

**Remarks By the Hon. Attorney General on the Opening of the
Grand Court of the Cayman Islands for the 2010 Session**

My Lord Chief Justice, Judges of the Grand Court, Hon. Chief Magistrate, Magistrates, distinguished guests, Colleagues at the Bar, Ladies and Gentlemen.

I am pleased to rise to move the motion for the opening of the Grand Court for the year 2010, and with your Lordships' leave I propose in doing so to make a few observations.

My Lords, may I take this opportunity to welcome my Lords Foster and Jones, to the Bench for their first full year as appointees to the newly established commercial division of this Court. I pause to also recognise the other Justice Jones, visiting. Welcome Sir.

I also take this opportunity to extend congratulations to My Lord Foster on his appointment as Queen's Counsel and to congratulate the other appointees, Mr. Neil Timms, Mr. Langston Sibblies, Mr. Kenneth Farrow and Solicitor General Ms. Cheryll Richards. Ms. Richards is worthy of special mention, she being the first female silk to be appointed in this jurisdiction but we will have ample opportunity to say more at the appropriate occasion.

My Lords, throughout the year 2009, we have noted the significant work done by the Rules Committee which has underpinned the much needed transition to the additional divisions of the Court. I am aware My Lord Chief Justice, that it was your hope that the rolling out of the Commercial Division would have coincided with the availability of additional accommodation, but despite the delay in that regard as well as with the outfitting of the 3rd floor of Kirk House with court rooms, this Court has sat in at least four divisions in recent weeks. This has been achieved by means of singular fortitude on the part of judges and court staff. Chambers have had to be used as open courts and vice versa. Judges have had to be using the Library as Chambers and in one instance, Counsels' common room was used as Chambers. While financial constraints have delayed the building of new court facilities, the need cannot be overstated and it is hoped that plans which have gone some far way will be given new life as financial constraints lessen. This is something that I as Attorney General will continue to work with Government towards.

My Lords, of note are the recent sittings of the Court of Appeal and the practice which it has adopted of providing written guideline judgements on areas of criminal law. In particular during

2009 written guidelines were issued in relation to sentencing matters such as grievous bodily harm and sexual assault. While each case must be decided on its own facts, these guidelines set out the parameters for sentencing and the factors which require to be taken into account in each case. The Court of Appeal also sought to tighten procedures for greater efficiency and for quicker disposal of appeals. These are welcomed by all who are involved in the criminal justice system.

My Lords, the most significant legal change over the course of the past year, is the enactment of the new and more modernised Constitution. This has served not only to change political arrangements and areas of responsibility, to introduce new public commissions for the better involvement of society but also to effect new methods for the appointment and discipline of judicial and legal personnel in the public service. By sections 105 and 106 of the Constitution, a Judicial and Legal Services Commission will be established as an independent advisory body to His Excellency the Governor on these matters.

Another important change is the establishment of the new and independent Office of Director of Public Prosecutions. This Office will have sole responsibility for criminal prosecutions which

Portfolio was part of the responsibility of the Attorney General. We look forward to the appointment of a Director in the coming months. In the interim, the Attorney General will continue to be responsible as a transitional arrangement.

My Lords, I wish to take this opportunity to publicly express regret at the passing of the late Commissioner of Corrections, Dr. William Rattray. His untimely death is a tragedy for family, friends and colleagues. It is also a set back for the many reforms being undertaken by the Prison Authorities. Our sincere condolences to his family and many well wishers.

In the wider society at large, by far the most serious area of concern over the past year has been and continues to be the rising levels of serious crime. This has understandably resulted in a level of anxiety in these Islands.

Understandably, we have seen calls from the Commissioner of Police for legislation to be enacted to protect witnesses, or encourage witnesses to come forward when serious crimes are committed.

This is a very small jurisdiction and it is understandable that there will be reluctance on the part of some witnesses to testify for different reasons, including intimidation. Additionally there may be and may have been a reluctance by Jury to convict for different reasons including intimidation or fear of certain known individuals.

My Lords, I am happy to report that the Government is considering legislation as we speak that will provide anonymity for witnesses in relation to certain offences and in instances where there is likely to be witness intimidation. We are also looking at whether certain scheduled offences may be tried by Judge alone to also counter the issue of jury intimidation and shortly we will be looking at how to expand the jury pool by including persons/professions that are now exempted.

My Lords it is worth observing that legislative changes will require other support services if we are to guarantee an effective and efficient criminal justice system.

Some years ago these Islands experienced what was considered then an unprecedented rise in criminal activities. The Legislative Assembly changed the laws to provide for the admission into

evidence of the statements of witnesses who were either killed or too frightened to testify. The law was also changed to increase the sentences for certain offences including firearms, and there were amendments to outlaw the carrying of baseball bats, machetes, knives and other prohibited weapons in certain public places such as parking lots of cinemas and night clubs. Other initiatives were also taken to improve the criminal justice system.

At the time I also made the suggestion that in order to complement these initiatives there needs to be less reliance on eye witnesses and instead a bolstering /enhancement of our forensic capabilities in order to improve the quality of police investigations. My Lords, I wish to again repeat my observation for such a facility, even if it means that Cayman will go it alone instead of partnering with the other Caribbean Overseas Territories which is what we have been attempting to do for some years now. Those of us who have been around long enough can speak to the recurring problems faced by police investigators, prosecutors and courts in cases where good forensic capabilities would have made a difference.

In a number of significant cases the Legal Department has been unable to recommend prosecution simply because that vital link

that would have been provided by the forensic evidence was missing.

Some of us will recall that tragic incident in Cayman Brac some years ago when a lady died, allegedly run over by one or possibly, two vehicles, no charges could be proffered because, among other things, there was insufficient evidence to independently verify which vehicle was involved and whether there was human hair or tissue or whether it was animal hair or some other type of fibre on the undercarriage of the vehicles. That determination may have been possible if at the time we had a local laboratory with experts in DNA, tissue analysis, tyre marks, and other such disciplines. Similarly, we have seen in recent times the difficulties encountered in some ongoing as well as concluded investigations.

We note that even when charges are proffered, in some cases the forensic evidence may be limited and thus eventually fall short of what is ideal. We have made some improvements with the opening of the DNA facility at the Health Services Authority which is now an accredited institution but the fact is that Cayman needs a dedicated local facility to include more than just DNA testing, a facility that will embrace all disciplines and will guarantee expedited results, one where there will be no need for collecting,

packaging, and storing exhibits for long periods, in order to transport to another country for analysis and in so doing compromising the integrity of the exhibits, and raising questions about chain of custody. If I recall correctly in the Brac case some exhibits thought to be either fiber or hair were sent abroad and it was almost a year before some sort of results were returned. This cannot be good for our jurisdiction which seeks to maintain a low crime rate. Indeed, to this day there is has been no closure in that Brac matter as well as other deaths.

The Commissioner of Police quite properly mentioned sometime ago about looking at cold cases. This is very commendable but we are not sure how much success he will be able to have unless he is given the technical and forensic capability to deal with those as well as current cases.

Additionally, my Lords there is the need for what I term people power. It is true that some people are understandably frightened at the heinousness of some of these offences, but the fact is that the Police need the help of the community. Unless someone is willing to come forward and give evidence these crimes may never be solved. Every one of these people committing these offences goes home to a relative or friend who invariably knows that he has done

something unlawful. It is incumbent upon them to report it to the police. To knowingly harbour a person who has committed an offence is legally and morally wrong.

There is also another worrying trend I am told of my Lords, and that is about young girls acting as co-conspirators with and facilitators of suspected criminals. It shows that there is a clear need to re-visit the findings of the Crime study report and to action its recommendations in particular in respect of young persons at risk.

I can't help but observe that the social decay we are experiencing seems in large part to be as a result of the lack of self-esteem in some of our young people. They need to be salvaged.

My Lords the immediate practical steps which have been advocated by the Commissioner such as tighter border control and need for air support are commendable. We note also that information available to us points to firearms coming into the Islands concealed in manifested cargo and this is an area under the purview of Customs which requires scanning equipment and much greater vigilance. In short more resources need to be concentrated in this area.

Additionally, my Lords it would be wrong for me to stand here and make this clarion call without acknowledging that we as Prosecutors and Police Investigators need to bend our back a bit more and exercise greater diligence consistent with the increasing complexity and heinousness with which these offences are being committed. We need to do more to assure the public. Some degree of recalibration is required. Despite the overwhelming workload, we as Prosecutors need to pay greater details to files and to be more diligent in our preparations.

Police officers who I must note are equally overwhelmed, need to pay greater attention to details, pursue more leads; ask the additional follow-up questions during interviews. They need to provide the Legal Department with and the Department needs to request every single piece of information even if apparently irrelevant, and finally there needs to be greater synergy between the various police units on the one hand and with Legal on the other hand.

There are times, not just now, but going back a decade or more that members of the wider public and even some police investigators, were frustrated and not happy with the Legal Department because

we were unable to recommend charges because in our opinion the evidence was insufficient. But the fact is that we use a certain established threshold to determine whether to recommend charges, and even though the acts are heinous and the suspicion is overwhelming, it would be wrong for us to lower the bar in such instances where the evidence does not meet the requisite standard, which is, that there is a realistic prospect of conviction. This must depend on whether there is reliable evidence which can be used. This is the same standard applied by the UK Crown prosecution service.

My Lords, just have to continue to work at it, not cave in to the public pressure to simply recommend charges because of what is happening around us. As a matter of fact, the greater the pressure, the greater the need for vigilance and the need for the protection of the civil liberties of all persons. The nature of our system of justice is that persons are innocent until the evidence is of a standard to establish guilt.

My Lords we are going through turbulence but unfortunately we cannot simply fasten our seat belts and sit back, we need to let our collective views be heard and all hands need to help. If Cayman

goes down in the turbulence we will all be counted among the casualties.

My Lords, there was some good news in 2009, we note for example, that Cayman continues to weather as best it can the financial storm and is holding its own in respect of international initiatives triggered by the attempt of the G20 to bring stability to world financial markets.

On the legislative front, I am pleased to say that in 2009, the Drafting Department continued its hard work with preparation of a number of bills which were passed by the Legislative Assembly. Many of these were revenue measures as well as measures required by the creation of new constitutional offices. Other Laws included the Companies Amendment Law, and the Exempted Limited Partnership (Amendment) Law 2009.

The legislative work underway for 2010 includes a Labour (Amendment) Bill which will give effect to the ILO No. 182 Worst Forms of Child Labour Convention, making it an offence for a person to subject a child to the worst forms of child labour including slavery, prostitution and pornography

Other proposed legislation includes a Criminal Procedure Code (Amendment) Bill - to abolish preliminary enquiries in relation to Category A offences; to abolish the need to call live witnesses at Preliminary Inquiries; and to permit the hearing of certain firearms offences by a single judge sitting alone. Consideration is being given and research undertaken as to the systems in other countries faced with similar problems.

A Prevention of Gender Discrimination Bill is also on the agenda. This will serve to implement the tenets of the Convention on the elimination of Discrimination against Women. Additionally, work continues on the long overdue Legal Practitioner's Law and a committee is at work reviewing the Legal Aid System.

In the area of Law Reform, the Commission in the year 2008/9 was in the process of finalizing its review relating to charities- a final report and bill will be submitted by end January 2010.

A review of Strata titles legislation was started in June 2009 and a sub-committee comprised of members of the private and public sector was formed to deal with this very technical area. A draft bill is due to be submitted this month.

The Commission also issued a discussion paper on Arbitration for consultation in May and a bill will be sent out by February 2010.

For 2010, the Commission will review the Matrimonial Causes Law, the Maintenance Law and the Affiliation Law with a view to their reform.

I take this opportunity to thank the members of the Public who continue to participate in the various consultation phases and who took the time to read and respond to the various Bills. In the long run, this can only serve to be beneficial to society as a whole.

My Lords, with the start of 2010 we have seen the commencement of the Anti Corruption Law. All persons are encouraged to familiarise themselves with its provisions as it will have implications for the conduct of business both in the private and public sectors.

The Law School under the guidance of the Legal Advisory Council with the full support of Government, continued its work in preparing students for the Legal profession and in 2009, saw continued significant student achievement.

My Lords, I have mentioned him before but I take this opportunity to publicly welcome the new Commissioner David Baines who is getting a much warmer welcome than he would have hoped and to commend him and his team for their commitment to the safety of the Public. His task is not an easy one. We note in particular his efforts and new initiatives to provide training for the Police and to standardize the many processes needed for improvements within the Police Service. We are confident that the many projects he has since undertaken will result in more pro-active policing activities and we pledge our support as a Portfolio to him and his office.

We note that in 2009, the Legal Department received for ruling, one thousand one hundred and eighty three (1183) files from the Police, marginally less than the amount received the year before.

In the Summary Courts, 2009 saw the first full year of the Tuesday mention courts and trial courts on three week days system under the direction of the Chief Magistrate. The improvement is pronounced, continuous and sustained and we commend My Lord Chief justice, the Chief Magistrate, all the Magistrates and Court Staff for the significant work which was undertaken and which has resulted in an increase in the output of these Courts. We look forward to assisting as best we can in this New Year.

My Lords, on the Personnel side of the Portfolio, there were some changes. On the civil side, with the full implementation of the Freedom of Information Law, Crown Counsel Joan Mattis was recruited to focus on this area. Crown Counsel Civil - Dawn Lewis was also recruited.

On the Criminal side, we welcome Crown Counsel Candia James who was recruited as a replacement for Nicola Moore who has left Chambers for Private Practice, we also welcome Counsel Kenneth Ferguson.

Finally, at the Legislative Drafting Department we welcome Legislative Counsel Karen Stephen-Dalton who will focus primarily on the drafting of financial legislation. In the same breath we say thanks and goodbye to Mr. Michael Bradley who was our Law Revision Commissioner for over a decade. He has now retired and we wish him and family happiness in retirement.

My Lords there remains only for me to reiterate the continued commitment of the Government in ensuring the required resources for the smooth administration of Justice, and of the Chambers to providing quality legal service and our assistance in whatever way

possible to facilitate the efficient conduct of the business of these Courts, and in moving the motion for the opening of the Grand Court 2010 to wish for your Lordships, Magistrates, Court Staff, and all here present, a prosperous and productive New Year.

I now formally move the motion for the opening of the Grand Court for the year 2010. May it so please you my Lords.

Samuel Bulgin QC, JP
Hon. Attorney General

