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Justice System Stalls INDECOM - Almost 100 Cases Against Cops Moving At Snail's Pace Through The Courts

The Gleaner

Ryon Jones

File
Relatives and friends of brothers Andrew and Triston Brydson and their cousin Kingsley Green wear T-shirts and carry cards bearing pictures of the trio, while standing outside the Savanna-la-mar Resident Magistrate's Court in Westmoreland when the cops charged with their killing made their first appearance in court.

More than 95 cases involving cops charged with various crimes, including murder, by the Independent Commission of Investigations (INDECOM) are meandering through the court system as several issues delay the quest for justice.

This has caused INDECOM head Terrence Williams to express concern that the delay in some cases, dating as far back as 2011, could result in justice being denied.

"We have just above 90 cases before the court. Since we have started, the DPP (director of public prosecutions) has dismissed one case and we have had four other cases of convictions," Williams told The Sunday Gleaner.

"A lot of these cases are in waiting. Some of them are going on six years now awaiting trial. It is a source of concern. The cases are ready for trial and have been ready for trial for a long while, but they have been adjourned for a variety of reasons," added Williams.

He said INDECOM continues to encourage witnesses to stay the course and not to lose hope, but he is conscious that the longer the cases take to go to trial is the greater the risk that some of the witnesses might be lost along the way.

"As time passes, witnesses' memories might fade, persons may leave the country, persons may pass away from natural causes, so it is a concern," said Williams.

Mario Deane Case

One such case that is yet to be disposed of by the courts is the August 2014 killing of Mario Deane.

Deane, who was 31 years old at the time of the incident, died three days after he was severely beaten while in custody at the Barnett Street police lock-up. He had been arrested hours before for a ganja spliff.

Corporal Elaine Stewart, District Constable Juliana Clevon, and District Constable Marlon Grant, who were on duty at the time of Deane's death, were charged with manslaughter, misconduct in a public office, and perverting the course of justice. The court is still hearing evidence in the matter following several delays.

Shrewsbury Killing

Constables Kenroy Hines and Damane Campbell, who were charged with the murder of 28-year-old firefighter Andrew Brydson, his brother, 24-year-old Triston Brydson, and their 38-year-old cousin, Kingsley Green, in Shrewsbury, Westmoreland, in March 2013 are also yet to learn their fate.

The men were killed during an alleged shoot-out with the police, but their deaths resulted in days of protest by angry residents, who insisted that the police killed the trio in cold blood.

Another case which INDECOM has ready for trial, having submitted a complete file for the matter, but it has dragged on, is the March 2012 shooting of schoolgirl Vanessa Kirkland. Kirkland was shot and killed after policemen reportedly shot at the vehicle in which she was a passenger. The three accused constables are Anakay Bailey, Dervin Hayles and Andrewain Smith.

Former justice minister Mark Golding, who is now opposition spokesperson on justice, argued that the problems facing INDECOM are not unique as there is a significant backlog of various categories of cases before the courts.

"The reality is we need to make additional investment in the justice system, capital investments, so that we have the courtrooms, the judges and the support staff and equipment that can tackle the volume that now exists in the system," said Golding.

The man who replaced Golding in the justice portfolio, Delroy Chuck, agreed that there is a need for additional resources in the court system to speed up the process.

According to Chuck, he is working to tackle the shortage of resources, judges, prosecutors and court space, as he intends to propose changes to the Constitution for judges to work beyond the age of 70, and to put in a Cabinet submission for at least 10 additional prosecutors.

"What I am really hoping is that in a short space of time, instead of four trial courts at the Supreme Court, we can have eight. So you will appreciate that, hopefully, we can move them off as quickly as possible," said Chuck.

"And then also in the circuit courts, we are hoping that the judges will be able to sit in circuit courts in the parishes longer than the three weeks, probably up to six weeks and, hopefully, on a permanent basis.

"But I am hoping that before the end of the year, there could be an expansion and a completion of more of these cases. All we want to do is ensure that all the cases over five years are tried this year."

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Matondo Mukulu | Our Courts Need Academic Lawyers

The Gleaner

Jermaine Barnaby

Most recently, I take had cause to have a look at the composition of senior courts across the Commonwealth and how judges are appointed. Of course, there are significant differences in how persons are appointed, but my concern is with the question of whether academic lawyers should be appointed to sit as judges.

In the Caribbean, we seem to have an aversion to academic lawyers sitting on the Bench, with a certain penchant, in some instances, to appoint persons from what can be loosely referred to as the public Bar, or those who formerly practised their craft on behalf of the State.

An academic lawyer is a person who, while legally qualified and having obtained a practising certificate, chose to teach the law to aspiring lawyers. In addition to lecturing at law schools within a specific country, I am equally of the view that, to be taken seriously, an academic lawyer must have publications in scholarly journals and occasionally set out his or her views for the consumption of those members of the public who do not read legal journals. In this regard, in the Caribbean context, I would not regard as academic lawyers persons who are part-time lecturers at a law school who do not contribute to the legal discourse in a specific jurisdiction.

The academic lawyer must be contrasted with those who are practitioners of the law, whose lecture room are the courts and tribunals within their jurisdictions, and their contributions to the evolution of the jurisprudence is to argue cases which, hopefully, will help to change the law and impact on the teaching done by the academic lawyer. Of course, there are those within the Caribbean jurisdiction who practise, teach and write.

Former Practising Lawyers

To the onlooker and, certainly, to some who are practitioners of the law, the idea of an academic lawyer sitting on the Bench and making determinations of what are, in essence, procedural issues, is slightly odd, if not wrong. In fact, so strong are the objections to academic lawyers sitting and getting involved in the process that I seem to recall that years ago, one of the anaemic arguments that were used to block Professor Stephen Vasciannie's appointment to the post of solicitor general was that he lacked court time. Of course, those who were in the know would have known that apart from being a brilliant academic lawyer, he has been involved in litigation to the Judicial Committee of the Privy Council.There are merits to having practitioners sitting as members of the Bench, as, without question, especially at the lower level of the court system, the resolution of procedural questions is, perhaps, best dealt with by those who were once practitioners who dealt with thorny procedural issues on a day-to-day basis. So there are obvious benefits, and common sense would

suggest that it would not be sensible to move to a situation where there are only academic lawyers sitting to determine cases brought by litigants.

Selecting Judges

The system of selecting judges in the Caribbean, certainly in Jamaica, is governed by statute and a reading of the relevant Jamaican statute shows that those who have practised law are preferred. Thus, for example, one cannot be appointed to sit as a magistrate unless he or she has practised law for at least five years. So, in a way, there is a natural statutory bias in favour of those who have had some time at the Bar, and the same bias is reflected in the appointment of persons who are selected to sit on the Supreme Court Bench, as judges of that court must have practised law for at least 10 years.

This contrasts most significantly with what obtains, for example, in respect of the appointment of justices to the American Supreme Court. In the first instance, the US constitution is silent on the qualifications that must be possessed by any person nominated to sit by the president, with that person needing to scale a confirmation hearing in the American Senate. The silence on these issues has not precluded a certain type of appointee.

Thus, usually the appointee is a graduate of one of the top five US law schools, and that person would have served or spent some time in some public (legal) office or spent time teaching the law. Most notably, we know that the first ever female justice (Sandra Day O'Connor) had served as an elected state official years before her appointment to the Bench.

In Jamaica, I suspect that the name Carl Rattray comes to mind, as he was a People's National Party-appointed senator, prior to his appointment in 1993 as president of the Court of Appeal. However, in the American and, to a lesser extent, in the UK judiciary, we do find academic lawyers, who have spent relatively little time practising, being appointed to the Bench, and their contributions has been no less than that of their colleagues who are seasoned practitioners.

Academic Lawyers

What then are the arguments that I think should be deployed in support of the appointment of academic lawyers to the Bench in the Caribbean? In the first instance, by widening the pool from which we can select our judges, we would have a natural increase in the numbers of judges that are available. This should help to increase the pace at which cases travel through our court system.

Second, and especially in the area of constitutional law or human-rights law, it would seem to me that an academic lawyer would, perhaps, have spent considerably more time pondering and lecturing on issues of constitutional importance than the equivalent constitutional law practitioner, as those cases are not, in the Caribbean context, regular occurrences that would cause an expert to have a frequency of exposure.

Third, invariably, an academic lawyer is very likely to have had far greater real-life experiences (not always) than a career practitioner, if only by the very fact that they tend, usually, to get involved in other spheres of life, through their lecturing and civic participation and research. One cannot, and should not, underestimate the importance of such experience to the dispensation of justice, as it tends to help to bring about resolutions and an understanding, which a purely legal outlook, at times, can miss.

However, the most effective argument in support of having academic lawyers sitting as Caribbean judges is the fact that it will, or can, increase the numbers of female judges. A quick look at both law faculties in Jamaica will show a higher proportion of women to men as lecturers. If the qualification for appointment took into consideration the years spent teaching, researching, and the nurturing of potential lawyers, it is not inconceivable that there will be a natural increase in the diversity on the Bench, as the academic lawyer pool is filled with talented women who would wish to continue their involvement with the actual practice of law and the delivery of justice.

The Caribbean Bench requires academic lawyers, and there has been no real case advanced as to why we should not have a healthy mix of academic and non-academic lawyers on the Bench, save that it has been the tradition. Tradition, at times, must be broken, and new ones invested in, especially in this case, where the court users will benefit. The thing speaks for itself.

- Matondo Mukulu is a public-law barrister and attorney and former acting public defender of Jamaica. Email feedback to columns@gleanerjm.com.

Judges Jettison Email In JMMB, Finzi Lawsuit - Supreme Court Rules It's Privileged; Appeal Court Calls It Hearsay

The Gleaner

McPherse Thompson

The Court of Appeal has sided with a Supreme Court ruling that details of an email used in witness statements be removed from evidence in the trial of a lawsuit by JMMB Merchant Bank (JMMB-MB) against businessman Winston Finzi and his Mahoe Bay Company.

Hearings in the lawsuit were suspended pending the appeal.

In May 2015, based on an application by JMMB-MB, Supreme Court Justice Brian Sykes struck out portions of the witness statements of Abraham Dabdoub and Finzi, filed on behalf of Finzi and Mahoe Bay.

JMMB-MB argued that parts of the statements included ‘without prejudice’ communication that is privileged, and that privilege had not been waived. As such,

the bank argued that the email was not subject to disclosure and should not form part of the trial – and Sykes agreed.

Finzi appealed Sykes' decision.

The Court of Appeal sided with the lower court, but while it jettisoned the appeal earlier this month, Justice Marva McDonald-Bishop, who wrote the unanimous judgement, did not agree with the Supreme Court that the communication was privileged, and ruled accordingly.

The case has its genesis in a dispute between Finzi and Ryland Campbell concerning the purchase of shares in Capital & Credit Merchant Bank Limited (CCMB) in or around 2005, which was then a subsidiary of Capital and Credit Finance Group (CCFG) Limited, headed by Campbell.

Jamaica Money Market Brokers purchased CCFG in 2012, including the flagship business CCMB.

ST LUCIA COURT PROCEEDINGS

The Finzi-Campbell dispute led to court proceedings in St Lucia. Finzi and Mahoe Bay contend that based on orders made by the court in those proceedings, he is entitled to a portion of shares that were held in CCMB by Weststar International, a company owned by Campbell.

During negotiations to buy Capital & Credit, JMMB held talks with Finzi concerning their interest in acquiring shares in CCMB. McDonald-Bishop noted that at the time of those discussions, JMMB had no association with Finzi, Campbell or Weststar.

On May 23, 2012, during the course of the discussions, JMMB director Patricia Sutherland sent the email communication to Finzi. The following day, JMMB submitted a formal offer to the CCFG board to acquire the group.

After acquisition, CCMB was rebranded JMMB Merchant Bank.

JMMB-MB later sued Finzi and Mahoe Bay to recover outstanding loans made to them by CCMB.

Using the estoppel defence, Finzi, referencing the email communication between Sutherland and himself, asserts that he was given assurances by JMMB, and on that basis, he did not assert his rights as a CCMB shareholder at the time of the acquisition.

He contends that the communication provides support for his counterclaim, saying it shows that JMMB, from its own due diligence, found there were sums owed to him by CCMB.

McDonald-Bishop ruled, however, that there was no nexus between the negotiations between Finzi and JMMB regarding acquisition of the CCMB shares and the later dispute between him and JMMB-MB regarding the debt and, as such, the email communication was irrelevant to the lawsuit in the Supreme Court.

She also noted that it could be challenged under the hearsay rule.

But McDonald-Bishop also ruled that the email was not, as JMMB argued, a "without prejudice" communication and that the details of the discussions to which it refers are not subject to legal professional privilege.

In dismissing the appeal, McDonald-Bishop affirmed that the details of discussions to which the email refers are inadmissible because they do not qualify for exception from the hearsay rule. She ordered that they be struck from the witness statements of Finzi and Dabdoub.

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Bert Samuels | Judicial Code Of Conduct Needed

I was called by the secretary for the registrar of the Supreme Court sometime during the week of May 23, 2016 who advised me that the High Court judge before whom the Trafigura matter was part-heard wished to speak, in his chambers, to the lawyers involved on Tuesday, May 31.

The dress code for chambers is that male lawyers should be in a suit and tie. Out of an abundance of caution, I called the same secretary the day before the hearing and confirmed that the matter was, in fact, a "chambers" matter. Chambers is where judges normally meet with lawyers to discuss "side issues" relating to a case. I turned up in chambers with an associate lawyer, who was also dressed for Chambers, on Tuesday, May 31, in obedience to the judge's wishes and to represent our clients.

INFORMATION CONFIRMED

The information given to me that the matter was to be held in chambers was confirmed by the fact that the judge was present and commenced hearing the matter in chambers. The judge made note of the fact that I was appearing for a number of the witnesses in the said Trafigura matter, including the holder of a constitutional office, the leader of the Opposition.

He commenced by stating that he wanted to refresh his mind about the issues in the matter, as the matter was last before him some four years ago. He was briefed and, among other things, he was reminded that there was a stay of the proceedings before him, ordered by the Court of Appeal, pending an appeal against his decision to hold the statement-taking exercise in open court, as opposed to in camera/in chambers.

After about 30 minutes in chambers, the judge said he was now moving the matter to open court. The dress code for open court is dark suit with tabs and gown. I pointed out immediately that I was not properly dressed for open court, in that we were told the judge wanted to speak to the lawyers in the matter in chambers. The judge insisted that he would be moving to open court,

nonetheless. I, with courtesy, pointed out that the clients for whom we appeared would be denied representation if he resorted to open court, in that I could not be heard in open court. My objection was overruled, and the matter was transferred to open court.

In open court, there were court reporters recording the proceedings. I went into the court and sat in counsel's bench. As the judge entered the court, I stood on the floor of the court (away from counsel's bench) and respectfully requested that, as is done at times, we could treat the open court hearing as a hearing in chambers so that I could continue to be heard and so our clients could be represented. This request was denied and the matter went on, leading to the summonsing of my clients to court on Monday, June 6, 2016, as though their absence from court was as a result of a failure to attend, in the face of the Court of Appeal's stay against the judge continuing to hear the matter.

Code Of Conduct

Judges in Jamaica are not subjected to a code of conduct. They enjoy wide powers to maintain order and good conduct in their courts and chambers. The drastic punishment of removal from office of a Supreme Court judge is the only disciplinary provision set out in the Constitution at Section 100 (4). This is for misbehaviour or physical or mental ill health, which prevents them from discharging their functions.

So, whereas in my case outlined above I was effectively excluded from representing my clients, the judge broke no "rules of conduct". Where my clients lost their freedom of choice of counsel to represent them, and where they were denied a hearing and right to due process, the judge was not in breach of any code of conduct with attendant legal recourse to those offended by that breach.

Concomitantly in that said courtroom, if I stepped out of line (e.g., seeking to address the court without being appropriately dressed), or shouted at the judge, I could be held in contempt and tried by the said judge, or in breach of the canons of the profession, and be tried for professional misconduct and duly punished by my colleagues!

The judge administers the law but he is not above the law. The rule of law is offended when any of its players are allowed to breach the constitutional rights of the land and get away with it scot-free. In professional games, the misconduct of the referee is as egregious as the misconduct of the players.

I call upon those in charge of the judiciary to, with due haste, draft a code of conduct for judges. This will preserve the dignity of the judiciary. Its absence, in my humble view, puts that high office at risk of the lowering of respect for its occupants.

- Bert S. Samuels is an attorney-at-law. Email feedback to columns@gleanerjm.com and bert.samuels@gmail.com.

Teen's refusal to wash her underwear causes big family fight

Covering the courts with Tanesha Mundle

The Observer

A 16-year-old schoolgirl, her father and stepmother were brought before the Kingston and St Andrew Parish Court for reportedly engaging in a fight, which allegedly stemmed from the teen's refusal to wash her underwear. The schoolgirl and the common-law couple, 43-year-old Donovan Prince and 31-year-old Denise Drysdale all of Bull Bay, St Andrew, appeared in court on a charge of affray.

All three reportedly ended up in a fight after Drysdale reportedly attacked the teen and the father intervened, while the police was at their home on May 28.

Allegations are that during the fight between Drysdale and the teen, Drysdale took up a piece of wood to hit the teen, who retaliated by hurling stones at her stepmother.

The father reportedly intervened in the fight to defend his daughter and all three were taken to the station and charged by the police.

Prior to the fight, earlier in the day Drysdale reportedly had an altercation with the teen and had reported the matter to the police, which saw them turning up at the house when the fight broke out.

On Friday when they appeared before Parish Judge Judith Pusey, Drysdale told the court that the fight occurred after she told her stepdaughter to wash her underwear and it caused an argument. She told the court that she normally does the laundry for her two daughters, aged 13 and nine, along with her stepdaughter's.

However, she said that on the day in question she had returned home and was not feeling well so, after washing their clothes in the washing machine, she told her stepdaughter to wash her underwear, after which she went to rest.

"But when me get up she never wash dem and me turn to her and ask her why she no wash her panties and she turned to me and say me fi f… me mother," Drysdale said.

Drysdale said she returned to her room and shortly after, was leaving the room when she tried to pass the teen, who was in the way. She alleged that the teen attacked her.

"She collar me and pop off the whole a me blouse," she said.

Drysdale told the court that the teen had been living with her since she was five years old, after she left her grandmother's home.

The judge then turned to the father and said: “She is your daughter and she is your wife ... what a calamity.”

She then asked the father if he approved of his daughter’s action and he said ‘No’.
Parish Judge Pusey then asked the teen: “Why you behaving like this, you don’t like her? Don’t answer.”

But the teen quickly replied: “She don’t like me either.”
The judge then told her: “When you are 16, anybody who stands in authority over you don’t like you.

“But there is a right and wrong way to do things and you can’t be a big woman in the woman’s home,” she added.

The judge then instructed the probation officer to arrange counselling with all three and extended their bails for them to return to court on September 1.

But before they left, the judge gave the teen a warning.
“Talk to the probation officer, because the direction in which you are heading is not good and you must not be ungrateful,” she said.

For a better JCF...

Linton P Gordon

The Observer

National Security Minister Robert Montague (second right) inspects the guard at a recent passing out ceremony for new policemen and women. He is followed by Commission of Police Dr Carl Williams.

The Jamaica Constabulary Force (JCF) was originally established as part of the colonial system of Jamaica. It was, in fact, established after the 1865 rebellion and its primary function upon establishment was to keep the blacks, who had just emerged out of slavery, in check. The force has always been seen as part of the establishment of an oppressive system and is referred to by some, especially Rastafarians, as "Babylon", meaning an instrument of oppression.

The JCF is established by statute and is given the primary responsibility for the maintenance of law and order in Jamaica. Its members have a duty to keep watch, by day and by night, to protect citizens from the acts of violence and from those who wish to deny citizens the right to property. The Constabulary Force Act provides as follows at Section 3(5):

"Every member of the force shall have, in every parish of this Island, all powers which may lawfully be exercised by a constable, whether such powers are conferred by this Act or otherwise."

The JCF, as part of its mandate to maintain law and order in Jamaica, is given wide powers, not only under the Constabulary Force Act but under a multiplicity of other laws.

There is no doubt that the main concern of the majority of citizens in Jamaica today is crime. Just about everyone has a sense of insecurity and uncertainty. The frequent news report of vicious murders, some incidents with multiple victims, are a source of depression, fright and insecurity for all.

It is no doubt also a stressful and difficult period for members of the force. It is this body that has the primary responsibility for ensuring the safety of citizens in Jamaica. By any measurement it must be conceded that the JCF is not achieving the objective of making citizens safe in Jamaica. Over the years, however, successive administrations have failed to take steps to rid the JCF of the negative image it has in some quarters as a "Babylon system". Cosmetic policy adjustments have been brought to the JCF. However, radical changes to the way the force operates, and the way it relates to citizens, have never been pursued by any political administration in Jamaica.

Training

Any effort to change the image of the JCF must begin with certain basic elements in the force. The first is training. It must be acknowledged that, in recent years, efforts are being made to improve the training of constables in areas of human rights and the importance of winning the hearts and minds of the citizens. However, there is a need to place more emphasis on ongoing training and a programme of rehabilitative training, where officers who are assessed as not successfully winning over the hearts and minds of citizens would be put through this programme so they will become capable of interacting more effectively with the citizens they are to protect. This programme should be part and parcel of an effort to maintain high standards in the force and to ensure that all members, irrespective of rank, are constantly trained and prepared to win the hearts and minds of the citizens. A courteous and polite manner to all citizens, irrespective of

their station in life, will go a far way in winning the heart of citizens. In the same breath being able to ignore the aggression and the misconduct of citizens while carrying out their functions professionally shall be the hallmark of the conduct of all members of the JCF.

Basic fitness and physical requirement

This is an area that should not be difficult to understand. Too often we hear citizens express: "Look how him fat, him can't run down criminal." Remarks such as these are usually used in reference to members of the security forces who are obese, but are seen at the scenes of a crime and are announced to be in charge of the investigation. The force might very well find use for someone who is overweight and physically unfit other than to chase a criminal. If that is the case, then that person should be assigned the specific duty he is fit for but should not be sent on the street only to be held in ridicule by citizens who know that such an obese and overweight officer could not chase a young man who has grabbed a lady's cellphone and is running down the street. Officers who are on operation and who are required to be capable of moving through communities and hilly terrain on foot should be subject to an annual physical test, and it should be a requirement that they must pass this physical test in order to continue performing their duties in the area to which they are assigned.

Operational duties

The operational wing of the JCF comes in contact with citizens more frequently than any other area. Personnel who are involved in operational duties are on the street daily, whether as part of the Traffic Department or involved in the investigation of the lotto scam, importation of firearms, crimes against private property, money laundering or sexual offences. These members are involved in the detection and investigation of crimes, interrogation of suspects, intelligence gathering, preparation of files for court and giving evidence in court when cases brought to court by them come up for trial.

Intelligence portfolio

Intelligence gathering is an area in which the JCF needs to improve. There are too many criminal activities occurring in Jamaica that members of the JCF become aware of after the fact. It is widely acknowledged in Jamaica that the intelligence unit of the Jamaica Defence Force (JDF) is

more reliable and more informed than that of the JCF. This, however, should not necessarily be so, because to begin with, the JCF has a wide basic source for the gathering of intelligence throughout Jamaica. This wide basic source comprises the several police stations and district constables that are spread throughout the island. These police stations provide the basic foundation on which the JCF can develop one of the most awesome, reliable and well-informed intelligence-gathering apparatuses.

Intelligence gathering, or spying, is as old as the Earth. In the Old Testament of the Christian *Bible*, it is reported at Numbers 13: versus 17-18 that: "...Moses sent them to spy out the land of Canaan, and said unto them, 'Get you up this way southward, and go up into the mountain: And see the land, what it is; and the people that dwelleth therein, whether they be strong or weak, few or many'."

Also in Joshua 2: 1 it is reported: "And Joshua, the son of Nun, sent out of Shittim two men to spy secretly, saying, 'Go view the land, even Jericho.' And they went, and came into a harlot's house, named Rahab, and lodged there."

The two men sent by Joshua to spy were so dedicated to their duties that in order to ensure that they were not discovered, they hid in a harlot's house. A harlot's house today is known as a house of prostitution or brothel. The moral of this quotation is that members of the JCF should be prepared to go into all areas of Jamaica and to disguise their identity, that is to say incognito, in an effort to get full and complete information on the criminal elements in our country.

Detection

This leads us to detection. There is constant complaint in Jamaica about the lack of detection, especially when serious crimes are committed. Again this takes us back to the lack of intelligence sources. Recently, the Minister of National Security Robert Montague announced he would return the district constable to their communities, rather than have them at police stations. I think this is a proper policy, because the district constable, if properly trained in information gathering, can be a source of "eyes and ears" in their communities, and they too should be seen as the basic foundation for intelligence gathering throughout Jamaica.

For the police to have a high rate of success in detecting crimes throughout Jamaica they need to have a widespread set of eyes and ears throughout the communities. This will ensure that whenever there is an incident, such as that of the murder of the missionaries in Boscobel, St Mary, someone should be able to give some information, even if it is the colour of a car or a general description of a stranger who was in the community.

Preparing cases for court

A very important area of policing is the preparation for court. No matter how well investigated a case may be, and no matter how much information is gathered about that case, if the officer or officers involved neglect or fail to prepare the court file properly, then when it is presented to the prosecutor it will either be rejected or time will be spent requesting further statements of clarification from the officer(s) involved. It is therefore vitally important that those responsible for investigating cases and presenting a case file to the court are well trained in doing so, or supervised by individuals who have a clear understanding of how a file is prepared. Too often we hear in court or on the news that the case brought before the court has been postponed because the file is incomplete.

Presentation in court

Additonally, in this regard, the presentation of the case in court, which involves evidence being given, is the most important aspect of a case before the court. No matter how strong a case the police officers may have against an accused person, if the case is poorly presented in court, the judge or jury will have no choice but to return a verdict of not guilty.

The presentation of a case in court is therefore significantly important. The police officer, in particular the investigating officer, should keep in constant touch with his witnesses and should be prepared, if needed, to assist with transportation to get them from and to court. He should monitor the security situation of witnesses because, unknown to the investigating officer, when witnesses fail to attend court it is often because threats are issued to them or their families. If the officer is in touch with the witness, the witness will have confidence in the officer, and will tell the officer whether threats have been issued.

Restructuring the JCF

It is accepted by just about all sectors of our society that Jamaica needs not only a better-trained police force but also a larger number of police officers. My proposal is that the structure of the police force should be changed by creating a commissioner general, who will be the head of the force. The commissioner general would work in close collaboration with the minister of national security and would be responsible for the development of policies and for the coordination of duties by ensuring the five divisions under his command make regular reports to him.

Thereafter the five police divisions in Jamaica should each have a commissioner commanding the area, and who should each report to the commissioner general. Each of the five commissioners should have ultimate responsibility for maintenance of law and order and all aspects for policing in the respective areas. The aim of going this route is to reduce bureaucracy in the force, to simplify management and task responsibility, and to be better able to ensure accountability, as each commissioner will have the greater flexibility of taking initiative required to successfully carry out his duties/tasks and responsibilities.

Part of this change will involve the Commissioner transferring officers when there is a problem in an area. The fact that there is escalation in crime in a police area should not lead to an automatic transfer of the commander or deputy commanding that area. In many instances, an escalation in crime is not necessarily due to failure on his part. The fact the escalation is beyond his ability to solve may be due to a number of problems, including manpower and inadequate time spent in the areas by the commander. Any removal of a commissioner from any of the five divisions due to poor results should lead to resignation or a dismissal of that commissioner for failure to perform. To transfer him to another area because he/she has not succeeded is to inflict failure on another area of responsibility, which cannot be good policy.

Each commissioner would be required to not only train the officers under his/her command but to also develop the intelligence-gathering apparatus and to ensure that the men and women under their command are so thoroughly familiar with the area of responsibility that there is hands-on knowledge of what is happening on the ground.

The job of policing in Jamaica is not an easy one. There is a high level of criminal activities, especially from armed gangs. Firearms are widely used in the commission of crimes in Jamaica and members of the security forces are at daily risk from gangsters. Front-line members of the JCF constantly face citizens who will confront the members of the force, test their patience and mettle, and engage them in deadly gunfire.

Jamaica needs a police force that is highly trained, well motivated, and whose members are proud, confident and determined to bring success to their task. Again, it is by no means an easy job, but it has to be done, and those tasked with the responsibility will have to continue their efforts to bring the crime situation under control.

Linton P Gordon is an attorney-at-law. Send comments to the Observer or lpgordon@cwjamaica.com.

My husband has disappeared

ALL WOMAN *Monday, June 27, 2016 , Margarette Macaulay*

The Observer

I got married to an American citizen in September of 2005. I came back to Jamaica as I had to finish college. He wasn't happy about it. When I came here he called about twice, then he disappeared. I called his family and no one seems to know where he is. I need to get divorced but have no money. What can I do?

You are certainly in a difficult position if your husband's family is being truthful that they do not know where he is.

As you must know, you need to know his address as it ought to be put in your divorce petition and then he must be personally served with the petition. If personal service is impossible, you must apply to the court for and obtain an order for substituted service either by way of advertisements in a popular newspaper published in the city/town where he lives and which he would be likely to read, and/or service on a member of his family who would most likely be in touch with him or whom he would contact.

However, in your case, you say his family says no one knows where he is. You can therefore not apply for and obtain an order for substituted service as you lack any facts on which you can rely for such an order.

You have been married since September 2005. If you have not heard anything from him and of him from you returned to Jamaica until now, then it seems that you have grounds to apply for a Decree of Presumption of Death and Dissolution of Marriage pursuant to the Matrimonial Causes Act in the Supreme Court.

Your application must demonstrate to the court that for over seven years you have had no contact from, or with your husband, and neither you or any member of his family (state by name and relationship which ones in your Affidavit Accompanying Petition you have contacted), have any idea where he is and what has happened to him. I would suggest that before you have the petition filed, you contact his family again, as you ought to say the occasions you did so, and recent enquiries by you of them and their negative answers would be more convincing.

You say that you do not have any money. Well, as you know, you must pay for private legal services and even at the legal aid clinics, so you may have to try and find some money and/or make arrangements with an attorney about how you will settle their fees later. Or, you can contact the Official Clerk at the Supreme Court and seek his/her assistance to prepare, file and present your petition for you. This service is supposed to be free of charge and I trust that it still is, as I have not heard or seen any information that this has changed.

I hope I have clarified the position for you and that you can move forward now. I wish you all the best.

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The contents of this article are for informational purposes only and must not be relied upon as an alternative to legal advice from your own attorney.

Bianca Samuels | Amendment Needed To Insurance Law

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Contributed
Bianca Samuels

In my humble opinion, there is an urgent need for an amendment to the Motor Vehicles Insurance (Third Party-Risks) Act, the relevant portion of which stipulates that:

18. (2) Subject to Subsection (lA), no sum shall be payable by an insurer under the foregoing provisions of this section-
(a) ...

(b) in respect of any judgment, unless before or within ten days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings; or [my emphasis]
(c) ...
(d) ...

That section embodies a requirement for notice of proceedings to be served on the insurance company of a defendant, within 10 days of the filing of the claim, failing which the insurance company need not provide coverage in respect of a judgment against the defendant.

It would be superficial, however, to read the above-mentioned section in isolation of the following rules of our Civil Procedure rules, 2002 which read as follows:
r. 8.1 (1): A Claimant who wishes to start proceedings must file ...
(a) the claim form; and
(b) unless either rule 8.2(1)(b) or 8.2(2) applies-
(i) the particulars of claim; or
(ii) where any rule or practice direction so requires or allows, an affidavit or other document giving the details of the claim required under this part.
r. 8.14: The general rule is that a claim form must be served within 12 months after the date when the claim was issued or the claim form ceases to be valid.
These Civil Procedure Rules make nonsense of the 'ten (10) days after proceedings are commenced' stipulation of the aforementioned Act, in that the claimant can wait all of 12 months after commencing proceedings to serve the claim on the defendant, leaving him and his insurers completely unaware that he [the claimant] had, one year ago, started the proceedings!

GREAT RESPONSIBILITY
What this means is that despite the fact that the above-mentioned section of the Motor Vehicles Insurance (Third Party-Risks) Act does not place the responsibility of giving notice on any particular party, the effect of that section, read in conjunction with the above-mentioned Civil Procedure Rules, is that the claimant is vested with the great power of determining whether or

not the defendant is ultimately covered under his insurance policy and at the risk of sounding clichÈ, with great power, comes great responsibility.

A defendant may be completely unaware of the commencement of proceedings by the claimant for all of 12 months before the claim form is served on him, and in his innocent ignorance, may thereby lose the opportunity to notify his insurers of the pending claim against him within the 10-day period stipulated by the Act.

Should the claimant fail to serve the claim form on the defendant within that 10-day time frame (which by virtue of the Civil Procedure rules cited above, he is entitled to do) and in so doing fail to serve notice of the proceedings on the defendant's insurance company within that time, it is open to that insurance company to then deny coverage of the judgment awarded against the defendant, leaving the defendant exposed not covered by his own policy.

In short, the claimant's failure to serve the required notice on the defendant's insurers himself or his failure to move with the requisite alacrity necessitated by the Act, may have the potential to cause the defendant to lose the advantage of being covered under his insurance policy, in circumstances where the defendant himself is not in breach of his policy of insurance and has himself failed to do nothing.

While Section 19 of the said Act does place a duty on the Registrar of the Supreme Court or clerk of court of any Parish Court (formerly the resident magistrate's court) to intervene and serve the relevant notice on the defendant's insurance company within ten days of the commencement of proceedings, in practice, this is almost never carried out. That section, therefore, provides no practical protection to the parties and the danger thus continues to loom. Motorists should know that they would have wasted paying their motor vehicle premiums and may be exposed by the failure of the party suing them to pay millions out of their own pockets, while the insurance company goes off scot-free, with no liability, keeping all their premiums for itself. The pro-insurance clause in Section 18 (2) of the law above must necessarily be repealed to ensure that both insured and the injured are protected under the relevant insurance policy following an accident.

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PHONE THIEF FINED $200,000 AFTER GRABBING $40,000 SAMSUNG

By **Rasbert Turner**

The Star Online

Galaxy S4

After grabbing $40,000 Samsung

A phone thief was yesterday slapped with a $200,000 fine after he pleaded guilty to grabbing a $40,000 Samsung Galaxy S4 smartphone.

The man, Ricardo Ricketts, 25, of Portmore St Catherine, grabbed a woman's phone in 'Sunshine City' while she was using it to make a call.

If he fails to pay the $200,000, Ricketts will have to spend 30 days in prison.
Ricketts, who plead guilty in March, was sentenced by Parish Judge Tara Reid-Kerr in the St Catherine Parish Court yesterday.

The court heard that about 5:50 a.m. on March 7, 2016, the woman was at a bus stop at Braeton Parkway in Portmore St Catherine.

She was making a call from her Galaxy Samsung S4 Smartphone, which is valued at $40,000. Rickets crept up from behind, grabbed the phone and ran off.

But when the complainant shouted "tief! tief!", passers-by chased him down and caught him. He was then handed over to the police who charged him with larceny from the person.

No books, so no ganja tickets

More than a year after, Ganja law still not enforced

BY JEDIAEL CARTER Staff reporter carterj@jamaicaobserver.com

The Observer

A man smokes on a ganja spliff in this photo taken in Mexico, where lawmakers have allowed the possession of five grams of the herb, or approximately four cigarette spliffs, for personal use.Marco Ugarte

Despite the amendment to the Dangerous Drug Act (DDA), the police are powerless when they come upon individuals in violation of the Act — specifically those who peddle or smoke ganja in public spaces.

“We can’t do anything,” Inspector Orette Bascoe, manager of the Statistics and Information Management Unit in the Jamaica Constabulary Force (JCF), told theJamaica Observer when asked what action the police take when someone is in possession of up to two ounces of ganja. Piloted by then Minister of Justice Senator Mark Golding and introduced last year April, the DDA — popularly known as the ‘Ganja Law’ — makes possession of up to two ounces of ganja a non-arrestable offence that attracts no criminal record. Instead, individuals found in violation are to be given a ticket, similar to a traffic ticket, valued at $500 by the police with 30 days to pay the fine.

A minor found with two ounces or less of marijuana or someone older than 18 who appears to the police to be dependent on ganja will, in addition to receiving a ticket, be referred to the National Council on Drug Abuse for counselling.

But no ticket has yet been issued by the police.
Inspector Bascoe, in response to the Sunday Observer 's query into the number of tickets issued since last year, stated: "...the legislation speaks to persons being ticketed for this breach. However, no ticket book was issued or directives given to this effect. Hence, the number of tickets issued remains at zero."

He was unable to state a reason for this and suggested that this reporter directs such questions to the Ministry of Justice (MOJ) — the ministry responsible for the reform.

WHO IS RESPONSIBLE?

Upon contacting the MOJ, the Sunday Observer was informed that the aspect of ticketing was "under the purview of the Ministry of National Security". This reporter was then instructed to contact the Office of the Commissioner of Police for the details.

This reporter was sent on a hunt for information when the Commissioner's Office recommended that the Narcotics Division be contacted instead.

Having called the Narcotics Division, the receptionist there suggested that the Constabulary Communication Unit (CCU) — the communications arm of the JCF — be contacted.

Inspector Dahlia Garrick at the CCU then redirected this reporter to the MOJ, reasoning that the Act reform falls under that ministry.

"The ticketing system did not reach the stage where it has reached the JCF," she noted.
"It's still in progress. It is not the JCF who has responsibility for that at this time. We have not reached the stage where we have received the ticketing system," Garrick stated.
When the Sunday Observer called back the MOJ correspondent, she noted that there must be a misunderstanding and initiated talks with Garrick.

Though nothing concrete was communicated, Garrick, on Friday evening, after speaking with the correspondent at the ministry, assured the

Sunday Observer that she would contact the JCF's legal department to clarify the obvious mix up. She noted that what the MOJ correspondent communicated is not what she was briefed on. Reasoning that it was late, she said the response would not be forthcoming until this week.

THE TICKET BOOK

When asked how different the ticket book for ganja possession would be from a normal traffic ticket book, Bascoe said he wasn't aware of the specification.

"I figure it would be something similar to a traffic ticket book, but I can't speak to that. I have never seen a draft or anything like that so I can't speak to it. I don't know if the draft person at the MOJ has ever come across anything like it, but I can't speak to that," Bascoe said.

Though the police are powerless when offenders are found with up to two ounces of ganja, it remains a criminal offence to be found with over two ounces. Such an individual can be "arrested, charged, tried in court and, if found guilty, sentenced to a fine or to imprisonment, or both. The conviction will also be recorded on that person's criminal record", stated the Ministry of Justice on its website.

Since the start of the year, the police have reported numerous ganja seizures. Just last week 2,000 pounds of ganja was seized in St Elizabeth.

The 'ganja law' was passed in both divisions of Parliament — the House of Representatives and the Senate — in February 2015.

The Bill also prohibits the smoking of ganja in public places, and makes provision for the granting of licences, permits to enable the creation of a regulated industry in medicinal ganja and other by-products.

The law is expected to reduce the number of cases before the Residents Magistrate's courts, now called Parish Courts, as well as acknowledge the constitutional rights of the Rastafarian community which uses ganja as a sacrament.

It also provides for the creation of a Cannabis Licensing Authority, which will be responsible for developing the regulations governing the medical marijuana industry.

The End