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MATTERS CONCERNING LAWYERS

The Newsletter of the Jamaican Bar Association



FEATURE ARTICLE: AN INTERVIEW WITH EMILE LEIBA PRESIDENT OF THE JAMAICAN BAR ASSOCIATION

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NOTE TO THE READER:

This issue of *Matters Concerning Lawyers* will be followed by a special COVID-19 related issue of the *JamBar Journal*, containing valuable insight on the impact of the pandemic on a multiplicity of areas of legal practice.

It is our hope that the two publications will be read in tandem, in an attempt to provide a well-needed balance in the nature and tone of the content disseminated by the Bar Association in these unprecedented times.

We wish our fellow colleagues, great health and good spirits. If you run out of good spirits just remember that you're always welcome at the Bar!

Stay safe and wash those hands!

This publication represents the renewal of the popular newsletter, "*Matters Concerning Lawyers*" written and published by K.C. Burke, former President of the Jamaican Bar Association, circa July 1986.

Snapshot available on pg 15.

No stranger to the legal profession, Emile G.R. Leiba has nearly two decades practising extensively in the areas of employment law, property law and civil litigation, primarily specializing in commercial litigation.

He was called to the Jamaican Bar in 2002 and is Partner in one of Jamaica's oldest law firms, Dunncox, Attorneys-at-Law, where he co-heads the Litigation & Alternative Dispute Resolution Department. Mr. Leiba has been involved in various committees and activities, serving as JAMBAR Treasurer, Chairman of the Industrial Relations & Labour Law Sub-Committee and Member of the Social Affairs and Outreach Sub-Committee. In addition to these roles he is a member of the Jamaica Chamber of Commerce, the Betting Gaming and Lotteries Commission, served as Honorary Counsel to the Little Theatre Movement of Jamaica, was a former Commissioner of the Fair Trading Commission, is an active member of the Jamdammers Running Club and is an Associate Tutor in Civil Procedure and Practice at the Norman Manley Law School. As a hardworking and dedicated attorney, Emile has sought to contribute to the growth and improvement of the legal profession in Jamaica. A second generation JAMBAR President, Emile's father John Leiba served as President from 2006-2008. This interview with Malike Kellier (MK) puts the spotlight on our president after his first year in office.

MK: Tell us a bit about your background and upbringing?

EL: Well, I am a middle child with an older sister and younger brother. Of the three of us only one decided to do law as my sister is a certified financial analyst and my brother is a mechanical engineer in Trinidad & Tobago. Born and grown in Kingston, I am a 'town boy' but my mom grew me on a host of country or rural experiences which helped foster strong family connections.



Article by Malike Kellier

I attended Mona Preparatory School, Champion College, University of the West Indies, Cave Hill and Norman Manley Law School. I started running with my dad from the age of nine years.

MK: Tell us about your experience at Champion?

EL: Champion College was an interesting experience for me. Back in those days I did the Common Entrance Examinations to get into Champion. Academically, I was not always at the top of the class but I peaked at certain times as I was in the bottom percent of class in first form and slowly made my way back up in 5th form. I was on the track team and went to Boys and Girls Champs where I participated in the 800 m and 5000 m events. I was a House Captain, Sub-Prefect, Prefect and Deputy Head Boy in charge of detentions.

When I was at Mona Prep we were late for school EVERY morning except for Common Entrance Exam. That's the only morning I remember us ever being early for school. I think in hindsight because we would exercise every morning it was difficult to finish everything and still get to school on time. We would get up at 4.30 a.m. every morning and run then come back and get ready for school. So, at Champion, because school started at 9.10 a.m. instead of 8.00 a.m. we were able to comfortably get there on time.

I didn't do any pre-law subjects and had more of a business mind and at A' Levels had an inclination for subjects such as Accounts, Mathematics and Economics rather than Literature and History. I did like History however, and at the time I read ***Man's Civilization and Conquest*** as well as ***People's Revolution and Nations*** texts back to back unprompted because I've always found human history interesting since, as they say, you can't know where you are going unless you know where you have been. So the history of humanity and how we developed as people is something I found interesting. I think perhaps the greater focus on Caribbean History and where we came from as a people in schools is good but I also think that we should not lose interest in the broader history of humanity.

In terms of the books I read at school, one of the books that has always stayed with me is ***Animal Farm*** by ***George Orwell***. It is a book of many layers – it is a commentary on political systems but at that age one didn't have a full appreciation of at the time, as to what the book was saying but, really, that theme that resonated throughout the book that all are equal but some are more equal than others; I have seen it played out repeatedly throughout my life.

MK: Are there any lessons you learned in childhood that stay with you to this day?

EL: Yes. First, in order to succeed you have to put in the work because even if you are bright and have some capability you have to put in the work. They say genius is 99% perspiration and 1% inspiration and I have seen that applied in legal practice – in order to be a brilliant advocate you have to read copiously and prepare in order to make sound and solid legal arguments.



One of the lessons I think I learnt in terms of balancing exercise with academia is that it helps to keep you grounded, so the second lesson is that one should maintain a balance. Some people would say if you use all that energy for exercise into your work you would do even better but that is actually not necessarily the case. I find that my mind is clearer; I think better, I function better when I balance the academic work with physical activity.

MK: Why did you decide to pursue a career in law? Was there an 'I'm destined' moment when you wanted to be an attorney?

EL: The interesting thing is despite the fact that my father is an attorney; I did not initially have the thought to pursue law. When I was in 6th form contemplating a career path, I in fact applied to the Faculty of Social Sciences and thought about becoming an Accountant as I did business subjects.

It was actually my mother, Eleanor Leiba who encouraged me to apply to the Law Faculty, so I applied to both. She saw something I didn't see at the time and I have not regretted the decision to pursue a career in law. The funny thing is people would say that as my father is a lawyer I ought to know what this law thing was about.

But he was a Conveyancer and, growing up, at best I would have been exposed to shows like **"Matlock"** so I had some understanding of what I call "courtroom law" but no understanding of property law which, as a child or teenager, didn't mean anything until you became a practitioner and had a grasp of it. So it was something I knew conceptually, but I had no real appreciation of what it meant for my father to be an attorney.



Funny enough, the point at which I knew I was destined to be an attorney occurred when, some years ago, I was driving along Arcadia and a vehicle swung across, cut in front of me and caused some damage. The driver of the vehicle initially accepted liability on the scene and that he was wrong and said I should simply get an estimate for the repairs and let him know the cost so he can pay for the damages.

However, when I called him he denied liability, saying that his insurers told him not to admit anything and that he was not going to honour his previous promise. I then asked him to hold the line for a few minutes. I spoke to my father who then articulated our claim and told me, "This is what you should tell him: my father is an attorney and we are fully prepared to sue him and take the matter to court and claim loss of use, the damage to the vehicle, the interest and our legal costs, so if he does not pay now we are going to bring the matter to court".

This happened on the Monday; the man paused for a minute and in a penitent voice asked if Wednesday was soon enough to pay over the money. So that Wednesday he met me, happily handed over the money and what that taught me, at that point when I was just a first-year law faculty student is just how powerful the spoken word can be.

Bearing in mind this wasn't an actual suit, there was nothing filed with a court stamp,

but simply the power of the spoken word, the choice of language and just the mere threat of having the law on your side, illustrated to me that there is a power in that which enables you to secure justice. The Law and justice are inextricably intertwined where you can secure justice for yourself and others

MK: What are some of the things you would like to see achieved in your tenure as President of the Bar Association?

EL: March 2020 will be one year as JBA President. I would say a lot of the early stages is figuring out the job of President-what is involved - despite the fact that I have been on Bar Council, I have been on the JBA executive as Deputy Treasurer and Treasurer before I became President. Becoming President is a complete shift in responsibility and perspective in a number of areas and so there was that initial learning curve required in figuring out how things were and how then you would like them to change.

So, in the initial stages it was continuing on the work of those who had served before. Of course, Jacqueline Cummings was the immediate past president and one of the things started under her tenure that I am happy we successfully achieved was the provision of health insurance for our members and the Bar office staff at a discounted rate.

For me, in terms of a focus, I would like to see the rehabilitating of the reputation of the profession to an extent. As Bar President you are the face of the profession and so you have to present yourself and, consequently, the profession in a way that improves the public's perception of the profession. One of the objectives of the Association is to maintain the honor, dignity and good name of the profession -



and that is one of the things I have strived to do as President in terms of presenting a certain way, preparation and putting views forward in my interaction with the media and so on. As a goal I want to modernize the Bar infrastructure in terms of how we communicate and interact with our members, which currently primarily is through email. Happily, we have secured funding from the United Nations Development Programme (UNDP) to improve the association's website and I would like to see that used as a greater tool of interactivity, perhaps with a connected JBA app.

My dream you could say is that every lawyer will have the JAMBAR app on their phone as a portal for communication to all attorneys in Jamaica whether they be sole practitioners, in a firm, outside of Kingston, Montego Bay, etc. so that we can be more cohesive as a profession. Each president has had their own objectives and so for me my focus is a bit more internal so that we can come together and use technology more.

The General Legal Council has started webinars, for example, and we hope to start offering same and to go even beyond that and have video FAQs (frequently asked questions). Electronic mentorship through a library of FAQs is -

also a goal so that as a young practitioner, where you are not sure how to do something you can click on something, search a subject area and you can see a practitioner experienced in an area walk you through, because a lot of how we absorb information is by this medium. We don't read as much anymore both as a people and as a profession. A lot of the ways we digest information is via social media, video, twitter, etc. Legal information is a bit different and so it is much harder to give a 30 second legal principle or process that is necessarily accurate. But, as much as possible, we must try to provide ways to raise the level of practitioners in Jamaica by letting them have information to practise law at the highest level.

MK: What have been some of the highlights of your legal career so far?

EL: From my early days, I recall as a junior attorney being in a matter with a Senior Queens Counsel and there was a difference of opinion on a legal issue in the matter as to what it meant and what was the preferred course and I remember convincing the Queens Counsel that my view was in fact correct and caused her to change her view; we adopted that course and were successful. That I would have to say, though there was no written judgment, is one of my first memories of a kind of peak for me.

In the case of ***David Lawrence v. Nestlé JMP Jamaica Ltd. CL. 019/2002*** we managed to establish in a Supreme Court decision before Mangatal J. where a worker had two incidents and was suing the Nestlé ice factory in respect of both incidents. On the face of it, it was a difficult case for Nestlé to win as usually there is a predisposition towards the employee, but this is where preparation comes in.



I went to the ice factory myself did a site visit and a walk through to see how it operated, how the cold room operated, how the workers should operate in getting ice cleaned from the back, how the workers should have cleared ice from the floor and so, based on that knowledge, I was able, through cross examination to establish what workers responsibilities were. So even though on the pleaded case it didn't appear to be a strong position for Nestlé, I managed to show, through cross examination that the worker was actually the author of his own misfortune in respect of both incidents.

Similarly, in the case of ***Life of Jamaica v. Dr Velma Nicholson-Lee Claim No. CL. 1995/L096*** Life of Jamaica (LoJ) had in fact sued a former customer for a debt and the customer counter-claimed damages for negligence for giving her poor investment advice. It was a case, on the face of it, so strong that LoJ was willing to settle the case and withdraw the claim. The defendant, the former customer, refused to accept settlement at the time and we went to trial and got through cross examination not through positive evidence on the part of LOJ's witnesses necessarily but through cross examining the defendant as to her knowledge regarding investments and arguing that she was knowledgeable but had elected independently to take the risks in terms of

the investments. This is a case which I thought we would have lost but where we ended up being successful. That represents the type of case I actually like, one that challenges you, you prepare for it and then you turn it around.

The Caribbean Examinations Council v. The Industrial Disputes Tribunal and Gerard Philip [2015] JMSC Civ. 44 is the first and may remain the only judgment from the Caribbean region that established the principles of diplomatic immunity in Jamaica where the court applied the ***Diplomatic Immunities and Privileges Act*** and interpreted that legislation. This case is currently before the Court of Appeal. Certainly, we were successful at the Supreme Court and Dunbar-Green J. wrote a very well-reasoned decision in that case.

There was also a Court of Appeal decision ***JAMALCO (Clarendon Alumina Works) v. Lunette Dennie [2014] JMCA Civ. 29*** that established certain principles of negligence and the proof of negligence and set out the principles the court will look at and the evidence required to quantify damages.

Also, there is the case of ***In the Estate of Charles Leiba [2013] JMSC Civ. 94*** which I came to understand is used frequently in undergraduate Family Law. It is currently before the Court of Appeal, submissions have closed and we are waiting with bated breath for the judgment. Certainly the case established important principles regarding the state of the law on declarations of paternity.

There is the case of ***Sagicor Pooled Investment Funds Ltd. v. Robertha Matthies and others [2017] JMCA Civ. 35*** regarding restrictive covenants that has -



laid the foundation for the current case (***Sarah Chin-Jen Hsia and others v. Martin Lyn and others [2020] JMSC Civ. 5***) which is quite topical. The Sagicor case is actually one of my first restrictive covenants cases where you have to go through the entire basis of entitlement to restrictive covenants and how it is you determine whether an entity or individual is entitled to the benefit of the restrictive covenant and then examine all the criteria under the legislation to determine the character of the neighbourhood, the obsolescence, etc.

Finally, the Privy Council case ***Causewell v. The General Legal Council (ex parte Elizabeth Hartley) [2019] UKPC 9*** where I appeared as Lead Counsel, was noteworthy as it would be the first Privy Council case that would be done by videolink in Jamaica, had the exercise been successful but it ended up being heard on paper where both parties put their submissions in writing and the Privy Council determined it on paper.

MK: Why is service to others so very important to you?

EL: Well service to others is important as I have throughout my life seen the benefit of service from others, whether it be my teachers, people who have helped me along the way in various capacities, my parents, -

my friends or family. I have even been stuck on the side of the road and had Beenie Man stop and offer to give me mechanical assistance. Time and time again you experience how much helping others benefitted them and how much it benefitted you, and you begin to appreciate the whole concept of giving back.

I have been a teacher at the law school for over nine (9) years now and when you have students say that they could not have passed Civil Practice but for your guidance you get a sense of satisfaction. Also, I do legal aid at my church, Bethel Baptist and sometimes you have people who come to you to explain the advice their lawyer gave them because they are too embarrassed to ask their lawyer for clarification.

Doing pro bono work as well, I try to have at least ten percent (10%) of my law practice as pro bono assistance to those who are in need. When you see how transformative it is to help others who could not otherwise afford your assistance you understand the need to help those in need. For example, there was a disputed child maintenance case in the parish of St. Thomas where the alleged father sat down and cried at the end of those proceedings. Had he not had assistance, the mother of the children would have him under the gun for the next few years and he would have perhaps not have been able to manage.

As you realise when you talk to some people, legal troubles can almost make you feel depressed, even suicidal, and so when it is you can be some sort of light in the darkness you cannot but try and help others who otherwise can't find their way out; there is a great value in that.

MK: What advice do you have for young attorneys just leaving law school, and very new in practice?

EL: My advice would be:

[1] be open to all opportunities that present themselves. So even if you feel like you don't like litigation or criminal law or property law, or you don't like this or that area be open to what opportunity may arise and if there's an opportunity to volunteer to gain experience in an area of law be open to doing that if you can afford it because it is the experience that you gain that is most valuable. The experience you gain is what adds to your value as an attorney;

[2] Be vigilant in your ethics and don't let anyone try to turn you astray and try to use you as a tool for money laundering, to facilitate any criminal activity and, it goes without saying, keep your clients' money separate from your own despite the paucity of your own resources compared to that of your client account and;

[3] Ensure that you are always striving to uphold the best standards of the profession.

MK: Apart from your legal career, what are some of your significant personal achievements?

EL: Being a husband and a father. I would say that the day my first son Jonathan was born it was transformative - on one level not something you achieve but it certainly felt like one of the most significant times in my life. Becoming a father and having full responsibility along with my wife Janelle, of course, for raising that child - family, having a family, raising a family and being a parent is, I think, of central importance.

Outside of that, I participated in a number of 5K, 10K and two marathons. The first marathon that I did was the Chicago Marathon in 2003. Now a marathon is 26.2 miles; some Jamaicans like to refer to a marathon as being a 5K. However, a 5K is three (3) miles and a marathon is 26 miles, so they are actually two completely different things.

When I try to give people perspective on mileage I say from Constant Spring Tax Office to Hellshire Beach, going along the Highway and making the left by the stop light is 18 miles, and in training we have to run to Hellshire Beach. So a marathon is eight (8) miles longer than that!

I also did the Baltimore marathon in 2005 and I've done the Jakes Treasure Beach triathlon and Rose Hall triathlon. So more recently I have been doing more triathlons than I certainly have marathons because I like the cross training aspect of it where you swim, bike and run.

You really feel a sense of accomplishment when you complete that; so, you swim in the sea by Treasure Beach, you cycle for 14 miles off road, up hills, through tracks, up goat paths, all over the place and then you have to run for four miles after that in the burning sun in Treasure Beach.

St Elizabeth is very hot so by the time you get to the point of running they could fry an egg on your head! But you feel a sense of accomplishment if you finish that course in about two hours (which is about close to my time).

So nowadays I run two mornings a week, I ride 8-10 miles at least once or twice a week and I swim about 1000m at the pool each week along with some planking and push ups.

MK: How do you balance it all?

EL: Time management, being able to prioritize what is important and also being able to delegate. The First thing you have to know is that you can't do it all and you have to trust those with whom you work to do jobs that they are engaged to do. You then focus on where you can add the most value.

So you do have to have oversight that applies to the firm life and family life and these, of course, can't be delegated but certainly in your legal practice you work with your colleagues, partners and associates and you have to know when to pass things, when to be able to supervise things, when to go in deep and when not to, and how to manage your time most effectively.

The firm is certainly supportive of my work as Bar Association President. At Duncocox they value the fact that you have external interests so no one questions when I have to leave on a Friday to teach my class or to attend a JAMBAR function.

At the firm, I also play multiple roles. I am co-head of the department for Litigation, I am the partner with portfolio responsibilities in finance, human resources and assist with information technology, so they support your freedom of movement needed to fulfil your Bar functions.

JAMAICAN BAR ASSOCIATION ANNUAL BANQUET

The Jamaica Pegasus Hotel
Saturday, July 13, 2019

As the highlight of this year's staging, the Association honored two distinguished stalwarts for their exceptional contributions to the advancement of law and the legal profession.



The night's honorees with Citations in hand:
Mr. R. Hugh Small, QC and Mrs. Jacqueline Samuels-Brown, QC





BAR BEAT: THE LINK UP, DRINK UP EDITION!

C & C South Beach Cafe

Saturday, May 25, 2019

Scores of legal professionals and friends turned out and "turned up" at JamBar's highly anticipated summer soiree.







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JOKES FOR LEGAL FOLKS

A Snapshot of
Matters Concerning Lawyers
Volume 23 Issue No. 4 July 1986



"Here's a dilemma. Should the disclaimer for our client's new sleeping pill read, 'May cause drowsiness' or 'May not cause drowsiness'?"



THE JUDICATURE (CIRCUIT COURT) (TIMES AND PLACES FOR THE HOLDING THEREOF) (AMENDMENT) ORDER, 2020



THE JAMAICA GAZETTE SUPPLEMENT

PROCLAMATIONS, RULES AND REGULATIONS

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FRIDAY, MARCH 26, 2020

No. 56

No. 53

THE JUDICATURE (SUPREME COURT) ACT

THE JUDICATURE (CIRCUIT COURT) (TIMES AND PLACES FOR THE HOLDING THEREOF) (AMENDMENT) ORDER, 2020

In exercise of the powers conferred by section 31 of the Judicature (Supreme Court) Act, the following Order is hereby made:—

1. This Order may be cited as the Judicature (Circuit Court) (Times and Places for the Holding Thereof) (Amendment) Order, 2020 and shall be read and construed as one with the Judicature (Circuit Courts) (Times and Places for the Holding Thereof) Order, 2018, hereinafter referred to as the principal Order.

2. The principal Order is hereby amended in the Schedule by including in the Hilary Term 2020 features the following:

Effective March 23, 2020, all circuit courts will be suspended and the cases transferred to the opening of the next sitting in the Easter Term 2020.

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PROCLAMATIONS, RULES AND REGULATIONS

[March 26, 2020]

3. The Principal Order is further amended in the Schedule by deleting from the Easter Term Dates for Commencement of Circuit Court 2020 the following:—

*Kingston	April 15	—	July 31
St. Catherine	April 15	—	July 31
Clarendon	April 15	—	July 31
Saint James	April 15	—	July 31 (R) July 6 – July 31
Manchester	May 11	—	June 5 th

and substituting therein the following:—

*Kingston	May 11	—	July 31
St. Catherine	May 11	—	July 31
Clarendon	May 11	—	June 5 and July 6 – July 31
Saint James	(R) July 6	—	July 31
Manchester	May 11	—	July 3 rd

4. The Principal Order is further amended in the Schedule by deleting from the Michaelmas Term Dates for Commencement of Circuit Court 2020 the following:—

*Manchester	September 28	—	October 23
St. James	September 16	—	October 16 (R) November 28 – December 18 th

and substituting therein the following:—

*Manchester	September 16	—	December 18
St. James	September 16	—	October 16 (R) November 23 – December 18 th

Dated this 20th day of March, 2020.

BRYAN SYKES
Chief Justice