

**ADDRESS TO
KIWANIS CLUB OF NOTH ST. ANDREW**

By

The Honourable Mrs. Justice Zaila McCalla, O.J.
Chief Justice of Jamaica
At the Police Officers' Club, Hope Road
June 19, 2014 at 6:30 p.m.

ISSUES AFFECTING THE ADMINISTRATION OF JUSTICE

SALUTATIONS

Mr. Howard Walker, President of the Kiwanis Club of North St.
Andrew

Executive members;

Hon. Mr. Justice Ian Forte, former President of the Court of
Appeal;

Other members of your club;

Specially invited guests;

Members of the media;

Distinguished ladies and gentlemen;

I extend warm greetings to you all on behalf of the judiciary

WHEN THE INVITATION was extended for me to address this august gathering, I had no option but to agree. This is due to the choice of the emissary who called me to request my attendance. I do not believe that this was accidental. In fact, the distinguished gentleman could be considered to be my boss in another life, and the self-same person who summoned me from the Kingston criminal court in 1978 to begin my prosecutorial journey in the High Court.

IN HIS TIME AS Director of Public Prosecutions, the Honourable Mr. Justice Ian Xavier Forte has sent me on numerous assignments, so you will understand that a negative response was not open to me. However, I could not help but wonder at your choice of a guest speaker for this celebratory milestone occasion, your 40th Anniversary.

AS JUDGES WE MIGHT BE QUITE ROBUST in delivering judgements, but when it comes to speaking in the public arena, it is not expected that we ought to have much practice due to the fact that Judges are obliged to keep above the fray of all the controversial issues highlighted in the public domain

IN MY VIEW it is inappropriate for Judges to enter in discussion of controversial matters in the public arena, because some of the issues being discussed might fall to be adjudicated on in due course. So for those who wonder why we are not "*active*" or are "*missing in action*", that is the reason.

LET ME BEGIN BY THANKING the Kiwanis Club of North St.

Andrew for your kind invitation to share in this wonderful occasion. It is a pleasure for me to leave my workload for the evening to spend what I hope will be some quality time with you all who have given up so much of yourselves in service to your country.

I AM AWARE that the Kiwanis organization is one of the most involved and dedicated service clubs in our country. I know that many communities have benefitted from your philanthropic work. I am also aware of the immense service that you have rendered to your country, and tonight I commend your organization for the stellar contributions you have made to community development, through your spirit of volunteerism. Many lives have been impacted in a positive way by your

interventions and I congratulate you on the attainment of your 40th Anniversary.

IN THE WORDS of that great man **Nelson Mandela**,

“What counts in life is not the mere fact that we have lived. It is what difference we have made to the lives of others that will determine the significance of the life we lead.”

I WISH FOR YOUR ORGANIZATION continued productivity and success in all your future endeavours.

AS WE ARE PRIVILEGED to have representatives of the media with us this evening, I wish to say that one of the issues of concern for the judiciary is to find a way in which to collaborate with the media in order to have a free flow of accurate information and public education for our citizens.

MANY INACCURATE STATEMENTS in the public domain have their genesis in lack of information. In many instances, inaccuracies go uncorrected and as a consequence misunderstandings persist. In some situations it would be unseemly for our members to air certain matters in public due to the conservative nature of our jobs. You would not for example find us with placards crying out that "*we want justice*" in order to address unsatisfactory conditions of work in certain areas.

I HAVE TAKEN NOTE of the call for the Chief Justice to urge Judges of the need to give reasons for their decisions as we are accountable to the public. I have issued memoranda, and on numerous occasions informed judicial officers of the importance of transparency and accountability and that consideration must be given to these issues in the performance of our public duties and the conduct of our private affairs.

IN THE PERFORMANCE of our judicial duties, if a decision is given against a litigant persons are quick to impute corruption where there is none. As corrupt practices are prevalent in our society I have emphasized that a good practice is to provide reasons for decisions even where it is not required by law. Failure to do so may in some instances have led to speculation in

the public domain as to the reason why a particular decision was made in a given case.

IN INSTANCES where a Judge directs a jury to return a formal verdict of not guilty, it is important for that Judge to explain the function of the Judge and the jury, and that justice must be in accordance with the law. As we all know, persons looking on may be privy to information circulating in communities to the effect that an accused in fact committed a crime and they may wonder why the jury is being directed to return a verdict of not guilty.

I CAN RECALL A CASE from one of our rural parishes where a Judge, without saying much directed the jury to return a formal

verdict of not guilty. The jury initially refused to do so and amplified directions had to be given.

THE DELAYS in our criminal courts caused by the vast number of times that cases are set for mention or trial are of great concern to us all. A lot of time is also spent dealing with matters that could be dealt with before a trial commences and when these matters are dealt with during the course of a trial, it causes trials to be more lengthy.

ANOTHER CAUSE OF DELAY is the unavailability of forensic evidence, outstanding statements and ballistic reports in a timely manner. When cases are repeatedly set for mention or trial, this is because such cases are not ready for trial. Last week I read a

report where a Resident Magistrate expressed her frustration by calling for sanctions to address failure to produce documents.

TO ADDRESS THE ISSUE of unnecessary waste of time for the judiciary, court staff, defence attorneys, Crown prosecutors, other participants including witnesses, jurors, accused and others concerned, a Criminal Case Management System is being implemented in our courts.

CRIMINAL CASE MANAGEMENT is the process by which judges are expected to assume a leadership role by ensuring that all elements of pre-trial preparation are substantively streamlined and dealt with to enable cases to be tried expeditiously and efficiently while ensuring fairness to all parties in the process. Sanctions are more effective in civil courts where failure to

produce certain documents within a specified time could result in a case being dismissed. However, the imposition of sanctions in the criminal courts could not work in the same way. It could not be acceptable for a serious case such as murder to be dismissed on the basis that a party has not complied with the production of a statement or a certificate save in exceptional cases.

THE COLLECTIVE EFFORT of all concerned is necessary if this initiative is to be successful. Cases must be thoroughly prepared for trial at an early stage, police officers should ensure that case files are in a state of readiness for the prosecution to proceed; accused persons must be brought before the courts on time and our case scheduling practices have to be improved in order to avoid or minimize waste of time. All these factors if not addressed contribute, to the inefficiency in our courts.

THE ENACTMENT of legislation to enable courts to admit evidence not in dispute in criminal cases, would go a long way in shortening criminal trials. I have been told that the Ministry of Justice is pursuing legislation in this area. Forensic laboratory capability in our jurisdiction is limited and there is a backlog of cases to be processed by the Forensic Laboratory for certificates to be issued.

THE AGREEMENT OF EVIDENCE in these areas would save time and expenses. The legislative provision being pursued by the Ministry of Justice to impose sanctions in the form of wasted costs orders in certain instances would also assist in making case management more effective.

ALL JUDGES MUST RECOGNIZE their roles in so far as Criminal Case Management is concerned. We are required to be proactive in order to make the best use of court time.

ON THE ISSUE OF BAIL MANY PERSONS do not understand that judges are mandated to perform their duties in accordance with the rule of law. Prior to the enactment of the Bail Act, which stipulates an entitlement to bail; judges were guided by principles of common law to the effect that in cases of murder bail should be granted only in exceptional circumstances. With the enactment of the Bail Act, Judges have to be guided by its provisions. However the right to Bail is not unconditional. Timely and adequately prepared and presented case files would go a long way in addressing some issues of concern raised in this area.

CONTINUING LEGAL EDUCATION for attorneys-at-law is now mandatory. However, there is no corresponding requirement for judicial officers. I am of the view that Judicial Officers should also be engaged in regular legal education and training seminars throughout our careers, and on this basis I use every opportunity to facilitate judicial seminars. I place on record, my thanks and appreciation to the various local and international partners who have assisted in this area.

I HAVE DEVOTED much time to training and educational seminars to deal with new and emerging technologies which have given rise to litigation in areas of law that did not exist 20 years ago. As Judges we have to keep abreast of these areas. Indeed, as you may be aware, the use of modern technology was put to the test in a recent case. We are living in a changing and dynamic

environment and judges must be fully equipped to apply the law within this context. Some of the qualities required to be a good judge must be taught and judicial skills developed.

I WILL MENTION A FEW AREAS such as the Treatment of Children in the Justice System. One of the challenges being experienced is the frequency with which children are involved in sexual activities and are abused by family members and other adults. Oftentimes these children come before our courts as offenders and they as well as their parents and guardians are in need of counseling. Recently at a function at the Family Court I indicated the need for an integrated Family Court to deal with all matters relating to the family under one roof.

ALL RELEVANT GROUPS in our court system have been sensitized on issues relating to the treatment of children in our criminal justice system, whether as complainants, witnesses or offenders, in accordance with the Child Care and Protection Act and International Instruments that Jamaica has ratified. A number of measures have also been put in place all geared towards the protection of the rights, freedom and dignity of our children and other vulnerable groups interacting with the justice system.

SESSIONS HAVE ALSO been held to sensitize court staff on how individuals with disabilities should be treated in courts. I have stressed that such persons with disabilities must be accorded special courtesies to address their physical limitations. Further, they should not be referred to by whatever disability

they have, such as “the blind man” or “the blind woman”, and should not be shouted at as such persons may not be hearing impaired. Justice for litigants is not only about a particular outcome in their favour but also about how they are treated and whether they perceive the process to be fair and equitable for all.

ONE OF THE TENETS of a sound justice system is the quality of its judicial officers. We have to reinvent ourselves to adapt to the changing needs of our society as well as the developments in the law and the many issues arising therefrom.

THE ESTABLISHMENT OF a Judicial Education Institute is part of ongoing plans to reform the justice system. Programmes will include mandatory training courses and orientation sessions for newly appointed judges. The public’s confidence will inevitably

be affected by its perception of the competence of judges. It is necessary therefore that continuous and specialized training should be readily available and budgetary provisions should be made for this.

THE DAYS ARE LONG GONE when the law was a mystery to most persons, and had to be explained by an attorney-at-law. With the advent of technology the average man is now able to apprise himself of basic legal knowledge. Against this background we have to be masters of the law which we interpret and apply. Also we are aware of the new and sophisticated crimes being committed with the advent of technology and the many pieces of legislation enacted to deal with them.

THE RELEVANT AUTHORITIES are well aware of the need to establish a Judicial Education Institute. Jamaica is one of few countries without this facility as part of its judicial system. Of course there is the Justice Training Institute which is an agency of the Ministry of Justice. Best Practices dictate that the Judiciary must be independent; hence training for judges should not be under the executive. In the meantime we have been working collaboratively with the Justice Training Institute to organize orientation sessions and training seminars in general areas, as we seek to establish a Training Institute under the Judicial branch of government.

I PAUSE TO PAY TRIBUTE AND THANK all the retired Judges who have given freely of their services to the many training sessions held for judicial officers over the years.

THE ADMINISTRATION of Justice in Jamaica is very challenging and there are numerous factors affecting the efficiency of the justice system. They have been chronicled many times.

THE EFFECTIVE DISPENSATION of justice to our citizens has been greatly handicapped due to the absence of adequate basic facilities such as adequate court infrastructure, human and financial resources and basic items such as steno machines, computers, printers and photocopying machines. There is also a great need for an upgrade of the technology used in our courts. I am pleased to say that some of these matters are being addressed.

DELAYS AND BACKLOGS are not due wholly to internal inefficiencies. The bitter truth is that criminal activities have increased considerably over the years and there has been no corresponding increase in the physical space or the human capital to address this. The reality that must be faced is that only one case can be tried at a time if a person pleads “not guilty”. In some jurisdictions there is a high percentage of guilty pleas; that unfortunately is not the culture in Jamaica.

IT IS A WELL KNOWN PRINCIPLE of criminal law that a person is innocent until proven guilty. However, one would also hope that a person who knows that he is guilty of committing a crime, especially one who has had the benefit of advice from an attorney-at-law, would do the honourable thing and confess guilt. Such an Accused could then place himself or herself at the mercy

of the court. rather than put the state to the expense of funding a trial at the end of which he or she is found guilty.

ANY SENTENCE IMPOSED after a guilty plea is likely to be more lenient than when a defendant is tried and found guilty. Of course if a case is not well prepared, presented and proved to the standard required or if it takes too long, for one reason or another a person may escape the consequences of his criminal act. However, no accused should be coerced to plead guilty. An accused must do so voluntarily.

THE EFFICIENCY OF THE COURT depends on all relevant organizations and groups such as judges, attorneys-at-law from the public and private bar, police officers, correctional, medical and forensic officers playing their part. Remember too that if

cases are ready for trial but there are insufficient jurors to try them, matters cannot proceed and so citizens also have a role to play.

THE QUALITY OF JUSTICE we receive as a nation is determined largely by our own actions and or inactions. We must all be willing to take responsibility for the existing state of affairs and simultaneously resolve to effect the changes necessary that must begin with a change of our attitudes. We have to assume a mindset that is directed at changing the present culture of delay.

THE ADMINISTRATION of justice does not only involve adjudication of cases by judges. A huge aspect involves administrative activities. The establishment of the Court

Management Services and the various initiatives to reform the justice system has enlarged the administrative function of the office of the Chief Justice.

I AM COMMITTED to all initiatives geared towards improving service delivery to our citizens and will continue to dedicate my time and efforts in spearheading and participating in all local, international and regional initiatives being pursued to advance the administration of justice. The judiciary is fully supportive of initiatives such as mediation, arbitration, restorative justice and Diversion being embarked on to improve our justice system. Court connected mediation exists and I have been informed by the Executive Director of the Dispute Resolution Foundation that police station connected mediation is now available in some rural

parishes. I welcome all these initiatives to resolve disputes and reduce the number of cases coming into the formal Justice system.

IT IS NOT EXPECTED that persons observing from the outside will have a full appreciation of how involved these processes are, but I urge you all to get further involved in these activities. No amount of talking or rehashing the challenges of the justice system will avail us unless and until all relevant groups realize that success can only be attained by positive action on our part geared towards improvement in all areas of concern.

DESPITE THE VARIOUS CHALLENGES with which we grapple, I must highlight the positive strides we have been making in the administration of justice. The Commercial Division of the Supreme Court has been performing well in terms of its

timely disposal of cases due to the assignment of additional judges to that division. I suggest that it is time for the establishment of a full Commercial Court in our court system

I MUST EMPHASIZE that the inadequacy of physical and human and financial resources have been greatly hampering our justice systems for decades and is one of the main reasons for the delays and the backlog of cases. Of course when we refer to backlog of cases we must realize that that a large volume of new cases are coming into the system at a faster rate than those in the system can be disposed of.

WITH CRIMINAL CASE MANAGEMENT and more cases ready to be tried we must have more court rooms and judges available. In a recent case which lasted for many weeks, several other cases that were ready for trial had to be put off as attorneys-at-law were involved in that trial. Also, there are now many cases with multiple accused persons and the trial of these cases takes longer to complete. The old refurbished NCB building to facilitate the expansion of the Supreme Court is expected to be available within a few weeks and more courtrooms will be available.

THERE HAS TO BE A PARADIGM SHIFT in the culture of the judicial system as well as the society at large if we are to truly attain greater efficiency in the administration of justice.

An increase in resources will not be sufficient. Our mantra must now include innovation, accountability, and adaptability.

I NOTE THAT your organization is one of action rather than words. I urge you to press on with important initiatives such as your proposal geared towards the protection of our children.

AS I COME TO A CLOSE I crave your indulgence to make reference to an excerpt from a Greek philosopher which may be relevant to our present situation.

“A private man, however successful in his own dealing, if his country perish is involved in her destruction; but if he be an

unprosperous citizen of a prosperous city, he is much more likely to recover. Seeing, then, that States can bear the misfortunes of individuals, but individuals cannot bear the misfortunes of States, let us all stand by our country."

LET US ALL CONTINUE to be committed to work for peace and justice in Jamaica, our beloved country.

ONCE AGAIN I thank you for inviting me to participate in this special occasion and it was my pleasure to share these thoughts with you.

GOD BLESS YOU ALL!