be replaced by new jurisprudence which will be shaped around that new global village green which is the Internet. Electronic commerce requires individuals who will never meet face to face to rely upon new highly precise tools of commercial certainty maintained by equally new forms of intermediaries particularly in the areas of legal and financial services..... These constructs of the digital age will bring with them precise but technically complex forms of evidence for the judiciary to weigh when so required in the course of their duties..... The era of electronic commerce will bring vast opportunities and tremendous competition to Cayman on a scale that has not previously been experienced. The fundamental role of the judiciary will remain constant

throughout the process of change but the statutory and common law tools may need to be refashioned or supplemented. The digital information age will undoubtedly bring change for all but there should be no doubt in anyone's mind that the foresight, innovative spirit and leadership which Caymanians have shown in the past will allow them to meet and embrace the new digital world and to thrive in it."

Dr. Rose has kindly allowed me to make some copies of the paper from which that is taken for anyone who would like one. I can assure you that it comes in printed and not electronic form and is only one page long.

All that will be for my colleagues who remain and for my successor. I know that he will receive from the Bar, as I have, not only the highest professional courtesy but the warmth of the friendship which will be our happiest memory of these Islands.

Going from there into the past I took what I found to be an interesting look at what my distinguished predecessor Sir Denis Malone said in his final speech to you on an occasion such as this. That was in January 1993. 1992 he said was a year of change in general for these islands but for the Courts it was a year of endurance. The Courts were precariously positioned as resources were stretched. Times have not changed in that regard and it is very important that the recommendations of the Chief Justice, who is responsible under the Law for the management of all matters arising in judicature to be given prompt and serious attention.

Like Sir Denis, I shall spend some time looking at the state of the criminal list. The total number of cases committed for trial by the Grand Court in 1997 was 64. As of today there remain 34 of those outstanding. 13 remain from 1996, 4 from 1995 and 1 from 1994. That is far too many but there is nevertheless some good news to report. I asked Mr. Justice Graham to take a particular interest in addressing this problem in the light of his recent experience in criminal practice at the English Bar and in particular of the conduct of Plea and Directions Hearings, the tool now used there to clarify and crystallize the real issues in the cases before trial. His work on this has already shown a significant benefit. In the months of November and December the outstanding indictments have been reduced by 19%. Reducing the backlog further is not just a matter of having more judges. The numerical strength of the criminal bar is quite inadequate, both on the prosecution and defence side. As far as the prosecution is concerned they must expect a hard line to be taken if they are not ready, but every accused person has the right to be defended by the lawyer whom he has instructed or under suitable alternate arrangements. I also firmly believe that newly qualified lawyers should cut their teeth on criminal work. That is the common practice elsewhere. I was particularly pleased to hear that a new locally qualified recruit to a distinguished legal firm has been made available for this work and is keen to do it. We have done what we can in the Rules Committee to make legal aid work more attractive financially. It will never equal other kinds of work in that respect. But experience in criminal advocacy is never wasted. It is invaluable experience.

We have at long last, a full time Court Administrator in post, Mr. Terry Beckett. He is here today and I would like to express my appreciation of what he has already achieved. He will

build on the foundations laid by Mr. Geraint Jones OBE, our Court Administration Consultant, who recently completed his term of duty. We owe Mr. Jones a great debt.

At this point I will interpose some financial figures relating to fines and fees collected in 1996 and 1997.

Fines for 1996 were \$745,209.95 and for 1997 \$1,109,503.14. We do not regard imposing fines as a revenue collection exercise, but revenue collected it is nevertheless.

Fees for 1996 were \$425,337.80 and for 1997 \$524,941.73.

I would like to pay particular tribute to the judges from outside the Cayman Islands who have come to help us at various times and in particular following the sudden departure of a judge after less than a years service. They minimized the disruption which that inevitably caused. There were Mr. Justice Patterson a judge of the Jamaican Court of Appeal, Mr. Justice Orr, also from Jamaica and Mr. Justice Lloyd Williams from St. Kitts. At an earlier stage we had Mr. Justice Bingham who since his visit to us has also been elevated to the Jamaican Court of Appeal. I particularly admired the way in which these distinguished visitors without exception cheerfully tolerated the sometimes makeshift conditions in which I had to ask them to operate while the new Kirk House extension was being made functional.

The Jamaican judge's were made available through the good offices of the Chief Justice of Jamaica, to whom I also extend my heartfelt thanks.

It is always interesting to receive comments from visitors and recently arrived permanent members of the judiciary and staff. The Court Administrator has expressed surprise at the number of white collar crimes such as theft and false accounting, obtaining property by deception, forgery and uttering false documents which are on our current list. Mr. Justice Graham has made a similar comment about the number of allegations involving dangerous driving. My own particular concern relates to the number of cases involving an allegation of unlawful use or possession of a firearm. The Court lists are not an early warning system. They are a very late warning system but none the less significant documents for those who study social trends.

I was up at the Prison last week. The number of inmates was at that time 238 which must be among the highest proportion per head of the population in the western world. It was sad to see a building designed for classrooms now used as sleeping accommodation. There will always be those who call for longer sentences - shopkeepers and homeowners call for them for burglars, mothers for child abusers, bankers for fraud, many people for drunken drivers. These are very natural emotions which we respect. But what the judges long for are alternatives to prisons. They need not necessarily be soft options, simply more effective options which help to make people better; in particular drug rehabilitation programmes.

Turning now to the civil side we have had yet again a record number of Grand Court writs lodged. It was 854 at the end of the year - up 16% from the 733 of 1996 which was itself a record. Nearly all the increase was accounted for by over 100 writs arising out of the BCCI liquidation which had to be filed before the six year limitation period since the liquidation began

ran out. Nevertheless, I do not foresee a respite from this high level of civil litigation. New and creative financial devices are likely to have their validity tested sooner or later in the courts and this is very demanding work. Other areas which I believe will give more work to the courts concern the rights and duties arising out of the ownership, board membership and management of companies, issues arising from the Proceeds of Criminal Conduct Law and cross-border insolvencies.

There was also a large rise in the number of summary court civil claims. It rose by 81% from 762 in 1996 to 1,380 in 1997. When I asked why that was I learnt that it was because of the large number of civil actions continue to be brought by Government to recover debts incurred in respect of various services. It can only be good news that these matters are being energetically followed up but less encouraging was the news that the smallest of these claims was for \$5.27. Government is exempted by law from paying processing fees in Summary Court. It is an abuse in my opinion to use that privilege to take up the time of a busy court with a claim of that nature.

That busy court could not operate without the dedicated commitment of the Clerk of Courts and the Court Staff, many of whom have long service and the experience which goes with it. It is fitting that I should near the end of this address with an affectionate tribute to all of them. I shall miss you all. Having said that I should remind you that I am not leaving tomorrow. There will be two more Grand Court openings of a less ceremonial nature between now and my scheduled date of departure in June and I may well feel disposed to make further observations on those occasions.

Last of all, I would like to express my pleasure at being able to sit today not only with my old friend and brother Judge, Mr. Justice Smellie but also Mr. Justice Graham who arrived in September. He has already made his mark and become a brother judge in every sense. Mr. Justice Kipling Douglas who is acting in a fourth judicial post - not old wine in a new bottle but an old friend in a new guise.

I look forward now to meeting my invited guests in my former Chambers behind this court for some refreshment and conversation.

G.E. Harre

Chief Justice

7th January 1998