

**Chief Justice's Address to the
Rotary Sunrise Club, 24th August 2011**

I am sure that the members of this service club share the same sense of urgent concern, about the emergence of gun and drug crime that everyone else in our society shares. No doubt you also ask the same questions: How did this happen in Cayman? What are the causes? Is it too late to stem the tide? What can we do about it?

Unlike most other people however, you are willing to get involved, to try to find the answers and to implement them.

You are good enough to take the time to invite responsible office holders such as the Chief Justice to speak to you about these concerns, no doubt again in the hope that some small insight might be imparted, such as could spark the light of a solution. And, not least of all, you are resolute enough to be here as early as 7 o'clock in the morning with minds alert and attuned to tackle an issue as dense and intractable as crime. Surely then, yours is an invitation to which one must respond, even if with some measure of misgiving about meeting your expectations.

Accordingly, I asked myself the question: on what aspect of this massive problem and the complex issues involved, can I usefully speak to you in the time allowed this morning?

I settled upon two topics: "*Early Intervention*" and "*Restorative Justice*".

I must concede right away though, that neither of these two topics will offer an answer to your immediate concerns about the state of crime in our society. Neither will contain advice on how to interdict the present day gunmen to prevent them from using their guns. Like all other institutions, the judiciary will have certain

views on those matters but judges must be especially abstemious in the views we might express about current matters. I think you will understand that, more so than most other people, in going about their daily business, judges are prone to having their public utterances come back to haunt them when they sit to try cases in open court.

So then, my chosen topics speak more to the future than to the present, more to what we can hope to do to prevent the spread of crime in the future, than to what we can do to stop the criminal activity presently in our midst.

Neither of the concepts embodied in my chosen topics is new. Since at latest the early 1970s, criminologists have embraced the view that reducing crime can only be accomplished through the dispensation of broader social justice, by addressing the root causes of crime. And no cause is closer to the root than break down in family life and the consequential failure to provide the necessary care, protection and proper upbringing – by which I include the proper socialization – of children.

Early intervention is long recognized as an integral part of any progressive policy initiative that Governments might undertake, to meet the needs of children who are at risk. As the term implies, what is required is the early recognition of the risks and the early intervention of the state agency best suited to address them. The earlier the intervention, the more likely it will be effective.

A sad and all too common example in Cayman is the drug addicted expectant mother. Experience before the Courts has shown that she and her child will almost inevitably require the intervention of the state. All too often however, that intervention does not occur until long after the child is born, when the mother gets into trouble with the law and when the child will already have been the victim of neglect and abuse.

Effective early intervention would require, in their case, prenatal and post-natal treatment, aimed primarily at protecting the child and enabling the mother to care for the child, including where necessary, interruption of the mother's immediate custodial rights over the child. This would involve the social welfare services working closely with the health care services and a mandate given by law for them to intervene at the earliest signs of risk to the welfare and well-being of the child. And there has to be a continuum of care, throughout the child's entire age of dependency, if necessary.

So, the reality is that what is required is not only early, but continued intervention as well. The proposition involves a wide range of programming being made available that will impact the child's life through his or her family, school and community. The ultimate objective is to give the child a viable chance of becoming a fully socialized and productive member of society, despite the immediate circumstances of deprivation. This will seem an expensive proposition to some, but tried and proven in other places, has been far less so than the alternative of having to deal with a mother and eventually the child, through the criminal justice and penal systems.

Other skeptics might say that it is social engineering taken a step too far, involving as it would the overriding by the state of parental rights and the undertaking of the state of parental responsibilities, whether or not the natural parent consents. But while these are all profound concerns, they tend to overlook the fact that in these kinds of cases, the rights of the parent and the welfare of the child often conflict. And when viewed from the perspective of the "big picture", the increasing numbers of cases requiring intervention speak moreover, to the need of society to preserve itself.

The judiciary is fully convinced of the need for this kind of early and continued intervention and has been so advising for several

years. The judiciary has been actively involved, not only with the actual cases coming before the courts and the agencies involved in the cases, but also in research, programme development and coordination of a National Child Protection Strategy spearheaded by the Ministry of Health and Human Services as it was known at the time (2006). We have also more recently made written representations to the National Security Council by way of input into the Crime Reduction Strategy currently being developed and which, in its Report, expressly embraces early intervention as part of the new paradigm.

It is hoped that all of this has led to the establishment and encouragement of open communication with all stake-holder agencies, especially with the Cayman Association of Youth Services (CAYS) Foundation that has responsibility for the Bonaventure Home for Boys and the Francis Bodden Girls Home – both of which homes were built and donated by Rotary.

Our interaction with the various other government and non-governmental agencies has provided ample proof that the necessary resources to deal with our problems – both human and financial – are already available in Cayman. What is lacking is coordination – the will and ability to coalesce all our best efforts towards the single objective of effective intervention.

The Crime Reduction Strategy Report reached a similar conclusion. At paragraph 12 of the Report the following statement appears:

“There are too many programmes and indeed in certain areas, a duplication of efforts. From comments received it appears that there is insufficient inter-agency co-ordination with the right hand not always knowing what the left hand is doing; and potential synergies are clearly not being exploited. Given the amount of

programmes, it is inevitable that the funding is being spread thinly and although perhaps these resources are not being wasted, they could surely be spent more effectively”.

In this respect there is however, already some positive news with the recent announcement by Government of the creation of a Policy Co-ordination Unit, to be headed by a Director, to implement the Government’s Crime Reduction Strategy. It is with a tangible sense of relief that one reads from the job description advertised for the post as follows:

“On all policy related matters, (to) coordinate the development and implementation of policy between ministries and portfolios and across the wider government sector to ensure that government policy is developed coherently.”

But noticeably absent from that remit is any reference to the important role of the non-Governmental agencies.

Because of the well established role that the NGOs such as the Rotary has played over the years and for reasons which I will explain later, it is also to be hoped that the Director’s remit will come to include coordination between Government and the NGOs, to ensure the NGOs effective involvement in working on what should be seen as and perhaps more aptly described not only as “Government’s” but as the “National Crime Reduction Strategy”.

I trust that from all I have said so far, you will agree that the policy of early and continued intervention, when supported by proper co-ordination, will be crucial to that National strategy. There is a lot more to be said about the policy of intervention that time does not allow this morning, but the literature is readily available and it goes without saying that my office would be happy to provide

assistance if your Mdm President sees the need for research in that regard.

Let me now turn briefly to the subject of restorative justice in which context also it will be readily apparent that the need for intervention and coordination is very important.

Restorative justice is the notion that holds that society's response to the growing threat of crime will continue to be ineffective unless and until society not only punishes, but also restores, the offender.

Already many regard that statement as embodying a self evident truth: witness they say the endless cycle of recidivism, the failure of the expensive prison systems to reduce crime because of the emphasis placed on punishment over rehabilitation and the escalation of crime in spite of the increasing severity of the penalties.

Although slow in the realization and years in the making, here too I am pleased to be able to say that there is already a paradigm shift. So much so that in the same Crime Reduction Strategy Report, we see as much emphasis being placed upon plans to reduce re-offending as there is upon plans for law enforcement. The urgent need to implement the Alternative Sentencing Law which was promoted by the judiciary and enacted by the Assembly as long ago as September 2006 is now also recognized.

This Law embodies a number of new ways of approaching the offender which I believe would be of particular interest to Rotarians because of your interest in remedial voluntary service, giving scope for the traditional Rotarian pledge to act with consistency, credibility and continuity.

Indeed, although this is at least the third occasion on which I will have had the pleasure of speaking to Rotarians on the subject of

this Law, I always feel compelled to mention that the important provisions which the Law contains for what may be described as a quasi-probationary programme, is based on an initiative of the Rotary Club of Davenport, Ohio. The idea was raised here by the Director of Vocational Services of Rotary Club, Grand Cayman in early 2000; with the offer of that Club to participate if a similar programme were adopted locally.

Although 11 years have since passed and in the spirit of the local saying that it is never too late for a shower of rain, section 50 of the Law will require the Governor to “*appoint a sufficient number of probation officers, qualified by character and experience to be probation officers, who shall perform such duties as specified under this Law and as may be prescribed by rules made under this Law*”.

I emphasize the words “*qualified by character and experience to be probation officers*” because they are clearly intended to embrace other persons, not only those who are qualified by virtue of formal training to be probation officers. The words apply as much to our hundreds of Justices of the Peace, Notaries Public and other dignitaries, as they do to service club members; and when seen in that light, the potential impact that such a strong cadre of voluntary probation officers could have upon the various restorative justice programmes, is truly encouraging.

The Alternative Sentencing Law allows several new approaches to sentencing: these include electronic monitoring at home coupled with curfew orders instead of immediate imprisonment; community service orders requiring the performance of service in the wider community, including for instance service to be performed under the supervision of the service clubs; conditional sentences, which if satisfactorily fulfilled will allow the offender to avoid going to prison; intermittent sentences, to allow for incarceration at times which would enable the offender to keep his

job and support his dependents; restitution and compensation orders, to require offenders to make reparations directly to their victims and in some circumstances to be confronted by their victims; family group mediation and counseling for offenders in the hope that their wider families will share responsibility for and participate in their rehabilitation ; and performance orders which require the offender within a specified time to do one or more things: such as participate in drug treatment or other counseling, seek and obtain suitable employment, undertake academic or vocational training courses and so on.

Allied to these will be the Drug Treatment Court and a number of other Court-led initiatives designed to treat the underlying problems that lead to offending; such as illicit drug consumption, drunk driving, domestic violence or offences committed by persons who suffer from mental illnesses. With some of these such as the Drug Treatment Court, tangible progress has already been made although it is still far too early to claim success.

It will be obvious to an audience such as yourselves, that the objectives of these reforms cannot be achieved just by legislation; nor can they be implemented by the officials and technical people alone. They require extensive community involvement and the idea of the rotary probation program is a very apt example of what that involvement could be.

The idea is that rotary club members, as well as the other suitable volunteers of good standing and character, will be selected to serve as supervisors and mentors. They would engage typically in probation programs with young offenders (age group 18 to 25) involved in minor drug offences or offences of dishonesty or lesser acts of violence. The program would seek to provide one to one counseling or mentoring to the young offenders.

In the Davenport Rotary program, Rotarians serve as positive role models and attempt to provide effective guidance by setting goals, stressing the importance of education and focusing the minds of the youngsters on careers. In effect a big brother/big sister programme but, if adopted in the Cayman Islands, would carry the added imprimatur of the court, including possible sanction under the Law to ensure compliance with the conditions of the programme. Those conditions can be expected to include compliance with random drug testing, keeping employment and regular attendance upon the supervisors at such time and place as the probation orders stipulate.

Regular reports back to the court by the supervisor will keep the court informed about the offender's compliance with the program, with failure to comply resulting in the order being revoked and the offender being brought back before the court to be dealt with in some other way.

As the Cayman community progresses along this more enlightened path of criminal interdiction and as the culture of restorative justice takes root, there is clearly a well suited role for a community organization like yours to undertake in the administration of justice. Certainly 11 years ago that was the view you yourselves embraced as expressed by the offer of your sister club to become involved in probationary work.

Today, this morning, as we meet together in this quiet room contemplating the current and alarming spate of gun crime, the idea of restorative justice may sound rather hollow to some of us. I empathise completely with that feeling. At the very least we are all entitled now, not at some unspecified time in the future, to a restored sense of security as we go about our daily lives and as we repair to our homes at night. And as I acknowledged at the outset, the long term policies of early intervention and restorative justice will not restore that immediate sense of security. Their potential

lies in the long-term reversal of that vicious cycle of neglect, misguided policy and missed opportunities that brought us to the place we are now in, that cycle which, unless we break it, will surely take us to a far worse place.

Hon. Anthony Smellie
Chief Justice of the
Cayman Islands

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