

**ADDRESS BY CHIEF JUSTICE, SIR MICHAEL BARNETT, AT THE
OPENING OF THE LEGAL YEAR ON WEDNESDAY, 12TH
JANUARY, 2011.**

I would like to thank all who participated in the events traditionally marking the Opening of the Legal Year.

I extend my thanks to both Archbishop Patrick Pinder and to Dean Patrick Adderley for the services at the St. Francis Xavier Cathedral and the Christ Church Cathedral invoking the guidance of the Holy Spirit on our work this year.

I am also grateful to The Royal Bahamas Police Force Band and the Guard of Honour for their participation in this Opening ceremony.

Worship services and the pageantry of the Opening are important and well established traditions, not only in The Bahamas, but in most countries of the world. They manifest the integral role of the Almighty in the dispensation of justice. Our work is not devoid of spiritual values and the pageantry emphasizes the majesty of the law in our society.

In the past year the work of the court was directed at strengthening the foundations upon which we continue to build.

There continues to be significant changes in the personnel of the Court. In January, 2010 Justice Cheryl Albury demitted office as a Justice of the Supreme Court. Retired Justice Albury served as Magistrate, as a

Registrar and as a Justice of the Supreme Court for a total of more than 20 years. Her service was marked by a willingness to take on all aspects of judicial work, whether it was in the criminal or civil matters, family or probate work. We thank her for her dedicated service.

Justice Hartman Longley assumed office as a Justice of the Supreme Court and was assigned to the Northern Region where he has done yeoman work. As a result the Northern Region has had the benefit of two full time resident justices. This provided valuable assistance to Justice Evans who for too long had to bear the brunt of the work of the Court by herself.

Two months ago Justice Anita Allen demitted office as Senior Justice and was appointed President of the Court of Appeal. Her colleagues on this Supreme Court which she served for 14 years will miss her collegiality on this Bench. We congratulate her on her appointment and on a personal note I look forward to working with her on matters that involved the Administration of Justice and the work of both courts. In this regard I wish to acknowledge her presence and that of the other Justices of Appeal at this Opening of the Legal Year.

In the Registry, Acting Assistant Registrar Kochina Marshall returned to the Office of the Attorney General in her substantive position and Deputy Registrar Tabitha Cumberbatch resigned in order to assume a new position in another Caricom country.

The Judicial and Legal Services Commission has been pleased to advise the Governor General that Mr. Justice Roy Jones of Jamaica be appointed as a Justice of the Supreme Court with effect from the 1st February, 2011. Mr. Justice Jones is presently an Acting Justice of the Court of Appeal of Jamaica having served as a Justice of the Supreme Court of Jamaica for more than 8 years.

In the year 2011 we will place greater focus on the work of the criminal division of the Supreme Court. It is our intention to dedicate four courts in New Providence and one Court in Grand Bahama to deal exclusively with criminal matters. I have asked Senior Justice Jon Isaacs to assume a greater role in the administration of the criminal division of the Supreme Court and in the Supreme Court's oversight of the work of the Magistracy. Justices Vera Watkins, Bernard Turner and Roy Jones will preside over the other three courts in New Providence. Justice Longley will continue to preside over criminal matters in Grand Bahama as well as various matters involving public law that arise in both the northern Region as well as in New Providence. The Judicial and Legal Services Commission was pleased to recommend to the Governor General that Justice Longley be appointed a Senior Justice with effect from 20th December, 2010. I was also pleased to recommend to the Governor General that Senior Justice Longley be appointed to the Judicial and Legal Services Commission. As Senior Justices, I will rely heavily on both Senior Justices Isaacs and Longley to assist in the administrative aspects of the work of the courts. As a manifestation of the focused attention we will be giving to criminal matters, as Chief

Justice, I will hear some bail applications to increase the time available to the other justices to preside over criminal trials.

Before leaving the criminal side of the Court, I have directed Mr. Ernie Wallace, the Deputy Registrar responsible for the Criminal Division to relocate his office from The British American Building to Ansbacher House so that he can give greater supervision to the work of the Criminal Registry.

As is well known, the vast majority of matters dealing with crime are done in the Magistrates Court. We look forward to the completion of the construction of the new Magistrates Court Complex on South Street. That Court will have 12 court rooms. As such we will be in a position to accommodate 12 courts in New Providence instead of the present 9 day courts and 2 night courts.

It is my expectation that with the completion of the Magistrates Court complex an additional court will be utilized for domestic matters to assist in the unacceptable delay in dealing with summary domestic matters.

I am confident that with all of the courts in one complex this will add to the greater efficiency of those courts and that many of the problems in relation to the administration of those courts will be resolved.

I have reminded Magistrates of the provisions of section 228 of the Criminal Procedure Code. Regrettably that provision has not been

complied with for some time. Magistrates will be required to carry out this statutory obligation of providing a monthly report to the Registrar of the Supreme Court in order for the Supreme Court to discharge its supervisory responsibility. In this regard, Senior Justice Isaacs will review these reports and make recommendations to me with respect to the same.

I thank those Magistrates who have continued to work under trying conditions.

Again I repeat the charge I gave to Magistrates at the Opening one year ago to be more aggressive in the management of their cases. Magistrates deal with summary matters and they should be dealt with quickly. Adjournments and delays must be kept to a minimum.

It is my profound regret that we were unable to provide Resident Magistrates in the major Family Islands. This was purely because of financial exigencies. It is my hope that the resources will become available in the next budget to provide for these Family Island Magistrates. Neither the Family Islands nor New Providence are properly served by magistrates sitting in New Providence who must go on Circuit on an irregular basis to sit in those Islands.

Plans have been made to accommodate two Coroners Court in the Victoria Court Complex in addition to 12 courts on South Street. Magistrate Virgill will be assigned to the Coroners Court to replace

Magistrate William Campbell and her court, which is presently underutilized, will once more become fully utilized.

With regard to the work on the civil side of the Court, the Commission proposes to appoint a number of senior lawyers to serve as Acting Justices of the Supreme Court for periods of at least three months. These lawyers will be responsible for the civil matters presently scheduled to be heard by Justice Turner, who as I said will be dealing with matters on the Criminal Side of the Court. Mr. Milton Evans has agreed to accept such an appointment commencing the 1st February, 2011. I thank him for his willingness to assist us in this matter. I also wish to thank those other attorneys who have indicated a willingness to accept appointments as Acting Justices.

Staying on the civil side of the work of the Court it is a matter of regret that notwithstanding that draft New Rules of Civil Procedure were circulated in August of last year, the comments from the Bar were only received on Monday night. We shall now take them under consideration with a view to finalizing the Rules as soon as practical. It is my expectation to finalize the Rules by the 1st April, 2011 with a view to their coming into effect by 1st July, 2011.

The new Probate and Administration of Estates Act has now been passed by Parliament. Draft Probate Rules have been prepared and are available for inspection. Mrs. Camille Gomez will be appointed Assistant Registrar responsible for Probate matters. After she has

settled in her new position, I propose to bring the new Probate Rules into effect, no later than 1st April, 2011.

It is my desire to revise the Rules relating to matrimonial causes and to the winding up of companies. However, my experience in relation to both the Draft Rules of Civil Procedure and Probate and Administration cautions me to be more patient in seeking to effect change. I suspect it will be counter productive in seeking to do too much too quickly. However, these rules will be reviewed in due course.

With respect to the general administration of the Supreme Court I readily accept that the state of the Supreme Court's website is embarrassing. I have asked Justice Turner to have responsibility for the supervision of the website and he has agreed to assume this responsibility. Madam Justice Bain has agreed to assist him in this matter.

I am happy to Report that the President of the Court of Appeal and I have agreed to reestablish the Bench Bar Committee. This Committee will act as an informal liaison between the Bench and the Bar on matters relating to the Courts. There will be one Committee made up of seven persons. The members will be the Chief Justice, The President of the Court of Appeal, a Justice of Appeal, a Justice of the Supreme Court, The President of the Bahamas Bar Association and two other senior members of the Bar. I have asked Justice Stephen Isaacs to serve with me on this Bench Bar Committee. Justice of Appeal Stanley John

will also serve on the Committee. Mr. Charles Mackay and Miss Metta Macmillan Hughes have agreed to serve on the Committee as well.

As the Attorney General has already noted, the renovations to the Supreme Court are well underway. It is expected that after these renovations are completed work will commence on the renovation of this main Supreme Court Buildings as well as the renovation of the former Ansbacher House to accommodate another five courts for civil matters. It is also my hope that when the Magistrates court complex is completed this year and the magistrates moved from Bank Lane to South Street, that space vacated by those magistrates may be utilized by the Supreme Court to deal with matters relating to the family.

At this time I express my profound thanks to the Ministry of Works for the repairs to the Garnet J. Levarity Justice Centre in Freeport.

I share the concerns expressed by the President of the Court of Appeal at her swearing in on the need for greater attention on judicial training. Inasmuch as I do not expect judicial training to be formally established immediately, Justice of Appeal Blackman and Justice Adderley have agreed to spearhead our efforts at training, not only for judges but for our administrative staff as well. The Magistrates themselves have expressed a desire for a seminar on sentencing and the President of the Court of Appeal has agreed to permit Justice of Appeal Conteh to conduct a seminar with the magistrates on this aspect of the work of the Magistrates.

As for Justices, we are concerned that litigants are not being properly served by the preparation of their cases. We recognize that it is the responsibility of their legal representatives to determine what claims should be brought and what evidence should be adduced. However, far too often the more appropriate claim has not been properly pleaded and relevant and available evidence has not been led which negatively impacts the proper determination of cases. We accept that our primary role is to be impartial umpires but we are always concerned that at the end of the day justice is served.

Before concluding these remarks, I wish to pay tribute to the staff of the Supreme Court, without whom we cannot function. Many are dedicated to their work and often go unnoticed. At the risk of offending others I would like to publicly pay tribute to the Registrar, Mrs. Donna Newton, the Director of Court Services, Mrs. Dolly King, the Listing Officer, Mrs. Grace Bostwick. I know the challenges you face in your work and I express my profound thanks.

Ladies and gentlemen, the work of the courts continues. We know the task ahead that lies ahead and we pledge anew to commit ourselves day by day, week by week, month by month to discharge our duty in accordance with our sacred oath to do right to all manner of people after the laws and usages of The Bahamas without fear or favour, affection or ill will. We are not unaware of our own failings and the need to reduce the delay in the delivery of our Rulings and Judgments. However, we read with some degree of concern, comments made in the public about the work of the judiciary. I remind the public that as

judges we are a part of the society and are painfully aware of the maladies in our community and the challenges that it faces, particularly the high incidence of crime. We are also aware, as Cicero said, that “the safety of the people is the highest law’. However, Judges are not prosecutors nor are we a part of the prosecution. We are not defence attorneys nor are we a part of their team. We are an impartial and independent tribunal We are the guardian of the rights of every person in our community. Under Article 28 of the Constitution we have been entrusted with the solemn obligation to enforce the fundamental rights of every person guaranteed by the Constitution. This includes the right of every person charged with a criminal offence to a fair hearing within a reasonable time. A person charged with a criminal offence is entitled to the presumption of innocence until he or she is proved guilty or has pleaded guilty.

We seek to do our job to the best of our ability with all of our strengths and human weaknesses. We do not seek to be excused from criticism. We do however require those who criticize to ascertain the facts before embarking on such criticism.

The administration of justice is a cooperative effort. I repeat verbatim what I said at last years Opening

“Greater cooperation amongst lawyers, better preparation of cases by both the prosecution and the defence or the plaintiff and the defence, the greater use of stipulations for the admission of undisputed evidence, more complete written submissions to reduce the need for long oral submissions, starting court on time, working

beyond 4:30, if necessary..... will all go a long way toward improving the administration of justice.”

It is a common lament amongst my colleagues and me, that too many civil cases come before the Court which ought to have been settled and which therefore clog the system and delay the resolution of those cases which require the court’s intervention. On the criminal side, there are also those cases, in respect of which there is not sufficient evidence to support a conviction, which ought to have been discontinued by the Crown or in which there ought to be greater use of the plea bargaining provisions in the law. The public is often puzzled by decisions of the Court, but they are often unaware of the evidence led or the evidence that was not lead before the Court.

I remind lawyers of the observation of the Law Commission of India on the Role of the Legal Profession in the Administration of Justice where it said:

“The real role of the legal profession is to resolve disputes –not to encourage litigation, but to reduce it, and only as a last resort should disputes be allowed to go to court.

I implore all lawyers to use this New Year to reaffirm their commitment to giving greater attention to the preparation of their work on behalf of their clients. Better preparation by lawyers will undoubtedly lead to the expeditious and fair determination of the matters before the courts.

Before taking the adjournment it is with regret that I record in the annals of this Court the death of Professor A. Ralph Carnegie, Professor Emeritus of Law, at the University of the West Indies. Prof Carnegie was truly an icon of legal education in the Caricom region. He was one of the two founding Professors of Law when the Law Faculty was established in 1970 and was a favoured lecturer of many of the members of the Bahamas Bar, some of whom sit on this Supreme Court Bench. Prof Carnegie was well known in The Bahamas and the wider Caribbean for his contribution to legal jurisprudence by his published writings on the law of contract, international law and constitutional law. This great Caribbean legal luminary will be missed and his example of scholarship is one that we should all strive to achieve. May his soul rest in peace.

As I bring these proceedings to an end, I extend to all of you my best wishes for a productive, successful and healthy New Year. I declare the Year open and invite you to the East Hill Street grounds of the Ministry of Foreign Affairs for a modest reception.

