



Re-engineering the Criminal Justice System

The Right Honourable Sir Dennis Byron,
President of the Caribbean Court of Justice

**The Dana Saroop Seetahal Symposium at the Noor Hassanali
Auditorium of the University of the West Indies**

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The University of the West Indies (The UWI)

For over 70 years The University of the West Indies (The UWI) has provided service and leadership to the Caribbean region and wider world. The UWI has evolved from a university college of London in Jamaica with 33 medical students in 1948 to an internationally respected, regional university with near 50,000 students and five campuses: Mona in Jamaica, St. Augustine in Trinidad and Tobago, Cave Hill in Barbados, Five Islands in Antigua and Barbuda and an Open Campus.

Remarks

By

The Right Honourable Sir Dennis Byron, President of the Caribbean Court of Justice,

on the occasion of

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Introduction

It is an honour to be invited to give the opening address for today's symposium.

Criminal justice reform is a burning issue in Trinidad and Tobago as it is throughout the Caribbean region. It is a notable endeavour that the St. Augustine Campus of University of the West Indies has lent its support to create a space for the free exchange of ideas on this topic evidencing the interest in contributing to social transformation that has been advocated by the distinguished Dean of the Law Faculty. Before I delve any further into the subject matter at hand it would be remiss of me to not make special mention of the distinguished attorney in whose honour today's symposium is being held, the late Ms. Dana Seetahal.

The tragic loss of Ms. Seetahal has shocked the national psyche of Trinidad and Tobago. That loss reverberates equally throughout the Caribbean region. Ms. Seetahal's work, her knowledge and her passion for criminal justice reform transcended national boundaries. She willingly gave of her talents to the entire Caribbean region, a fact I can personally attest to in my former incarnation as Chief Justice of the Eastern Caribbean. She was a Caribbean legal luminary and her loss is a loss for the region. However out of this sadness and tragedy, there is hope. Hope for change as we

finally realise that we have reached the point of no return and the need to take drastic action to reform the criminal justice system.

Criminal Justice Reform

The issue of criminal justice reform is high on our regional agendas owing in part to the undeniable fact that we are witnessing rising crime rates across the board. It is being addressed by, not only in Trinidad and Tobago, but by Governments throughout the Caribbean region. The judiciaries of CARICOM are engaging in programs to improve the quality of justice delivery knowing full well that this will impact on economic development and social stability. Reform of the criminal justice system in the Caribbean has also generated international support. For example right here in Trinidad and Tobago there is the Criminal Justice Advisor (CJA) project funded by the Canadian Government; a joint project with the UK Crown Prosecution Service and the government of Trinidad and Tobago (T&T), the Juvenile Court Project funded by the United Nations Development Fund and the Caribbean Basin Initiative, a partnership between the US Government and the CARICOM Implementation Agency for Crime and Security (IMPACS). These are some of the projects that spring automatically to mind. Today's symposium is yet another initiative in this sphere.

Developing dynamic, creative solutions to improve the criminal justice system is no easy feat. It requires cross-disciplinary, holistic, cultural and societal approaches. Crime is a subject with societal, cultural, legal and economic underpinnings. Reforming the justice system is but one piece of the puzzle. Change must also manifest itself on an individual and societal level.

In a very real sense, the fight against crime starts from within the human heart. As Henry Miller, the author remarked *"The study of crime begins with the knowledge of oneself. All that you despise,*

all that you loathe, all that you reject, all that you condemn and seek to convert by punishment springs from you."¹ It is the breakdown in morals and values within each individual that produces disorder in our societies. We need to reawaken our moral compass and our sense of individual responsibility in order to reduce crime. We need to champion moral and spiritual values in all our endeavours, in our hearts, in our homes, in our daily interactions, in our work, in our profession. We need to demonstrate principled leadership, accountability and transparency in all our endeavours. A high responsibility is placed on our leaders to set the right example. We need to actively recognise and address the high levels of corruption in our region. We need to take steps to restore public confidence in governance and administration at all levels. After all, a law abiding citizen is the product of a law-abiding society. And we would do well to remember that the converse is also true.

Sight must not be lost of the economic aspect of this issue. Poverty and inequality provide fruitful soil for the growth of criminality. Increasing funding for the criminal justice system is a welcome step, but we need to go further in order to effect meaningful change at the ground level. Despite the high incidence of white collar crime among the more affluent in society, it is upon the poor, the disadvantaged and the socially displaced that the weight of the criminal justice system is brought to bear. Therefore in allocating resources we need to channel funding social justice programs which allow all persons to develop the full range of their human potential. This will remove the sense of injustice, the sense of hopelessness, the sense of despair and desperation which fuels crime. Nelson Mandela said that *"When a man is denied the right to live the life he believes in, he has no choice but to become an outlaw."* Maybe instead of demonising criminals, we should try to understand them, their station in life and the reasons why they have chosen the life they lead. As Atticus Finch

¹ Henry Miller (1891-1980), U.S. author. *The Air-Conditioned Nightmare*, "The Soul of Anaesthesia" (1945).

said in *To Kill a Mockingbird* “*You never really know a man until you stand in his shoes and walk around in them.*”

We all have a stake in creating a more just and equitable society grounded in the rule of law as “*injustice anywhere is a threat to justice everywhere.*”² The concept of social justice lies at the foundation of the supreme law of Trinidad and Tobago. We would do well to recognise, understand and practice the virtues on which this country was founded as reflected in the Preamble to the Constitution which recognises:

“respect the principles of social justice and therefore believe that the operation of the economic system should result in the material resources of the community being so distributed as to subserve the common good, that there should be adequate means of livelihood for all, that labour should not be exploited or forced by economic necessity to operate in inhumane conditions but that there should be opportunity for advancement on the basis of recognition of merit, ability and integrity.”

Turning to the criminal justice system, there must be holistic change among all the major players: the police, the prosecution, the judiciary and the prison system. In relation to the police, the levels of crime detection must be addressed. In recent times the regional rate hovers at around 10%. For small societies such as ours this is a cause for concern. According to the US Census Bureau, the average population of New York City as at July 2013 was 8,405,837. Yet the detection rate for serious offences, such as murder is between 80 – 90%.

² Dr Martin Luther King Jr

We in the region have serious work to do. Technology must become the hand-maiden of the police in addressing spiralling crime. Wireless surveillance, GPS systems, PDA devices, in-car computers must enhance and eventually replace police reports, station diaries, and eye-witness testimony. Such advances will also assist not just in crime detection but also in crime prevention thereby ushering in the “new technology of policing.”³ Any investments in technology must be coupled with adequate training to ensure “*strategically optimal uses of technology for reducing crime and serving citizens.*”⁴ Reform at the level of the police should not stop at increasing the technical skills of detection. Reforms should also respond to the increasing public demands for the capacity development necessary to assure the public that there is an honest, efficient, and effective police service that ensures the rule of law and an environment free from fear and conducive to the realisation of people's human rights.

At the level of the prosecution, the judiciary and the prison service, increased human resources are needed. However new strategies also need to be deployed particularly to reduce the amount of matters going to trial and to shorten the trial period. Some of the techniques that produce these results include greater care in the drafting of charges, encouraging an environment for more guilty pleas, introducing ADR practices for lesser crimes and increasing the levels of judicial management throughout the prosecution cycle.

One of the greatest travesties of the current criminal justice system is to be found in the management of pre-trial detention. The extraordinary length of pre-trial detention must be regarded as a human rights issue and should be targeted for elimination as a pressing priority. Courts in our region have

³ James Byrne and Gary Marx, Technological Innovations in Crime Prevention and Policing. A Review of the Research on Implementation and Impact, Cahiers Politiestudies Jaargang 3(20): 17-40.

⁴ Christopher S. Koper, Cynthia Lum and James J. Willis, Optimizing the Use of Technology in Policing: Results and Implications from a Multi-Site Study of the Social, Organizational, and Behavioural Aspects of Implementing Police Technologies, *Policing: a Journal of Policy and Practice* (2014) 8 (2): 212-221, (*Oxford Journals*)

often heard cases after the accused has already been in prison for a period longer than the sentence on conviction would have been. The obvious, even if difficult solution is to ensure that trials take place soon after arrest and charge. The issue of pre-trial detention involves a balancing of interests. Failing to detain a suspected offender may jeopardise the chances of a successful prosecution, particularly with the problems of witness intimidation in the region. However, detaining a person in remand under inhumane conditions is an affront to the concept of justice and the rule of law. A recent report commissioned under the auspices of the United Nations Development Program which examined human development and the shift towards better citizen security in the Caribbean revealed⁵ that in their survey of seven Caribbean countries, five of them reported prison occupancy levels well above 100 percent of capacity. Almost a third of the prison population are persons being held on remand awaiting trial and in one instance the figure was as high as 50 percent.⁶ Only two countries have prison facilities which meet international standards. Two! Surely we can do better than that!

It is also important to understand that pre-trial delay has a wider societal impact. The longer a matter takes to come to trial is the harder it is to secure a conviction. Evidence goes missing, witness's recollections fade, and key personnel may no longer be available either through death, retirement, migration. On top of all of that the psychological toll on victims, on families, on children is unimaginable. It also takes away the deterrence of the criminal trial because inordinate delay in bringing matters to trial increases the sense of impunity, reinforcing the idea that committing crime has no consequences and will not be punished.

⁵ See the Caribbean Human Development Report 2012 available at http://www.undp.org/content/dam/undp/library/corporate/HDR/Latin%20America%20and%20Caribbean%20HDR/C_bean_HDR_Jan25_2012_3MB.pdf

⁶ Ibid at p 126 in reference to Suriname.

Tackling this problem requires a range of different approaches. We need stronger systems for plea bargaining, parole and witness protection. Even when a conviction is secured, attention must be paid to the issue of sentencing. We have to decide who we want to be in our prisons and develop suitable punishment options for the courts to employ. In sentencing offenders we must ensure not just that the penalty suits the crime and the circumstances of the convicted person, but also that sentencing is done on a fair and rational basis and takes into account all the relevant considerations such as the public interest, deterrence and most importantly, rehabilitation.

In relation to the judicial process, in undertaking reformative efforts we need to cast the net far and wide and be willing to be innovative. We do not have to be bound to all the common law traditions as we look at ways at improving our criminal procedure and practices. We may wish to consider the system of international criminal justice and where the judicial function is divided into three separate divisions – the appellate division, the trial division and the pre-trial division. We can also consider a concept which has proved highly successful in transforming civil litigation – judicial case management. Such a system properly applied could produce many beneficial results. In the pre-trial stages it could assist in rationalising the relationship between the charge and the available evidence. This will allow some supervision of and accountability for the prosecutorial role and could impact on guilty pleas, cases which are identified for ADR practices, and restorative justice, and the removal of cases where the available evidence cannot support a conviction at an early stage. It can also result in the reduction of time between the laying of the charge and the trial by fixing time standards from the inception of proceedings. The time has surely come when people must know that if they are charged with an offence the trial will take place within a fixed reasonable

time. The judiciary is critical to this process. It will also improve the trial process, discourage delay, encourage stakeholders to co-operate in the progression of the case and make use of technology.⁷

Actively managing cases will serve to reduce delay and help clear the backlog in the judicial system. It will also help to deter criminal behaviour if one believes in the adage that Certainty of punishment is a more effective method of crime prevention than severity of punishment. However in the region there is a lot of passion and outcry focused on the latter and not enough on the former. As Mahatma Ghandi taught us *“an eye for an eye will only make the whole world blind.”*

Conclusion

In concluding, I wish to borrow the words of Mr. Roger Hamel-Smith, the then Chief Justice of Trinidad and Tobago in his 2007 address at the ceremonial opening of the Law Term where he noted that *“Crime flourishes when the environment makes it conducive for persons to behave in a particular way.”* In talking about crime and criminal justice reform it is easy to play the blame game: to blame the criminals, to blame the police, to blame the politicians, to blame the DDP, to blame the magistrate, to blame the judge. The time for blame has stopped. Now it’s time for action. And change, meaningful change begins with us. As Tolstoy once said *“Everyone thinks of changing the world, but no one thinks of changing himself.”* As we sit here today discussing the strategies needed to effect reform in the criminal justice system, let us not lose sight of the change we can effect right here, right now at an individual level in aid of the peace and prosperity of our region. I think that is a development which Ms. Seetahal would have wholeheartedly endorsed.

⁷ Criminal Procedure Rules (UK)